

**CONSTITUTIONAL DEVELOPMENT  
IN PAPUA NEW GUINEA, 1968-73**



New Guinea Research Bulletin no. 51

**CONSTITUTIONAL DEVELOPMENT  
IN PAPUA NEW GUINEA, 1968-73**

**The transfer of executive power**

**P. J. BAYNE  
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**New Guinea Research Unit  
The Australian National University  
Port Moresby and Canberra**

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Printed and manufactured in Australia by  
The Australian National University

National Library of Australia  
card no. and ISBN 0 85818 015 4

Library of Congress Catalog  
card no. 73-88395

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## Preface

The preparation of these materials was commenced in 1970 by H.K. Colebatch in connection with the teaching of various courses at the Administrative College of Papua New Guinea. This work was interrupted by his departure for the Institute of Development Studies at the University of Sussex, and the documents published after August 1970 have been collected and edited by P.J. Bayne, initially as materials for the course in Constitutional Law at the University of Papua New Guinea. Both of us have, however, participated in the planning of each of the parts, and lay claim to the whole.

In origin therefore, these materials were viewed primarily as a teaching tool, and it is hoped that their value as such remains. The documents have been selected and annotated in such a way that the reader will learn by his own analysis. However, there is more commentary and explanation than is normally found in the law school case-book, and difficult points of interpretation are explained in the introduction to each part. Non-lawyers in particular may find it necessary to refer to these introductions.

However, as the materials developed, their primary object came to be seen as a research tool and as a contribution to the constitutional history of the 1968-73 period. It will be apparent to the reader that the most important of the constitutional documents relating to the transfer of power have been the determinations and the approved arrangements made by the Minister for External Territories under the Papua New Guinea Act. With one exception, these instruments have never been published in official documents. At the least therefore, this collection makes these documents available to the public. These instruments have been placed in the context of the reports of the select committees on constitutional development of the House of Assembly, the parliamentary debates in Papua New Guinea and Australia, and the legislative changes. The commentaries and analyses explain the legal changes and place them in their historical context. The study is based on material available to the authors as at June 1973.

## Acknowledgments

We would like to thank David Chenoweth, Mark Lynch, Ted Wolfers and John Ballard for their advice and encouragement

in the early stages of planning this collection and for their comments on the draft manuscript. We also benefited from discussions with Tos Barnett and Brian Ely.

We would also like to thank the secretarial staffs of the Faculty of Law of the University of Papua New Guinea and of New Guinea Research Unit of the Australian National University for patiently typing the drafts of the manuscript, and Susan Tarua for her careful and constructive editing and for the preparation of the index.

Acknowledgment is also given to the following for their permission to include various articles in this collection of documents: Papua New Guinea Post-Courier, for 'Five members protest on Act changes' (Document 7); Mr T. Lokoloko, MHA, for 'The ministerial member system' (Document 11); and Australian External Territories for 'Press conference held by His Honour the Administrator, Mr L.W. Johnson' (Document 21).

## Introduction

The constitutional relationship between the Australian government as the imperial power and the Papua New Guinea government as the colonial subject has approximated what is known in British colonial practice as 'Crown colony government'. 'Crown colony government is built on two great principles of subordination: (1) the legislature is subordinate to the executive; (2) the colonial government is subordinate to the imperial government' (Wight 1952:17). As a colony moves from colonial status to independence, the formal restraints which embody this subordination are removed. It is possible to identify a number of distinct stages in this process of change, particularly with respect to the evolution of the relationship between the executive and the legislature within the colony, and the process in Papua New Guinea could be said to have begun very soon after the initial acts of colonisation in 1884. However, in respect of both principles of subordination it has been the 1968 to 1973 period which has been of the most critical importance in the process of constitutional development.

The subordination of the Papua New Guinea government to the Australian government has meant that the executive and legislative organs of government in Papua New Guinea have been subject to the control of the Australian government. In the modern period, control over the exercise of executive power has been achieved by the subordination of the Administrator of Papua New Guinea to the Minister for External Territories, while formal control over the exercise of legislative power has been achieved by the power to prevent an Ordinance passed by the legislature from becoming or remaining law. In practice, the Australian government has regulated the affairs of Papua New Guinea primarily by control over the exercise of executive power; the legislative veto has only rarely been employed, and in very recent years its use may not have been practicable because of the likely international repercussions. From 1968 to 1973 there was a fundamental redistribution between the Australian and Papua New Guinea governments of the final authority to control the exercise of executive power. There was no formal change in this period with respect to the

legislative veto, although there were statements of policy as to how this power would be exercised.<sup>1</sup>

This transfer of executive power in 1968-73 has been accompanied by a transformation in the relationship between the executive and the legislature in Papua New Guinea. In line with the British pattern of colonial constitutional development, the direction of this change has been towards the 'Westminster model' of 'responsible cabinet government'. It is understandable that the Select Committee on Constitutional Development of the 1964-68 House of Assembly should have been influenced by the Westminster model given its, and its advisers' familiarity with the Australian system of government. Nevertheless, while constitutional change was obviously required to transfer power in the post-1968 period, it need not necessarily have involved the introduction of responsible cabinet government in the Westminster sense. The trend of constitutional development in the 1942 to 1967 period does not unequivocally indicate that this model would be adopted.

The basic constitutional document in relation to Papua New Guinea is the Papua New Guinea Act,<sup>2</sup> a statute of the Commonwealth of Australia; this Act provides for the basic constitutional structure of the country, the details of which are elaborated in various legal instruments made directly under the Act. The transfer of executive power and the concomitant constitutional changes have required amendments to the Act, to instruments made under the Act, and to Ordinances of the House of Assembly.

This collection of documents is designed to provide the basic reading for an analysis of the constitutional processes

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<sup>1</sup> The documents contain few references to this subject and the matter is more fully dealt with in the appendix; see also Lynch (1968) and Wight (1945).

<sup>2</sup> This statute was originally enacted as the *Papua and New Guinea Act 1949*. It has been amended several times, most recently in June 1973, and the full title of the statute is now *Papua New Guinea Act 1949-1973*. Where it is not intended to refer to the Act as it stood at any particular time, the reference *Papua New Guinea Act* is used; where it is so intended, the Act is referred to by its full title at that time, e.g., *Papua and New Guinea Act 1949-1968*, *Papua New Guinea Act 1949-1971*. Reference is also made to the Acts which amended the principal Act, e.g., *Papua and New Guinea Act 1968*, *Papua New Guinea Act 1971*.



involved in the transfer of power in Papua New Guinea between 1968 and 1973. This introduction provides the background for an understanding and evaluation of the documents; it first explains some constitutional terms to which reference will be found in various of the documents and then reviews the development of the relationship between the legislature and the executive from 1942 to 1967. Each section of documents is introduced by explanatory notes.

The Westminster model of responsible government

The term 'responsible government' refers to a number of separate but closely related principles concerning the legislative and executive branches of government. These principles also constitute the basis of the 'Westminster model' of government, that is, the pattern of government evolved by the United Kingdom and followed in varying degrees by almost all former British colonies when they achieved independence.<sup>1</sup> These principles may be summarised as follows:

(i) The head of the executive (in terms of real rather than formal exercise of power) is that member of the legislature who, following a general election (or the resignation or death of the head of the executive), is able to command the support of a majority of the members of the legislature. In the United Kingdom the Queen is the head of state, but in terms of the real exercise of power the prime minister is the head of the executive. The Queen appoints the prime minister as the necessity for a new appointment arises. The existence of a rigid party system in the United Kingdom means that there is usually no doubt as to which person is capable of commanding the support of a majority of the members of the legislature.

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<sup>1</sup> For a recent statement of United Kingdom practice see De Smith (1971:ch.6). It is more correct to say that the Westminster model was the point of departure from colonial status, as few former British colonies have not modified the cabinet system which was written into their independence constitutions (see De Smith 1964). In exceptional circumstances, the Queen may be able to exercise more discretion than this sketch allows, even with regard to a matter such as the appointment of a prime minister (see De Smith 1971:99-109, 159-60). It is very difficult to express the true situation in a short, precise statement, and it is perhaps for this reason that the attempts to reproduce these conventions in a written constitution have been difficult to interpret (see Adegbenro v. Akintola [1963] A.C. 614, and De Smith 1971:55).

(ii) The Queen, acting on the advice of the prime minister, appoints and dismisses the ministers. A minister must be a member of the legislature or must become a member shortly after appointment.

(iii) Each minister is the head of a department of the public service<sup>1</sup> and is responsible for the actions of his department, including answering on its behalf in the legislature.

(iv) The ministers are collectively responsible for the policies of the government; that is, each minister is obliged to publicly support and defend government policy irrespective of whether he personally approves of it.

(v) The Queen, acting on the advice of the prime minister, may at any time dissolve the legislature, thus causing a general election.

(vi) When an election is held, the prime minister and the other ministers continue in office unless the election results show that the prime minister's party (or coalition) no longer has support from a majority of members of the newly elected legislature.

(vii) If the government is defeated in the legislature on a matter of confidence (for instance, if a vote of no-confidence is passed or if government-sponsored legislation is defeated), the prime minister and the ministers resign, whereupon the Queen either selects another member of the legislature to become prime minister or dissolves the legislature. British practice in this regard is not clear and in some circumstances the Queen may not be bound by the advice of the outgoing prime minister. The ability of the legislature to cause the executive to resign is the core of the concept of responsible government.

The basic features of the Westminster model may be seen more clearly when they are contrasted with the basic features of the American presidential system.<sup>2</sup> The Constitution of the

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<sup>1</sup> Although occasionally a minister is not assigned responsibility for a department of the public service; in Australia he may be called a minister of state or a minister without portfolio. In the United Kingdom several archaic offices, such as that of the Chancellor of the Duchy of Lancaster, have been preserved to offer senior ministers a post free from departmental responsibilities.

<sup>2</sup> The American system of government is not, of course, the only system which can be described as presidential. Several independent African states have adapted their Westminster

United States vests executive power in the president, who is elected by the entire electorate of the country for a fixed term of four years. Elections for the legislature (the Congress) are held at varying intervals and are independent of the presidential election, so that the results of congressional elections do not determine who the president shall be nor can they affect his tenure of office. Thus the party to which the president belongs is often not the party which has a majority of supporters in the Congress. The separation of the executive branch from the legislative branch is further emphasised by the provisions concerning appointment of persons to be the political heads of government departments; collectively these persons form the president's cabinet. The president must choose as his cabinet members persons who are not members of the Congress; he also dismisses cabinet members. Except by the very rarely used process of impeachment, the Congress cannot cause the removal from office of the president or his cabinet. The president is also the head of state, and rules concerning succession to office are designed to ensure continuity should the president die or become incapacitated.

Legislative and executive power:  
self-government and independence

Legislative power is the power to make law. In the constitutional framework of Papua New Guinea the ultimate source of legislative power is the Parliament of the Commonwealth of Australia,<sup>1</sup> and several statutes of that Parliament apply to Papua New Guinea. Within Papua New Guinea the paramount legislative authority is the House of Assembly, acting with either the Administrator or the Governor-General of Australia. The Papua New Guinea Act creates the House of Assembly and empowers it to 'make Ordinances for the peace, order and good government of Papua New Guinea' (section 52); however, such Ordinances do not take effect until assented to by either the Administrator or the Governor-General, depending on the character of the

2 (continued)

legacy to a presidential system (De Smith 1964:ch.6). However, in the discussion of the presidential alternative in Papua New Guinea, it is generally the American model that has been offered.

<sup>1</sup> Constitution of the Commonwealth of Australia, section 122. The vagaries and difficulties of the case-law will not be explored here. The possibility that United Kingdom legislation could affect Papua New Guinea is too remote to merit consideration here.

legislation. Ordinances assented to by the Administrator are also subject to disallowance by the Governor-General within six months of the assent (sections 53 to 57A). Ordinances are subordinate to Acts of the Australian Parliament in that they are invalid to the extent that they conflict with an Act or with action taken under an Act.<sup>1</sup> Several other governmental authorities in Papua New Guinea exercise power which can be characterised as legislative, but their constitutional position is essentially different from that of the House of Assembly.<sup>2</sup>

The transition to self-government has not involved any legal diminution of the legislative powers of the Australian Parliament or of the veto power of the Governor-General or the Administrator, although the practical difficulty of exercising these powers has increased.<sup>3</sup> The Australian Parliament will retain full legislative power after formal self-government, but the veto power of the Governor-General or the Administrator will probably be limited to legislation in fields in which the Australian government retains final authority. At independence the Australian Parliament will probably renounce its power to legislate with respect to Papua New Guinea,<sup>4</sup> and this renunciation would be binding upon the courts of Papua New Guinea and possibly on those of Australia as well.<sup>5</sup>

The concept of executive power is rather more complex because it is used in two senses. In a legal sense it is used

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<sup>1</sup> For instance, section 6 of the *National Identity Ordinance* 1971 (No.41 of 1971), which provided that 'Papua New Guinea' should be the national name, was probably in conflict with section 10 of the *Papua and New Guinea Act* 1949-1968. However, section 27 of the *Papua New Guinea Act* 1971 (No.123 of 1971) retrospectively validated the Ordinance.

<sup>2</sup> See the discussion in Secretary for Law v. Tenalom [1965-66], P & NGLR 414, 419-20.

<sup>3</sup> Also in July 1970 the Australian government announced that it would not invoke these powers over a wide range of matters; see Document 14.

<sup>4</sup> As in the *Nauru Independence Act* 1967 (No.103 of 1967), section 4(2): 'On and after Nauru Independence Day, Australia shall not exercise any powers of legislation, administration or jurisdiction in and over Nauru.'

<sup>5</sup> See the discussion in De Smith (1971:77-82) and Blackburn v. Attorney-General [1971] 1 WLR 1037; [1972] 2 All ER 1380.

to describe power derived from a law to take action. Such powers are of infinite variety: they range from the power to spend public money to powers to make regulations, to grant licences, to make appointments to offices, and so forth.<sup>1</sup> This sense of the concept is important to an understanding of the *Administrative Arrangements (Vesting of Powers) Ordinance 1971-1972* (Document 37). However, the concept of executive power is more frequently used in the political sense of the power to decide government policy. In this sense it refers to a number of separate but related functions: the power to decide how laws will be applied; the power to formulate policy as to the repeal, amendment or making of laws by the legislature; and the power to formulate policy in areas which do not involve the application of law.<sup>2</sup> A person or body may have executive power in the political sense without necessarily having any legal power to take action. Thus in August 1970 it was possible to speak of a transfer of executive power to the ministerial and assistant ministerial members of the House of Assembly although the members had no legal power to take action in relation to the functions of their departments. Similarly the Administrator's Executive Council as a body possesses very little legal power although it exercises most important policy-making functions.

Many persons and bodies exercise executive powers with respect to Papua New Guinea affairs. Almost all are vested with executive power in the legal sense<sup>3</sup> but the degree to

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<sup>1</sup> For a varied sample see the powers delegated to the ministers of the 1972 House of Assembly by virtue of the *Administrative Arrangements (Vesting of Powers) Ordinance 1971-1972* (Papua New Guinea Government Gazette, No.67 of 1972); see Document 40.

<sup>2</sup> Halsbury's Laws of England (1954:vol.7, p.192) gives this definition: 'Executive functions are incapable of comprehensive definition, for they are merely the residue of the functions of government after legislative and judicial functions have been taken away. They include, in addition to the execution of laws, the maintenance of public order, the management of Crown property and nationalised industries and services, the direction of foreign policy, the conduct of military operations, and the provision or supervision of such services as education, public health, transport, and state assistance and insurance.'

<sup>3</sup> The exception is the Australian cabinet, which is not provided for in the Australian Constitution and is rarely even identified by laws (see Sawer 1956).

which they determine policy varies considerably. The Australian government authorities include the Governor-General, the cabinet, the Minister for External Territories and several other ministers, officials of various departments of the public service of Australia, and independent and semi-independent bodies such as the Australian Broadcasting Commission, the Reserve Bank, the Australian National Airlines Commission and the Bureau of Meteorological Services. The most significant Papua New Guinea authorities are those provided for by the Papua New Guinea Act: the Administrator, the Administrator's Executive Council, the Deputy Chairman of the Council,<sup>1</sup> and the ministers of the House of Assembly. There are many other executive authorities constituted by Ordinances, including all officials and bodies comprising departments of the public service and such statutory bodies as the Royal Papua and New Guinea Constabulary, the Liquor Licensing Commission and the Electricity Commission.

Progress towards self-government and independence involves a transfer of executive power in both the legal and political senses. In August 1970 full and final responsibility for policy in various fields was vested in the ministerial and assistant ministerial members, and in April 1973 these areas of responsibility were expanded. Self-government will involve a further transfer of power until in only the areas of defence, external affairs and internal security (see Document 41) will the Australian government be the ultimate arbiter of policy. On independence the Australian government will not retain any formal power to make policy decisions concerning any aspect of Papua New Guinea's affairs.

#### Constitutional development, 1942-67

The modern constitutional and administrative history of Papua New Guinea begins with the formation of the Australian New Guinea Administrative Unit (ANGAU) in April 1942, and the establishment of the administrative union of Papua and New Guinea (Ryan 1972:21). Civil administration commenced with the operation of the *Papua and New Guinea Provisional Administration Act* 1945 (No.20 of 1945 of the Commonwealth of Australia), but the constitutional structure established by the Act was very rudimentary. Legislative power was vested in the Governor-General but provision was made for either House of the Commonwealth Parliament to disallow any Ordinance

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<sup>1</sup> The Deputy Chairman is more commonly known as the Chief Minister; see pp.155-6 and Document 36.

made by the Governor-General. On the executive side the Act provided for the appointment of an Administrator, who was required to perform his functions according to instructions given by the Minister for External Territories. This Act was obviously intended to be a temporary measure although the bulk of its provisions continued in force until mid-1949; the legislative power of the Governor-General remained operative until the end of 1951.<sup>1</sup>

The *Papua and New Guinea Act* 1949 (No.9 of 1949 of the Commonwealth of Australia) introduced a more sophisticated constitutional structure and is the basis of the present system. Part of the background to this Act is the Trusteeship Agreement for the Mandated Territory of New Guinea, approved by the General Assembly of the United Nations on 13 December 1946. This agreement recited that the government of Australia had agreed to place the Territory of New Guinea under the trusteeship system of the United Nations and to administer the Territory according to the terms of the Agreement. The Agreement permitted to Australia 'the same powers of legislation, administration and jurisdiction in and over the Territory as if it were an integral part of Australia', and it was also agreed that the Australian government would 'be at liberty to bring the Territory into a customs, fiscal or administrative union or federation with other dependent territories under its jurisdiction or control'.<sup>2</sup> Obviously the intention was to permit a continuation of the administrative union with the Territory of Papua. The *Papua and New Guinea Act* 1949 therefore provided that the two Territories 'shall be governed in an administrative union' (section 9), and that for the purposes of the Act they should together be called 'the Territory of Papua and New Guinea' (section 10).<sup>3</sup>

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<sup>1</sup> See the annotations to the *Papua and New Guinea Act* 1949-1950, in Laws of the Territory of Papua and New Guinea, 1949-51, vol.1, part A, pp.52-76.

<sup>2</sup> The Trusteeship Agreement is set out as the Fourth Schedule to the *Papua and New Guinea Act* 1949, and the quotations are from Articles 4 and 5 of the Agreement.

<sup>3</sup> However, section 8 of the Act provided that it was the intention of the Australian Parliament that 'the identity and status of the Territory of Papua as a Possession of the Crown and the identity and status of the Territory of New Guinea as a Trust Territory shall continue to be maintained'. The ambiguity latent in these three provisions remains, for the only post-1949 change has been the repeal of the old section

The 1949 Act provided for the appointment of an Administrator and for an Executive Council 'to advise and assist the Administrator'. The Council was to consist of 'not less than nine officers of the Territory', to be appointed to the Council by the Governor-General and to hold office during his pleasure (section 19). The Act defined 'officer of the Territory' to mean a person appointed to the public service of the Territory (section 5); this definition is still current. The subordinate position of the Council to the Administrator was reinforced by other provisions of the Act: only the Administrator could summon the Council and submit matters to it, and the Administrator might in his discretion act in opposition to advice given to him by the Council although in such cases he was required to submit a report forthwith to the Minister (sections 21, 22, 23).<sup>1</sup> The 1949 Act also provided for the creation of a Legislative Council, to consist of the Administrator, 16 official members ('officers of the Territory'), 3 appointed members to represent the interests of the Christian missions, 3 appointed 'native' members, 3 appointed members (without restriction), and 3 members to be elected by the 'electors of the Territory' (section 36(1)). (At that time, under the *Legislative Council Ordinance* 1951 (No.28 of 1951) (section 8(1)), only a person who was resident and 'not...a native or an alien' was entitled to vote.) The non-elected members were appointed by the Governor-General on the nomination of the Administrator.

Very little in the 1949 arrangement reflected the principles of responsible government. The Executive Council was purely advisory and was composed entirely of public servants. (The fact that there was no representative of the non-official members of the Legislative Council on the Executive Council marked a regression from the pre-World War II trend.)<sup>2</sup> In

<sup>3</sup> (continued)

10 and its replacement by a new section 10 which provides that the two Territories are to be together called 'Papua New Guinea' (see *Papua New Guinea Act* 1971 (No.123 of 1971), section 5).

<sup>1</sup> When the Act came into operation the relevant Minister was the Minister for External Territories; in 1951 the designation was changed to Minister for Territories, and in 1968 it reverted to the original title.

<sup>2</sup> The *New Guinea Act* 1932 and the *Papua Act* 1940 provided that one non-official member of the Legislative Council should also be a member of the Executive Council.



the Legislative Council the official members outnumbered the non-official members and, as public servants, the official members were obliged to support government policy.<sup>1</sup> Of the non-official element, the elected members formed only one-quarter of the total and the indigenous people of Papua New Guinea were not therefore represented by an elected member. The Legislative Council was not representative of the people, and it could not determine the composition of the Executive Council or the tenure of its members. Finally, the Act did not even require that the 9 official members of the Executive Council should be chosen from among the 16 official members of the Legislative Council.

Significant constitutional change to the 1949 Act did not occur until the passage of the *Papua and New Guinea (No.2) Act* 1960 (No.47 of 1960). The operation of this Act began the period of the short-lived 'reconstituted' Legislative Council, and the most important amendments concerned the composition and size of this Council. They provided that the Council was to consist of the Administrator, 14 official members, 10 persons appointed by the Governor-General on the nomination of the Administrator, and 12 persons elected by the 'electors of the Territory' (section 36). At the time this Act came into operation the *Legislative Council Ordinance* 1950 was still in force, and by section 8(1) of this Ordinance 'natives' were excluded from the definition of 'electors of the Territory'. In order to permit the indigenous inhabitants of the country to participate in the election of the members of the reconstituted Legislative Council, the 1960 Act provided that until such time as the law was amended to permit 'natives' to vote, the 12 elected members were to be composed of 6 persons 'elected by electors' and 6 persons 'elected by natives' (section 36(3)). It also provided that of the 10 appointed members not less than 5 should be residents and that not less than 5 should be 'natives' (section 36(2)). Although there was no longer an official majority in the Legislative Council the Administration had no difficulty in securing support for its legislative programme. However, the elected members made up only one-third of the Council and as representatives of communal groups, they could not confidently claim to represent the interests of the whole Territory, as the Administration could.

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<sup>1</sup> This was made clear in 1959 when several official members of the Legislative Council unsuccessfully petitioned Canberra for a free vote on the Income Tax Bill (see Jinks 1967:23).

All provisions of the 1949 Act concerning the Executive Council were repealed and replaced by the 1960 Act, and the name of the Council was altered to the 'Administrator's Council'. The Act provided that the Council was to be composed of the Administrator, 3 of the official members of the Legislative Council, and 3 of the non-official members of the Legislative Council, of whom at least 2 were to be elected members (section 19(2)). All members were to be appointed by the Minister for Territories on the nomination of the Administrator, and to hold office during the Administrator's pleasure (section 19(3)). To reinforce the provisions that the members of the Administrator's Council must be chosen from the Legislative Council, a member of the Administrator's Council could not hold office for more than three months after he ceased to be a member of the Legislative Council unless within that period he again became a member of the Legislative Council (section 19(4)). Thus in 1960 two small steps were taken towards a responsible parliamentary executive and a small elective element was introduced into the executive.

The Administrator's Council remained weak in relation to the Administrator although some slight advances were made. Section 20 of the Papua and New Guinea Act as it stood after the 1960 amendments provided that: 'The functions of the Administrator's Council are to advise the Administrator - (a) on any matter referred to the Council by the Administrator; and (b) in accordance with an Ordinance, on any other matter.' The Act did not therefore impose a general obligation on the Administrator to consult with the Council, and in practice there were very few matters referred to it under section 20(a) (Parker 1966a:256-7). However, section 20(b) contemplated those cases where an Ordinance required the Administrator to consult with the Council. Some Ordinances specifically imposed statutory functions on the 'Administrator in Council',<sup>1</sup> and section 4 of the *Administrator's Council Ordinance* 1960 (No.43 of 1960), provided generally that 'where an Ordinance is expressed to confer power on the Administrator to make regulations, the regulations may be made by the Administrator in Council'. On general principles of interpretation, an act required or permitted to be done by the 'Administrator in Council' could only lawfully be performed if the Council concurred with the Administrator and vice versa. However, section 5 of the 1960 Ordinance provided that 'where it is provided by this or any other Ordinance that an act or thing shall or may

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<sup>1</sup> See, e.g., *Migration Ordinance* 1963, section 12(1).

be done by the Administrator in Council, that act or thing shall or may, as the case may be, be done by the Administrator', but that 'the Administrator shall not do the act or thing until the Administrator has received the advice of the Administrator's Council'. However, 'the Administrator...is not bound to act in conformity with the advice of the Administrator's Council', although in the event that he should act, or fail to act, contrary to that advice, he is required 'not later than the first sitting day of the next meeting of the Legislative Council, to cause a statement of the reasons for his so acting or failing to act, as the case may be, to be laid before the Legislative Council'. The 1960 Ordinance therefore reinforced the principle that the Council was advisory to the Administrator.

During 1962 increasing political pressures were placed on the Australian government to accelerate constitutional change, particularly after the visit to Papua New Guinea of the United Nations Visiting Mission headed by Sir Hugh Foot. A Select Committee of the Legislative Council recommended important reforms to both the legislature and the executive which were reflected in the *Papua and New Guinea Act 1963* (No.27 of 1963). On the legislative side these amendments created the House of Assembly, to consist of 10 official members to be appointed and subject to dismissal by the Governor-General, 44 persons elected by electors of the Territory, and 10 persons 'not being indigenous inhabitants of the Territory' elected by the electors (section 36).<sup>1</sup> (The *Electoral Ordinance 1963* (No.41 of 1963), section 34, provided for a common electoral roll of the indigenous and non-indigenous electors of the Territory.) These amendments increased the possibility that the government might not find support in the House.

On the executive side the 1963 amendments only affected the size and composition of the Council, which thenceforth was to consist of the Administrator, 3 persons who were official members of the House, and 7 members who were elected members

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<sup>1</sup> The *Electoral (Open Electorates) Ordinance* (No.42 of 1963) provided for the division of the country into 44 open electorates, and the *Electoral (Special Electorates) Ordinance* (No.43 of 1963) provided for 10 special electorates, each of which covered an area which included a number of open electorates. Section 9 of this Ordinance provided that 'No person is qualified for nomination for a special electorate if he is an indigenous inhabitant of the Territory...'. However, all persons enrolled to vote in the open electorates could vote in the election for the special electorates.

of the House (section 19). These members were still to be appointed and dismissed by the Minister for Territories, and the advisory role of the Administrator's Council established by the 1960 amendments also remained. However, the reforms in 1963 were complemented by the *Parliamentary Under-Secretaries Ordinance* 1963 (No.44 of 1963), passed by the Legislative Council after the 1963 amendments to the Papua and New Guinea Act were assented to but before they came into operation. It was provided that the Administrator might appoint up to fifteen elected members of the House as parliamentary under-secretaries. Each under-secretary held office 'during the Administrator's pleasure' and could not hold office for more than three months after he ceased to be a member of the House (section 4). It was provided that an under-secretary 'shall have and perform such duties as are determined by the Administrator' (section 8), and that an under-secretary who was not a member of the Administrator's Council might 'attend and be heard' at a meeting of the Council (section 9).

There was thus no attempt made in 1963 to involve the House of Assembly in the appointment or dismissal of the under-secretaries, and there was no requirement that the seven elected members of the Administrator's Council should also be under-secretaries. The Ordinance was also silent on the relationship between the under-secretaries and the heads of public service departments. Nevertheless, the Parliamentary Under-Secretaries Ordinance was sufficiently vague to permit a considerable practical advance towards responsible government. At the time, however, it appears that the Australian government had other considerations in mind; Dr J.T. Gunther, a former Deputy Administrator and member of the House, observed in 1966 that 'obviously the Administration hoped to get the support of...such appointees, and so reduce the great gap in numbers between the elected and official members' (Gunther 1966:2).<sup>1</sup> In practice, only 10 under-secretaries were appointed, all of them indigenous members of the House, but of the 7 elected members of the Administrator's Council only 5 were also under-secretaries.<sup>2</sup> The scheme produced few practical benefits:

<sup>1</sup> However, three years after the first meeting of the House of Assembly, Møller (1968:4) concluded that 'the attitude of the under-secretaries as a group towards the Administration's position does not differ much from [that of] the average [member of the House]'.  
<sup>2</sup> Papua New Guinea House of Assembly Debates (hereafter referred to in commentaries as H.A.D.), vol.I, no.1, p.8, 9 June 1964.

The mutual obligations of the senior officials and their allotted 'understudies' remained vague; each side had more pressing preoccupations and commitments; the constitutional status of the Under-Secretaries was equivocal; in practice they had neither political nor administrative responsibility; at best they became messengers, intermediaries, and spokesmen for their official heads of departments.... Membership of the Administrator's Council during the first House provided only tenuous 'association in the exercise of power'. It was even in law only an advisory body; in practice its proceedings were reported to be almost entirely formal until 1967. (Parker and Wolfers 1971:27)

### Conclusion

As has been indicated, the documents which follow are concerned largely with the constitutional processes involved in the transfer of executive power from the Australian government to the Papua New Guinea government. They do not reveal the full range of problems involved in the creation of a coherent and independent Papua New Guinea administration. However, the significance of the constitutional changes can only be fully evaluated when a more complete picture is available of the progress which was made to overcome these problems. In conclusion to this introduction, attention is drawn to one general aspect of a problem which has been the subject of comment: the problem of what may be somewhat crudely called 'Canberra control'.

In a statement of Australian policy for Papua New Guinea in 1952 the then Minister for Territories stressed that:

For some years to come, it is inevitable that Papua and New Guinea will be administered as a territory, and that the administration will become increasingly centralised in Australia. (Hasluck 1952:227, quoted in Parker 1966b:195)

This statement remained a guiding principle of the pattern of administration until at least 1970, and its implementation has inhibited the development of a coherent administration in Papua New Guinea.

Constitutionally the instrument through which the Australian government has exercised close supervision over administration has been the Administrator. The *Papua and New Guinea Act* 1949 provided, as does the present Act, that the Administrator is to be appointed by the Governor-General and that he 'shall be charged with the duty of administering the government of the

Territory on behalf of the Commonwealth' (sections 13 and 15). A necessary obligation of his office is therefore to administer the government according to the specific directions of the Minister for External Territories and his departmental officers. Such specific directions have been freely and frequently given (Parker 1966b:196-7). In addition, most of the important statutory functions provided for by Ordinances of Papua New Guinea have been vested in the Minister for External Territories or in the Administrator.

Until recently the Australian government has also resisted the development of a 'fully co-ordinated administration' in Port Moresby (Parker 1966b:197). This attitude was particularly manifested in opposition to the growth of a planning and co-ordinating role for the Department of the Administrator. Parker (1966b:200) wrote: 'Port Moresby cannot, as a co-ordinating or planning centre, seriously purport to challenge the more closely knit Department of Territories.' Rowley (1969) voiced similar criticisms and it would appear that it was not until mid-1970 that the Australian government made a conscious effort to reverse the policy.<sup>1</sup> It was not, however, until August 1972 that the Australian government agreed to transfer to the Administrator's Executive Council final authority over the main functions of the Office of Programming and Co-ordination.

These features of Australian administration in Papua New Guinea must be considered when assessing the process of transfer of political power from Canberra to the government in Papua New Guinea. A local 'institutional structure...operating within its own areas of decision making' (Rowley 1969:13) is a necessary concomitant of a local political executive, yet the dominant trend of Australian administration from 1942 to 1970 was contrary to the creation of an autonomous administration within Papua New Guinea.

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<sup>1</sup> See, too, Bruce Juddery, 'Running Papua New Guinea from Canberra', Canberra Times, 9 October 1969. This article attempted to analyse, so far as the sources of information permitted, the relationships between the then Minister, the departmental head of the Department of External Territories, and the Administrator. Appointments to the latter two posts in May 1970 were taken to indicate that the Port Moresby administration would thenceforth have more influence on decision-making (see The Age, 6 May 1970, and Australian Financial Review, 6 May 1970). See too, D. Fenbury, in Post-Courier, 27 March 1973.

## Part I

### The introduction of a ministerial system

On 19 May 1965 the House of Assembly, on the motion of Mr (now Dr) John Guise, resolved to create a Select Committee 'to consider ways and means of preparing and presenting, and to draft for the consideration of this House a set of constitutional proposals to serve as a guide for future constitutional development in the Territory'.<sup>1</sup> The committee appointed to perform this function included Mr Guise, who was subsequently elected as chairman. The Select Committee on Constitutional Development presented two interim reports; the first gave only a very general indication of the Committee's plans,<sup>2</sup> and the second was confined to suggestions concerning the size and composition of the House of Assembly.<sup>3</sup> The final report of the Committee dealt with the executive structure of government,<sup>4</sup> and Document 1 contains extracts from this report.

The Committee's recommendations were an attempt to find an 'intermediate position' between those who wanted no change and the 'small group' who wanted a limited measure of self-government. The Committee's recognition that 'until the people of the Territory determine their own political and constitutional future, the duty and responsibility of administering the Territory rests with the Administrator acting on behalf of the Australian government' reflected the cautious nature of its recommendations. Such a bald statement of principle did not envisage that any distinction between internal and external affairs should be drawn, and no suggestions were made as to when or how the people should determine their future.

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<sup>1</sup> H.A.D., vol.I, no.5, p.660, 19 May 1965.

<sup>2</sup> H.A.D., vol.I, no.7, pp.1126-7, 26 November 1965.

<sup>3</sup> H.A.D., vol.I, no.10, pp.1582-7, 30 August 1966.

<sup>4</sup> H.A.D., vol.I, no.13, pp.2340-4, 6 June 1967.

The Committee recommended that, subject to the principle of the Administrator's responsibility, the Administrator's Executive Council (AEC) 'should be the principal instrument of policy of the executive government of the Territory'. The primacy of the Administrator in the constitutional scheme was underlined by the recommendation that the principle that the Administrator was not bound to act in accordance with advice given to him by the Council should not be altered.

However, the recommendations concerning the appointment of ministers and assistant ministers, and the recommendation that all ministers should be members of the AEC, did represent significant advances. The last recommendation clearly envisaged the development of a parliamentary executive along the lines of the Westminster model, although the proposal that a minister should share responsibility with his departmental head diluted its strength. The proposals concerning the appointment of ministers and assistant ministers were original in that the House of Assembly was to be actively involved in the process of appointment. This departure from the Westminster model can be best explained by the absence in the House at that time of political parties or party leaders; the inchoate nature of groupings in the House would have made it very difficult for the Administrator to consult with a particular member of the House before appointing the ministers.

With some departures,<sup>1</sup> the recommendations of the Select Committee were accepted by the Australian government and

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<sup>1</sup> It is noteworthy that the Australian government substituted the words 'ministerial member' and 'assistant ministerial member' for the Committee's 'minister' and 'assistant minister'. This change was recommended in the House of Assembly by Mr Henderson, Assistant Administrator, Economic Affairs (the only member who spoke to the motion that the House should adopt the final report), who argued that the use of the word 'minister' would indicate that the Territory 'is further along the way to self-government than in fact the Committee recommended' (H.A.D., vol.I, no.13, p.2409, 6 June 1967). The Minister for Territories justified the change on the basis that the office-holders 'will not be exercising...full executive responsibility and authority' (Commonwealth Parliamentary Debates (hereafter referred to in commentaries as C.P.D.), House of Representatives, no.9, p.2310, 26 October 1967). See, too, Document 7.



implemented by the *Papua and New Guinea Act* 1968 (Document 2).<sup>1</sup> It should not, however, be concluded that the Australian government was simply following the wishes of the Select Committee for it has been alleged that the government influenced its work. In May 1970, some time after the final report was made, Dr J.T. Gunther contrasted the freedom the Australian government allowed to the Select Committee on Constitutional Development of the last Legislative Council (of which he had been chairman) with that allowed to the Select Committees of the 1964-68 and 1968-72 Houses of Assembly:

This lack of interference with the Committee and confidence in the Committee by the Prime Minister, the Minister and the Administrator was very much appreciated. Unfortunately, such confidence was not shown in the House of Assembly Select Committee proposed and led by Mr John Guise, now Speaker. I have reason to believe there is similar interference with Mr Arek's Committee.... With great respect to Mr Guise, I believe that there was much interference by the Government through directions to the official members, so that the Committee was not able to consider some of the very many exacting problems that must come before any committee considering a new constitution for a colonial country progressing to self-determination. (Gunther 1970:427)

This statement sparked a short but vigorous debate in the Australian House of Representatives, which not surprisingly did little to clarify whether there had been any interference.<sup>2</sup> Dr Gunther's statement stands as an indication that the Australian government's role in shaping constitutional development may have been more direct than might otherwise appear.

The 1968 amendments provided that the AEC should 'advise the Administrator' on matters referred to it or in accordance with the requirements of an Ordinance. The Council was to comprise the Administrator, three official members of the House, and the persons who held office as ministerial members.

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<sup>1</sup> The *Papua and New Guinea Act* 1966 had permitted the enlargement of the House of Assembly, and elections for the Second House were held in February and March 1968. The *Papua and New Guinea Act* 1968 was not assented to until May 1968, and the first meeting of the first session of the new House was not held until 4 June 1968.

<sup>2</sup> C.P.D., House of Representatives, no.67, pp.2518-31, 21 May 1970.

There were to be seven ministerial members and not more than ten assistant ministerial members. The provisions concerning the functions of these members are of crucial importance to an understanding of the transfer-of-power process.

As amended, section 24(1) provided that the Minister for External Territories should determine the designations for each of the offices of the ministerial and assistant ministerial members. By section 24(2) the Minister was required to 'determine, from time to time, the matters in which the holder' of the office should perform his functions, 'being all or any of the matters to which the functions of a specified department of the public service relate'. Section 25(1) then provided that the functions of a member were 'to assist in the administration of the government of the Territory'; the three facets of this general function which were detailed, however, were to be performed in relation only to the matters determined by the Minister under section 24(2) to be within the functions of a member, and were to be exercised 'to the extent and in the manner provided by arrangements approved by the Minister'. In summary, the purpose of a determination made under section 24(2) was to indicate the range of matters with respect to which a ministerial or assistant ministerial member could perform his functions; the purpose of approved arrangements made under section 25(1) was to indicate the extent and the manner in which these functions were to be exercised. The various 'determinations' and 'approved arrangements' made under the 1968 and 1971 amendments to the Act have been of the greatest importance in the progress towards self-government.

Section 25(2) completed the provisions of the 1968 Act relating to the functions of ministerial and assistant ministerial members. It provided that the 'powers, functions or duties in relation to the government of the Territory' should not be imposed by any Ordinance on an office-holder 'in his capacity as the holder of such an office', but it did permit delegation of powers or functions under an Ordinance to an office-holder. Section 25(2) related to the exercise by the office-holders of executive power in the legal sense, and it seems that it was designed to ensure close control by the Australian government: a delegated power could be quickly withdrawn whereas amendment to an Ordinance would have been cumbersome.

Section 26 of the Act, supplemented by the *Papua and New Guinea (Ministerial Appointments) Regulations 1968* (Document 3),<sup>1</sup>

<sup>1</sup> These Regulations were made by the Governor-General under sections 26(4) and 78 of the *Papua and New Guinea Act 1949-1968*.

provided for a rather complicated method of appointing the ministerial and assistant ministerial members. The House of Assembly was made an integral part of this process since the Minister for External Territories could not exercise his discretion to appoint until the House had resolved to nominate the persons agreed to by the Ministerial Nominations Committee and the Administrator. The checks built into the system - the House's discretion to refuse to nominate the agreed persons, the Minister's discretion to refuse to appoint the House's nominees - are such that the process of appointment could have been very lengthy. This possibility posed no real problem in 1968 as all executive power concerning the public service was vested in the Administrator and departmental officials, and a failure to appoint the ministerial office-holders quickly would not have stultified decision-making. In 1972, however, the problem was potentially more real, and at self-government such a system could well be unworkable.

The Act and the Regulations provided that removal of an office-holder should follow the same procedure, except that it was not imperative that the House should elect a new Ministerial Nominations Committee; however, if the existing Committee refused to recommend removal of an office-holder to the Administrator, the House could dismiss those members of the Committee opposed to removal and appoint others in their place. The House's power to invoke the procedure for removal introduced into the constitutional system for the first time an element of control by the House over part of the executive. Section 26(5) of the Act detracted from this, however, by permitting removal of an office-holder by the Governor-General 'in the public interest'. The inclusion of the latter provision reflects again the tentative nature of the 1968 amendments.

In his speech introducing the 1968 amendments to the Australian House of Representatives (Document 4), the Minister for External Territories, Mr C.E. Barnes, claimed that the proposals represented 'an important advance on the side of the executive government' in Papua New Guinea. This is no doubt true if a comparison is made with the under-secretaries scheme, but the Minister nevertheless stressed that the AEC and the ministerial and assistant ministerial members would be subordinate to the Administrator. He indicated that the Administrator would consult the Council on a wider range of issues and that 'in matters of budget policy and planning, the Council would have the final responsibility... for advising the Administrator' (emphasis added). The ministerial office-holders would be in a majority on the AEC and would 'make recommendations' to it and 'if authorised by the Administrator...introduce any matters for discussion'. Also,

they would have 'administrative responsibilities in relation to specified functions of the Administration', which 'would be derived from the Administrator'. The assistant ministerial members were to play an even more subordinate role: the intention was to allow other elected members 'to work with departmental heads and to undertake work of a ministerial nature. Responsibility however would remain with the departmental head'.

These proposals were brought into effect by instruments made by the Minister in exercise of his powers under sections 24(2) and 25(1) of the Act: a determination made on 13 June 1968 (Document 5) and a set of approved arrangements made on 7 June 1968 (Document 6). The determination indicated in very general terms the functions of the seven ministerial and eight assistant ministerial members appointed.<sup>1</sup> Not all departments of the public service were represented by an office-holder, although three of the assistant ministerial members were given responsibility for divisions within departments already represented by a ministerial member.

The approved arrangements of 7 June 1968, while reflecting many of the precepts of responsible government, tended to understate the significance of the ministerial member's role. The basic principle was that the member should 'exercise responsibility jointly with the departmental head including the exercise of such delegation (including financial delegations) as may be authorised'. The 'management and public service aspects of the conduct of the department', however, remained the responsibility of the departmental head. This exclusion is to be explained on the basis that at that time public service matters were the responsibility of the Department of the Public Service Commissioner, and that an Ordinance for the creation of the Public Service Board was about to be introduced into the House of Assembly. The logic behind the existence of both the Public Service Commission and the Public Service Board was that decisions concerning the public service should be removed from the political arena in Papua New Guinea.

The arrangements provided for a minor role for the assistant ministerial members, who were to be 'consulted' only 'whenever possible'. The 'Notes on conduct for holders of ministerial office' were repeated or incorporated in all subsequent approved arrangements except those of 30 April 1973.<sup>2</sup>

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<sup>1</sup> The first appointees to these offices are listed at H.A.D., vol.II, no.1, p.132, 13 June 1968.

<sup>2</sup> See pp.159-60.

Document 7 has been included as evidence of the reaction in political circles in Papua New Guinea to the ministerial system introduced by the 1968 amendments to the Act (Document 2). For the purposes of this study, the most significant aspect of the protest of the five MHA's is their criticism that it was unclear from the amendments whether the 'government' in Papua New Guinea would continue to be the Administrator, or whether it would be the AEC which now had a majority of ministers. This criticism serves as a commentary on the attitude of the Australian government to the direction and purpose of the changes for, despite these changes, this government may still have conceived of the Papua New Guinea ministry as being primarily dependent on the Australian-controlled administration. It is also instructive to note that one of the protesters was Mr Guise, who had been chairman of the Select Committee of the 1964-68 House of Assembly. The fact that he joined in the criticism lends weight to the assertion that the Australian government appeared to be reneging, at least in part, on its claim to have implemented the Select Committee's proposals. However, it should be noted that of the five protesters, four were members of the Pangu Pati, and that they had only fifteen members in the 1964-68 House. The opinions of this group therefore represented only a minority view and it would be fair to say that most members of the House would not have shared their views.<sup>1</sup>

1. Extracts from the Final Report of the Select Committee on Constitutional Development, 1967<sup>2</sup>

#### CHAPTER I - INTRODUCTION

...4. Your Committee believes that the pace of constitutional change should be dictated by the people of the Territory, and that no changes should be proposed without the people's support. Accordingly, the Committee recently visited all District headquarters and sought views on the next steps to be taken in the constitutional development of the Territory and whether members of the House should participate more fully in the executive government.

<sup>1</sup> See Wolfers (1970:447-54).

<sup>2</sup> Territory of Papua and New Guinea House of Assembly, 1967. Final Report from the Select Committee on Constitutional Development together with Minutes of Proceedings, Government Printer, Port Moresby.

5. Many varying views were submitted: one large sector of the community was against any change and wanted the present position continued, at least until 1972. A small group put forward far-reaching recommendations amounting to limited self-government. The majority maintained an intermediate position. They desired a further step forward so that members of the House could participate more in the government.

6. In addition to obtaining an indication of the degree of constitutional advance desired by the majority of the people, many valuable ideas on how the elected members could participate more fully in the executive government were expressed, and these have assisted the Committee in reaching its conclusions. The Committee was pleased to receive many written submissions. These were all carefully considered, and were of considerable assistance.

## CHAPTER II - THE ADMINISTRATOR'S EXECUTIVE COUNCIL

7. The Committee appreciates that until the people of the Territory determine their own political and constitutional future, the duty and responsibility of administering the Territory rests with the Administrator acting on behalf of the Australian government. Subject to this, the Administrator's Executive Council should be the principal instrument of policy of the executive government of the Territory.

8. The Administrator's Executive Council (referred to as the 'Council') should consist of the Administrator, three official members of the House of Assembly and seven persons who are ministers. In addition, the Administrator should have the right to nominate one additional elected member in accordance with the following paragraph.

9. There will probably be men in the 1968 House who, though well qualified for ministerial positions, may consider they are not able to afford the necessary time. The advice of such men could be of benefit to the country. The Administrator should therefore be able to nominate for appointment one additional member of his Executive Council from among the elected members of the House.

10. Each member of the Administrator's Executive Council, other than the Administrator, should be appointed by the Minister for Territories on the nomination of the Administrator and would hold office during the pleasure of the Minister for Territories....

11. The Administrator's Executive Council should also exercise all the functions now carried out by the Administrator's Council, and these are set out in the *Papua and New*

*Guinea Act 1949-1966 and the Administrator's Council Ordinance 1960.* At present, where an act or thing is to be done by the Administrator in Council, it is to be done by the Administrator, but in such cases he must seek the advice of his Council. This position should be continued.

12. Because he is charged with the duty of administering the government of the Territory, the Administrator is now not bound to act in accordance with the advice of his Council. In cases where he is required by Ordinance to consult his Council, and he does not accept its advice, he must, at the first opportunity report the reasons for the non-acceptance of such advice to the House of Assembly. Your Committee considers that these provisions should be maintained....

14. In view of the recommended increase in the scope of the Council's activities which require that it should be the principal instrument of policy of the executive government of the Territory, and should have the final responsibility within the Territory for advising the Administrator on budget policy and planning, and in view of the ministerial personnel on it, the Administrator's Council should be renamed the Administrator's Executive Council.

15. In accordance with generally established practice, the members of the Council would not publicly oppose the advice of the Council and the policies laid down by it.

### CHAPTER III - THE MINISTERS

16. The under-secretary system was instituted to give members of the House an opportunity to participate in the government, and to enable the under-secretaries to learn the work of government. The time has now come for elected members to take a more active part in the government, and it can be anticipated that there will be members in the next House of Assembly who will be capable of exercising more executive authority.

17. Seven ministers should therefore be appointed from the elected members of the House, and this number could include members from both the open and regional electorates, without racial qualification.

18. As those selected for ministerial positions will have had at most only limited experience in governmental work, and will need time, experience and assistance in order to become proficient, the Committee thinks it will be wiser for the minister to share responsibility with the departmental head.

19. Each minister should be responsible, with the permanent departmental head, for departmental policy and for the

overall activities of the department. The minister would represent the department in the House by answering questions, introducing and carrying legislation concerning his department through all stages of proceedings, and by giving the departmental view on resolutions and motions affecting the department.

20. In the event of a disagreement between the minister and the departmental head, the matter should be referred to the Administrator for decisions.

21. The director of a department represented by a minister could be appointed to the House, but as an official member only and not as representative of the department....

26. The principle set out in paragraph 15 should also apply to ministers.

#### CHAPTER IV - THE ASSISTANT MINISTERS

27. In departments not represented by a minister there should be an assistant minister appointed from the elected members to work with the departmental head. In this position the appointee would be able to undertake work of a ministerial nature within the department. Responsibility for the department would remain with the departmental head.

28. Elected members would therefore in some way represent in the House each of the Administration departments.

29. In the past there has been some confusion amongst members of the House and the general public as to the duties carried out by under-secretaries and what was expected of them. This point was frequently expressed on the Committee's recent tour. For this reason the duties to be performed by assistant ministers should be specified.

30. These duties should embrace the following:-

- (a) To assist during preparation of Bills within the department,
- (b) To represent the department at official functions,
- (c) To represent the department and answer questions in the House,
- (d) To meet official visitors,
- (e) To participate in departmental conferences,
- (f) To participate in preparing budget estimates,
- (g) To participate in departmental policy formation,
- (h) Liaison with representative public bodies,
- (i) Such other duties or responsibilities as are determined from time to time by the Administrator....



32. The principle set out in paragraph 15 should also apply to assistant ministers.

#### CHAPTER V - APPOINTMENT OF MINISTERS AND ASSISTANT MINISTERS

33. The Committee considers that the responsibility for nominating ministers and assistant ministers should be shared by the House of Assembly and the Administrator.

34. A ministerial nomination scheme involving the House and the Administrator will require close co-operation, and discussions and consultation, between the parties. These discussions would best be carried out on behalf of the House by a committee of the House.

35. At the first meeting of the 1968 House, a standing committee of five elected members, entitled the Ministerial Nomination Committee, should be appointed. This committee would have the duty of consulting with the Administrator, and, with him, agreeing upon a list of nominated appointees. The committee would then submit these nominations to the House for approval. When approved, the House would make the necessary recommendation through the Administrator to the Minister for Territories who would make the appointment. As the committee would be a standing committee, this procedure would cover any casual vacancy in the position of minister or assistant minister occurring during the life of the House.

36. Should it become necessary for the appointment of a minister or assistant minister to be terminated, other than at his request, a similar procedure could be employed. The Ministerial Nomination Committee and the Administrator would make a recommendation to the House that the appointment be terminated. If the House agreed, it would make its recommendation, through the Administrator, to the Minister for Territories who would terminate the appointment....

#### 2. Extracts from the *Papua and New Guinea Act 1968*<sup>1</sup>

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

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<sup>1</sup> No.25 of 1968.

1. (1.) This Act may be cited as the *Papua and New Guinea Act* 1968.
- (2.) The *Papua and New Guinea Act* 1949-1966\* is in this Act referred to as the Principal Act.
- (3.) The Principal Act, as amended by this Act, may be cited as the *Papua and New Guinea Act* 1949-1968.

...6. - Division 2 of Part IV of the Principal Act is repealed and the following Divisions are inserted in its stead:-

"Division 2 - The Administrator's Executive Council

"19. - (1.) There shall be a Council to be known as the Administrator's Executive Council of the Territory of Papua and New Guinea.

"(2.) The functions of the Council are to advise the Administrator -

- (a) on any matter referred to the Council by the Administrator; or
- (b) in accordance with an Ordinance, on any other matter.

"(3.) Where he thinks it in the public interest to do so, the Administrator may introduce, or authorise the introduction, in the Council of any matter for discussion in the Council.

Constitution of Council

"20. - (1.) Subject to this section, the Council shall consist of -

- (a) the Administrator;
- (b) three official members of the House of Assembly appointed by the Minister on the nomination of the Administrator; and
- (c) the persons for the time being holding office as ministerial members.

"(2.) The Minister may, on the nomination of the Administrator, appoint an additional member of the Council, being a person who is an elected member of the House of Assembly.

"(3.) A member of the Council, other than the Administrator or a ministerial member, may be removed from office by the Minister.

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\* Act No.9, 1949, as amended by No.80, 1950; No.41, 1954; No.15, 1957; Nos.4 and 47, 1960; No.27, 1963; No.103, 1964; and No.84, 1966.

"(4.) A person appointed under paragraph (b) of sub-section (1) of this section ceases to be a member of the Council if he ceases to be an official member of the House of Assembly.

"(5.) A person appointed under sub-section (2) of the section ceases to be a member of the Council if he ceases to be an elected member of the House of Assembly.

"(6.) The performance of the functions of the Council is not affected by reason of a vacancy or vacancies in the membership of the Council.

"21. If a member of the Council appointed under paragraph (b) of sub-section (1), or under sub-section (2), of the last preceding section desires to resign his office as a member of the Council he shall deliver a written resignation to the Administrator for transmission to the Minister, but the resignation does not become effective unless and until it has been accepted by the Minister.

#### Proceedings of Council

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

"(2.) In the absence of the Administrator from a meeting of the Council, a Member of the Council appointed by the Administrator to preside in such absences shall preside.

"(3.) At a meeting of the Council, a quorum consists of the Administrator, or a member appointed in accordance with the last preceding sub-section, and three other members.

"(4.) The regulations may prescribe the procedure of the Council and, subject to the regulations, the procedure shall be as the Council determines.

#### Oath of Members of Council

"23. - (1.) A member of the Council other than the Administrator shall, before entering on his duties as a member of the Council, make and subscribe an oath or affirmation in accordance with the form in the Eighth Schedule to this Act.<sup>1</sup>

"(2.) The oath or affirmation shall be made before the Administrator or a person authorised by the Administrator to administer such oaths or affirmations.

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<sup>1</sup> See pp.32-3 (eds).

Ministerial offices

"Division 3. - Ministerial offices

"24. - (1.) There shall be -

- (a) Seven offices of ministerial member of the House of Assembly, of such respective designation as the Minister from time to time determines; and
- (b) such number, being not more than ten, of offices of assistant ministerial member of the House of Assembly, and of such respective designations, as the Minister from time to time determines.

"(2.) In respect of each ministerial office, the Minister shall determine, from time to time, the matters in respect of which the holder of the office is to perform the functions of a ministerial member or assistant ministerial member, as the case requires, being all or any of the matters to which the functions of a specified department of the public service relate.

Functions of holder of ministerial office

"25. - (1.) The functions of a ministerial member or assistant ministerial member are, in relation to the matters determined in relation to his office under the last preceding section, and to the extent and in the manner provided by arrangements approved by the Minister and applicable to his office, to assist in the administration of the government of the Territory and, in particular

- (a) to take part in the formulation of policies and plans, and of proposals for expenditure, in relation to those matters and in the direction of the activities of the department of the public service dealing with those matters;
- (b) to represent, or assist in representing, the Administration in the House of Assembly; and
- (c) in the case of a ministerial member, to make recommendations to the Administrator's Executive Council in relation to those matters.

"(2.) Powers, functions or duties in relation to the government of the Territory shall not be conferred or imposed by Ordinance on the holder of a ministerial office in his capacity as the holder of such an office, but this sub-section does not operate so as to prevent the delegation to the holder of a ministerial office of powers or functions under an Ordinance.

Appointment and removal of holders of ministerial office

"26. - (1.) Subject to this section, the Minister may appoint an elected member of the House of Assembly to a ministerial office and may terminate any such appointment.

"(2.) An elected member shall not be appointed to a ministerial office unless, since the last preceding general election, he has, in accordance with the regulations, been nominated by the House of Assembly, with the concurrence of the Administrator, for appointment to a ministerial office.

"(3.) Subject to the next succeeding section, the Minister shall not terminate an appointment of a person to a ministerial office unless the House of Assembly has, in accordance with the regulations, resolved that the appointment should be terminated.

"(4.) Regulations for the purposes of this section may -

- (a) make provision with respect to the number of persons who are, in prescribed circumstances, to be nominated under sub-section (2) of this section at the one time;
- (b) prescribe conditions subject to which, and the procedure in accordance with which, the House of Assembly may make nominations or adopt resolutions for the purposes of a provision of this section; and
- (c) provide for the appointment by the House of Assembly of a committee of that House for the purposes of the regulations, and make provision with respect to the manner of appointment of the committee and the functions and procedure of the committee.

"(5.) If the Governor-General, after report to the Minister by the Administrator, is satisfied that the public interest requires that a person holding a ministerial office should cease to be the holder of a ministerial office, the Governor-General may terminate the appointment of that person as the holder of a ministerial office.

Minister may vary appointments

"27. The Minister may, at any time, terminate the appointment of a person to a ministerial office and, at the same time, appoint that person to another ministerial office.

"28. The appointment of a person to a ministerial office takes effect on the day specified in the instrument of appointment and terminates when -

- (a) he ceases to be an elected member of the House of Assembly;

- (b) the appointment is terminated in accordance with this Division;
- (c) he resigns his office by writing under his hand delivered to the Administrator for transmission to the Minister and the resignation is accepted by the Minister; or
- (d) the House of Assembly first meets after a general election of that House that takes place after the appointment takes effect.

#### Oath of office

"29. - (1.) A person who is appointed to a ministerial office shall, before entering on the duties of the office, make and subscribe an oath or affirmation in accordance with the form in the Ninth Schedule to this Act.<sup>1</sup>

"(2.) The oath or affirmation shall be made before the Administrator to administer such oaths or affirmations.

#### Minister to consult with Administrator

"29A. The Minister shall not exercise a power under this Division, or under the regulations made for the purposes of this Division, except upon a recommendation of, or after consultation with, the Administrator, but the validity of an act of the Minister shall not be called in question on the ground that the requirements of this section have not been complied with."

14. The Eighth Schedule to the Principal Act is repealed and the following Schedules are inserted in its stead:-

#### "EIGHTH SCHEDULE

##### Oath

I, A.B., do swear that, except as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my membership of the Administrator's Executive Council of the Territory of Papua and New Guinea, or anything said or done by myself or any other member of the Council at a meeting of the Council: So help me God!

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<sup>1</sup> See p.33 (eds).

## AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that, except as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my membership of the Administrator's Executive Council of the Territory of Papua and New Guinea or anything said or done by myself or any other member of the Council at a meeting of the Council.

## "NINTH SCHEDULE

## Oath

I, A.B., do swear that, except in the course of my duties or as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my holding the office of (designation of office): So help me God!

## AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that, except in the course of my duties or as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my holding the office of (designation of office)."

3. Papua and New Guinea (Ministerial Appointments) Regulations 1968<sup>1</sup>

1. These Regulations may be cited as the Papua and New Guinea (Ministerial Appointments) Regulations.

2. In these Regulations -

"the Committee" means the Ministerial Nominations Committee appointed in accordance with these Regulations;

"the House" means the House of Assembly.

3. Nominations by the House in pursuance of sub-section (2.) of section 26 of the *Papua and New Guinea Act 1949-1968* and

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<sup>1</sup> Statutory Rules 1968, no.65. Made under the *Papua and New Guinea Act 1949-1968*; notified in the Commonwealth Gazette on 4 June 1968. *Commonwealth Statutory Rules* 1968, p.802.

resolutions of the House in pursuance of sub-section (3.) of that section shall be made or adopted in accordance with these Regulations and not otherwise.

4. - (1.) As soon as practicable after the House first meets following a general election of the House, the House shall, in such manner as it determines, appoint a Committee consisting of five elected members, to be known as the Ministerial Nominations Committee.

(2.) Subject to this regulation, members of the Committee hold office during the pleasure of the House, and the House may at any time, in such manner as it determines, appoint an elected member to fill a vacancy in the membership of the Committee.

(3.) A member of the Committee may resign his office by writing under his hand delivered to the Speaker.

(4.) A member of the Committee ceases to be such a member if he ceases to be an elected member of the House.

(5.) All members of the Committee holding office immediately before the time at which the House first meets following a general election cease to be members of the Committee at that time.

(6.) At a meeting of the Committee the presence of all the members of the Committee is required, but agreement by a majority of the members of the Committee shall be taken to be agreement by the Committee.

5. - (1.) As soon as practicable after the first appointment of members of the Committee following a general election, the Administrator shall consult with the Committee for the purpose of reaching agreement with the Committee on a list of elected members, equal in number to the number of ministerial offices, for submission to the House as a list of elected members eligible to be nominated by the House for appointment to ministerial offices.

(2.) If the Administrator and the Committee agree, in accordance with the last preceding sub-regulation, on a list of elected members equal in number to the number of ministerial offices, the House may, by resolution, nominate all the persons whose names are on the list for appointment to ministerial offices.

6. - (1.) Where -

- (a) there is a vacancy in a ministerial office; or
- (b) the Administrator and the Committee have, after consultation, agreed that a person holding a



ministerial office should cease to be the holder of a ministerial office,

the Administrator may consult with the Committee for the purpose of reaching agreement with the Committee on an elected member as a person eligible to be nominated by the House for appointment to a ministerial office.

(2.) If the Administrator and the Committee agree on an elected member in accordance with the last preceding sub-regulation, the House may, by resolution, nominate the person agreed on for appointment to a ministerial office, but, in a case referred to in paragraph (b) of the last preceding sub-regulation, the House shall not so nominate the person unless the House has, in accordance with these Regulations, resolved that the appointment to a ministerial office of the person referred to in that paragraph should be terminated.

7. If, after consultation, the Administrator and the Committee agree that a person holding a ministerial office should cease to be the holder of a ministerial office, the House may resolve that the appointment of that person to a ministerial office should be terminated.

4. Extracts from the speech in the House of Representatives by the Minister for External Territories, Mr C.E. Barnes, moving the second reading of the *Papua and New Guinea Bill* 1968, 2 May 1968<sup>1</sup>

...The proposals now being submitted to the House represent an important advance on the side of the executive government distinct from the side of the legislature. The present Bill would provide for elected members to assume certain responsibilities in the administration of the Territory both in day-to-day administrative activities and in the framing of policies. Seven elected members of the House of Assembly would be appointed as ministerial members. They would have administrative responsibilities in relation to specified functions of the Territory Administration. They would represent their

<sup>1</sup> Commonwealth of Australia, Parliamentary Debates (Hansard), Twenty-Sixth Parliament, Second Session, House of Representatives, no.5, pp.1056-7, 2 May 1968.

departments in the House of Assembly. They would be members of the Administrator's Executive Council. The Administrator's Executive Council would replace the present Administrator's Council. The new Council would consist of the seven ministerial members, three official members and the Administrator. The Administrator might also nominate to the Minister for appointment to the Council an additional elected member of the House who was not a ministerial member.

The Administrator's Executive Council will play an increasingly important role in the development of policy in the Territory as well as in major executive decisions of the Administration. Certain Territory ordinances already require the Administrator to seek the advice of the Council and in such cases where he does not accept the advice of the Council he is required to table his reasons in the House of Assembly. He may also seek the advice of the Council on other matters. Apart from the present statutory provisions the Administrator has progressively enlarged both the range and significance of the matters brought before the Council for consultation and will continue to do so.

The role and importance of the Council would be further enhanced under the proposed ministerial member system. In matters of budget policy and planning, the Council would have the final responsibility within the Territory for advising the Administrator. Ministerial members would constitute a significant majority of the Council. In relation to their departmental functions they would make recommendations to the Council and, if authorised by the Administrator, could introduce any matters for discussion in the Council. The cumulative effect of these arrangements, as foreseen by the Select Committee, would be that subject to the duty and responsibility of the Administrator, acting on behalf of the Australian government, to administer the Territory, the Council would be the principal instrument of policy of the executive government of the Territory. As recommended by the Select Committee, in accordance with generally established practice, members of the Council would not publicly oppose politics [*sic*] or decisions that were in accordance with the advice of the Council.

Combined with their role in the Administrator's Executive Council ministerial members would also have administrative responsibilities in relation to specified functions of the Administration. In relation to these functions ministerial members would be responsible with the departmental head for overall departmental activities and for the framing of policy proposals including proposals for expenditure. The management and public service aspects of the conduct of departments would

remain the responsibility of departmental heads. The administrative functions exercised by a ministerial member would be derived from the Administrator. In accordance with the general transitional character of these arrangements, where there was a difference of view between a ministerial member and a departmental head the matter would go to the Administrator for decision. In the House of Assembly ministerial members would represent the Administration in relation to those functions assigned to them, for example, regarding questions and motions in the House. They would introduce and have the carriage of legislation.

It is proposed that in addition to the seven ministerial members, there will also be appointed up to ten assistant ministerial members. The purpose here is to provide a form of junior ministerial office designed to allow elected members to work with departmental heads and to undertake work of a ministerial nature. Responsibility however would remain with the departmental head. As suggested by the Select Committee the duties of these assistant ministerial members would be specified and would follow the lines indicated in the Committee's report....

5. Sphere of authority of ministerial and assistant ministerial members: determination made by the Minister for External Territories, Mr C.E. Barnes, under section 24(2) of the *Papua and New Guinea Act* 1949-1968, 13 June 1968

I, CHARLES EDWARD BARNES, Minister of State for External Territories, hereby make the following Determination under sub-section (2.) of section 24 of the *Papua and New Guinea Act* 1949-1968.

DATED this thirteenth day of June, One thousand nine hundred and sixty-eight.

Minister of State for External Territories

DETERMINATION

1. The holder of the office of ministerial member of the House of Assembly specified in the first column of the First Schedule hereto is to perform the functions of a ministerial member in respect of the matters specified

in the second column of the Schedule opposite to that reference in the first column being matters to which the functions of the department of the public service specified in the said second column relate.

2. The holder of the office of assistant ministerial member of the House of Assembly specified in the first column of the Second Schedule hereto is to perform the functions of an assistant ministerial member in respect of the matters specified in the second column of the Schedule opposite to that reference in the first column being matters to which the functions of the department of the public service specified in the said second column related.

FIRST SCHEDULE

<u>FIRST COLUMN</u>	<u>SECOND COLUMN</u>
<u>NAME OF MINISTERIAL OFFICE</u>	<u>DEPARTMENT OF PUBLIC SERVICE AND MATTERS FOR PERFORMANCE OF FUNCTIONS</u>
Ministerial Member of the House of Assembly for Agriculture, Stock and Fisheries	Department of Agriculture, Stock and Fisheries All the matters related to the functions of the said Department
Ministerial Member of the House of Assembly for Education	Department of Education All the matters related to the functions of the said Department
Ministerial Member of the House of Assembly for Labour	Department of Labour All the matters related to the functions of the said Department
Ministerial Member of the House of Assembly for Posts and Telegraphs	Department of Posts and Telegraphs All the matters related to the functions of the said Department
Ministerial Member of the House of Assembly for Public Health	Department of Public Health All the matters related to the functions of the said Department
Ministerial Member of the House of Assembly for Public Works	Department of Public Works All the matters related to the functions of the said Department
Ministerial Member of the House of Assembly for Trade and Industry	Department of Trade and Industry All the matters related to the functions of the said Department

SECOND SCHEDULE

<u>FIRST COLUMN</u>	<u>SECOND COLUMN</u>
<u>NAME OF MINISTERIAL OFFICE</u>	<u>DEPARTMENT OF PUBLIC SERVICE AND MATTERS FOR PERFORMANCE OF FUNCTIONS</u>
Assistant Ministerial Member of the House of Assembly for Co-operatives	Department of Trade and Industry All the matters related to the functions of the Division of Co-operatives and the Business Advisory Section of the Division of Business Training and Management in the said Department
Assistant Ministerial Member of the House of Assembly for Forests	Department of Forests All the matters related to the functions of the said Department
Assistant Ministerial Member of the House of Assembly for Lands, Surveys and Mines	Department of Lands, Surveys and Mines All the matters related to the functions of the said Department
Assistant Ministerial Member of the House of Assembly for Local Government	Department of District Administration All the matters related to the functions of the Division of Local Government in the said Department
Assistant Ministerial Member of the House of Assembly for Information and Extension Services	Department of Information and Extension Services All the matters related to the functions of the said Department
Assistant Ministerial Member of the House of Assembly for Rural Development	Department of Agriculture, Stock and Fisheries All the matters related to those functions of the Division of Development and Marketing concerned with the subject matters of Extension Development, Education and Training, Fisheries Development and all matters concerning Land Settlement in the said Department
Assistant Ministerial Member of the House of Assembly for Technical Education and Training	Department of Education All the matters related to the functions of the Technical Education Division of the said Department
Assistant Ministerial Member of the House of Assembly for Treasury	Department of the Treasury All the matters related to the functions of the said Department

6. Arrangements approved by the Minister for External Territories, Mr C.E. Barnes, pursuant to section 25 of the *Papua and New Guinea Act* 1949-1968 (section A only), 7 June 1968

(A) MINISTERIAL MEMBERS

(1) In relation to matters in respect of which the ministerial member is to carry out his functions and in relation to the activities of the specified department dealing with those matters the ministerial member will exercise responsibility jointly with the departmental head including the exercise of such delegation (including financial delegations) as may be authorised. The management and public service aspects of the conduct of the department will remain the responsibility of the departmental head.

The ministerial member will take part in the formulation of policies and plans and proposals for departmental expenditure (including the preparation of departmental estimates). Policy proposals may be initiated either by the ministerial member or by the departmental head.

In matters other than those affecting the management and public service aspects of the conduct of the department the ministerial member and the departmental head will make recommendations or decisions jointly and these will be formally recorded on departmental papers.

In the event of a disagreement between the ministerial member and the departmental head which cannot be resolved by consultation between them the matter will be referred to the Administrator for decision.

(2) In the House of Assembly the ministerial member will represent the Administration by answering questions relating to matters in respect of which he is authorised to perform the functions of a ministerial member. He will introduce legislation relating to those matters and guide it through all proceedings in the House of Assembly. The ministerial member will also give the Administration view on resolutions and motions affecting these matters and generally explain and defend Administration actions in relation to them. In relation to his responsibilities in the House of Assembly it will be necessary for the ministerial member to co-operate with the official member designated as senior official member of the House.

(3) In the Administrator's Executive Council the ministerial member will represent departmental interests in relation to

the matters in respect of which he is authorised to perform the functions of a ministerial member. These matters include the draft estimates of annual expenditure. He may also initiate proposals for legislation in respect of these matters for submission with the agreement of the Administrator to the Council. As a member of the Council he will also participate in the exercise of the functions of the Council generally (as set out in section 19 of the Papua and New Guinea Act).

(4) The effective working of these arrangements will require close co-operation between the ministerial member and the departmental head. In general the departmental head will tender advice to the ministerial member on all matters within the ministerial member's competence in relation to the activities in his department. The departmental head may with the agreement of the Administrator attend meetings of the Administrator's Executive Council.

[The sections on assistant ministerial members and on the code of conduct for both ministerial members and assistant ministerial members, which remained substantially the same after the revision of March 1970, are reproduced in the complete text of the approved arrangements of 4 March 1970 (Document 10).]

#### 7. Five members protest on Act changes, 10 May 1968<sup>1</sup>

Five members of the House of Assembly have protested strongly about some amendments to the Papua and New Guinea Act deviating from recommendations made by the Select Committee on Constitutional Development.

The last House of Assembly adopted unanimously the report of the Committee.

The five members include the Committee chairman, Mr John Guise (Alotau Open).

The other members are Mr Percy Chatterton (Moresby Open), Mr Oala Oala-Rarua (Central Regional), Mr Tony Voutas (Morobe Regional) and Mr Cecil Abel (Milne Bay Regional).

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<sup>1</sup> South Pacific Post, 10 May 1968, p.2.

### Ministers

The Minister for External Territories, Mr Barnes, introduced the amendments in the second reading of the Papua and New Guinea Bill in the House of Representatives last week.

The amendments provide for seven ministerial members and 'not more than ten' assistant ministerial members to be appointed from the elected members of the House of Assembly.

Other amendments introduced provide that:

- \* urgent government business be given priority in the House of Assembly.
- \* assent may be withheld to a part of a Bill besides a complete Bill as at present.

The five members issued a written statement at a press conference held in Port Moresby on Wednesday.

Before the conference they discussed 'the legal technicalities of the amendments' with legal officers.

The statement said: 'We are disturbed at certain amendments to the Papua-New Guinea Act [sic] which have been proposed by the Federal Government.

'On some critical points, these deviate from the recommendations of the Select Committee on Constitutional Development, whose report was unanimously adopted.

### Disturbed

'We assert that this is a reflection on the dignity and authority of the previous House of Assembly.

'There are three broad issues about which we are concerned and to which we take strong exception.

- '1. We object to the additional power of partial veto conferred on the Governor-General over Ordinances reserved for his pleasure as per clause 12.<sup>1</sup> Constitutional changes should anticipate the gradual reduction of the Federal Government's powers whereas this clause is a move in the opposite direction.
- '2. The duties and powers of ministerial and assistant ministerial members as specified in paragraphs 19, 20 and 30 of the Select Committee's Report<sup>2</sup> have not been spelt out.

<sup>1</sup> See appendix, p.208, section 56(1)(c), (eds).

<sup>2</sup> See pp.25-7.



'3. We agree that the "Government" should have some control over the order of business on the floor of the House. However, the Administrator's Executive Council, where the House is directly represented by its seven elected members, rather than the Administrator alone, will be the "Government" of the day.

'This was substantiated by the Minister for External Territories in his Second Reading Speech where he said, 'the [Administrator's Executive] Council would be the principal instrument of policy of the executive government of the Territory'.

'We therefore request an assurance from His Honor the Administrator that he would exercise this power only on the advice of his Council.'

#### Assurance

Mr Voutas said the five members had requested the assurance from the Administrator through a 'senior Administration officer'.

He declined to name the officer.

Mr Chatterton said: 'We hope some amendments will be aired in the Commonwealth Parliament debates.'

The five members said later they believed it was essential that the ministerial members had powers of initiation and responsibility as well as mere powers of response.

The new legislation did not guarantee such a state of affairs.

#### Negate

They said Australia purported to have accepted the full recommendations of the Select Committee, but the door was now being left open for Australia to negate the recommendations in practice.

The five members pointed out that when assent could only be withheld from a complete ordinance, Australia would bargain with private members in the House rather than risk the stigma of vetoing an entire measure.

Under the new proposal Australia could simply and quietly veto an individual clause, thus reducing the extent of compromise.

The five men said Australia had therefore assumed new power instead of gradually relaxing powers.

The Australian Parliament is expected to debate the Bill introduced by Mr Barnes later this month.

## Part II

### Evolution of the ministerial system to July 1970

The first of the documents in this part is a communication from the Administrator to the Speaker of the House of Assembly on 18 November 1969 (Document 8), and there are a number of statements in it which require some explanation. It referred to 'new arrangements in relation to the formal powers of ministerial members', but the Minister for External Territories did not appear to have made any formal document similar to the arrangements of June 1968 and later dates. However, the June 1968 arrangements indicated that a ministerial member was to exercise joint responsibility with his departmental head in respect of his functions 'including the exercise of such delegation (including financial delegations) as may be authorised' (Document 6). The November 1969 'arrangements' can probably be understood only as an authorisation in terms of the 1968 arrangements.

The comments concerning the AEC are also unclear as the 1968 arrangements did not deal in detail with the role of the AEC. In November 1969 the AEC's role in law was only advisory, and the Administrator's communication only stated how the AEC would perform its advisory role. The final paragraphs of the communication referred to a problem which is dealt with more fully in Part VIII of these Documents. As noted above,<sup>1</sup> section 25(2) of the *Papua and New Guinea Act 1949-1968* prevented an Ordinance from imposing on a ministerial office-holder any 'powers, functions or duties in relation to the government of the Territory', although it did permit the delegation to the office-holder of powers or functions under an Ordinance. The communication indicated that until such formal delegations were made, the ministerial members were to be consulted by their departmental heads (who were vested with legal power to perform statutory functions).

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<sup>1</sup> See p.20.

The first substantial changes to the June 1968 arrangements were made in March 1970. In his speech to the House of Representatives (Document 9) the Minister for External Territories indicated that the objective was to transfer more responsibility to the ministerial members so that they were no longer required to act jointly with their departmental heads. However, he also stressed that overall responsibility still lay with the Minister for External Territories.

The approved arrangements of March 1970 (Document 10) did not refer to the role of the AEC, and the Minister merely indicated that there were to be further changes in practice. The existing framework of the Act to which the Minister referred provided for a purely advisory role for the AEC and the Administrator was under no legal obligation to accept this advice.

In view of the extensive changes to the ministerial system in July-August 1970 (Part III), it is interesting to note the rather equivocal nature of the Minister's comments concerning the pace of constitutional change. The Minister repeated the formula that self-government would not be forced on the people against their wishes but recognised that the new arrangements were 'a definite and material step along the road to self-government'. He also stated that the Australian government was 'satisfied' that the changes accorded with the wishes of the people and the House of Assembly. He did not indicate how the government had satisfied itself although he referred to 'helpful' discussions with the Select Committee on Constitutional Development. It is to be noted, however, that this Committee did not make its first extensive tour of Papua New Guinea until April-May 1970 (see Document 13).

The approved arrangements of 4 March 1970 brought into effect the changes outlined in the Minister's speech. Part A(1) enlarged the role of the ministerial members. Part A(2), by which legal powers could be delegated to ministerial members, arose out of the problem created by section 25(2) of the Papua New Guinea Act.<sup>1</sup> In Part A(3) the 'functions' of a ministerial member referred to the functions as indicated in the determination of the Minister in June 1968 as no new determination was made in March 1970. Parts B and C of the arrangements substantially paralleled Parts (3) and (2) respectively of the June 1968 arrangements, and the sections relating to the functions of assistant ministerial members and the code of conduct were repeated.

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<sup>1</sup> See p.175.

The speeches of Mr T. Lokoloko, MHA (Document 11), and the Administrator, Mr D.O. Hay (Document 12), described the powers and functions of ministerial members and the AEC in mid-1970. It is to be noted that in May 1970 further financial responsibility was entrusted to the AEC in that it was empowered 'to advise the Administrator on acceptance of contracts exceeding \$200,000 for supplies and services'.<sup>1</sup>

Despite these statements, however, it would appear that there was little real development of the ministerial system in the period to August 1970. The approved arrangements of March 1970 did permit greater participation by the ministers, but there was no practical advance. The AEC met only thirty-five times between 1 July 1970 and 30 June 1971, which was five times less than in the previous year.<sup>2</sup> It is difficult, of course, to gauge how much real participation there was, but an informed observer of this period has commented that the aspiring politicians in Papua New Guinea continued to remain dependent on Australian leadership (Wolfers 1971:131). It is important to take these matters into account when considering how far there had been preparation for the July-August 1970 changes.

The statement by Mr P. Arek, MHA, on the work of the Select Committee on Constitutional Development (Document 13) also threw light on the nature of the July-August changes to the ministerial system. He indicated that the Committee did not intend to make any recommendations until after its October 1970 tour and emphasised the principle that 'all major constitutional changes which require amendment to the Papua New Guinea Act should, in future, be made only on the recommendation of the Select Committee...'.<sup>1</sup>

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<sup>1</sup> Commonwealth of Australia, 1972. Administration of Papua New Guinea, 1 July 1970 - 30 June 1971, Report to the General Assembly of the United Nations, p.24, Australian Government Publishing Service, Canberra.

<sup>2</sup> See p. 71.

8. Increases in financial powers for ministerial members: communication to the House of Assembly from His Honour the Administrator, Mr D.O. Hay, 18 November 1969<sup>1</sup>

Mr SPEAKER - I wish to report the receipt of the following communication from His Honour the Administrator dated 18 November 1969:

'Dear Mr Speaker,

I am directed by the Minister to write regarding new arrangements in relation to the formal powers of ministerial members. These give effect to the principle that a ministerial member will exercise responsibility in respect of the functions of his office jointly with the departmental head.

Ministerial members will accordingly now exercise financial delegations equal to those held by departmental heads (apart from the Treasurer). They may approve requisitions for services, stores and supplies up to a limit of \$20,000, subject to the expenditure being in accordance with approved policy and functions, funds being available and the exercise of due economy. In the more important cases, it will be the ministerial member who exercises this delegation rather than the departmental head.

Collectively, ministerial members will exercise greater financial authority in relation to public works through the Administrator's Executive Council in addition to authority in relation to their departments. The AEC will now have authority to admit to a design list proposals for new works in cases where the estimated cost does not exceed \$200,000, if the proposals conform with the standard works procedures, including the requirements that they are necessary for approved functions and they are being designed to approved standards. The AEC will also have authority to approve any requisitions authorising the commencement of works in an approved works programme, subject to a resolution of the House of Assembly (following a report by the Public Works Committee) where the estimated cost exceeds \$200,000. The AEC may, in exceptional circumstances, admit urgent additional works into a current financial year's works programme where the estimated cost does not exceed \$200,000.

The AEC also authorises projects for inclusion in the rural development works programme, to an individual value not

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<sup>1</sup> House of Assembly Debates, Second House, Seventh Meeting of the First Session, vol.II, no.7, pp.2051-2, 18 November 1969.

exceeding \$10,000, and to a total amount this financial year of \$1 million.

These arrangements for increased financial authorities in the hands of ministerial members are additional to the existing arrangements for full consultation with the AEC in the preparation of the annual estimates of receipts and expenditures and the works programme.

The principle that ministerial members have no less authority than departmental heads will also apply to the exercise of statutory delegations under Ordinances. The powers vested in the Administrator under various Ordinances are too numerous to be exercised by him personally and in the interests of good administration many of these powers are deputed to departmental heads.

The more important powers in this category are now also being delegated to ministerial members. Pending the formal delegation of these powers, the ministerial member will be consulted by a departmental head before he acts under his delegation. Any difference of view between a ministerial member and a departmental head will be settled by the Administrator before the power is exercised.

Yours sincerely,  
(Sgd) D.O. Hay,  
Administrator'

9. Statement in the House of Representatives by the Minister for External Territories, Mr C.E. Barnes, on the *Papua and New Guinea Act 1949-1968*, 4 March 1970<sup>1</sup>

In harmony with the government's approach indicated in the Governor-General's speech the government intends to introduce some immediate changes within the provisions of the present Papua and New Guinea Act which will give ministerial members drawn from the Papua and New Guinea House of Assembly increased powers both individually in relation to the functions of their

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<sup>1</sup> Commonwealth of Australia, Parliamentary Debates (Hansard), Twenty-Seventh Parliament, Second Session, House of Representatives, no.1, pp.47-9, 4 March 1970.

departments and collectively as members of the Administrator's Executive Council. During the parliamentary recess there were ministerial discussions in Canberra with the Territory Select Committee on Constitutional Development, which were helpful to both sides.

Following the recommendations of the Select Committee on Constitutional Development set up by the first House of Assembly the Papua and New Guinea Act was amended in May 1968 to provide for further constitutional development in Papua and New Guinea. The main changes made at that time provided for increased participation by elected members in the executive government of the Territory through a system of ministerial offices and the replacement of the former Administrator's Council by the Administrator's Executive Council. It was emphasised that these arrangements were essentially transitional in character. It was stated that under section 25 the role and functions of ministerial members and assistant ministerial members could be adapted in the light of experience.

The Act sets out that the functions of ministerial office-holders are generally to assist in the administration of the Government of the Territory to the extent and in the manner provided by arrangements approved by the Minister for External Territories under section 25. In 1968 in accordance with the amendments to the Act 7 ministerial members and 8 assistant ministerial members were appointed from elected members of the House of Assembly.

These office-holders were selected from elected members of the House jointly by the Ministerial Nominations Committee of the House and the Administrator before being nominated to the Minister for appointment. There are Ministerial Members for Agriculture, Stock and Fisheries, Education, Labour, Posts and Telegraphs, Public Health, Public Works, and Trade and Industry. At present ministerial members share responsibility with the departmental heads for overall departmental activities and for the framing of policy proposals including proposals for expenditure.

The government considers that the time has now come to invite ministerial members to assume more responsibility in the administration of the government of the Territory. New arrangements have therefore been approved for ministerial members under section 25 of the Act. I table the approved arrangements.<sup>1</sup> These include also the arrangements applying

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<sup>1</sup> See Document 10 (eds).

in respect of assistant ministerial members. Subject to the overall responsibility of the Minister for External Territories, acting through the Administrator, these approved arrangements provide that a ministerial member will be fully responsible to the Administrator's Executive Council for the day-to-day running of the department instead of, as at present, acting jointly with the departmental head and sharing the responsibility with him.

As set out in the approved arrangements a ministerial member will within the framework of broader government policy make decisions regarding policy and administration in day-to-day activities related to the matters for which he is responsible. He will formulate plans and proposals for departmental expenditure including draft departmental estimates. It is the government's intention that these changes should come into effect in practice at once and without waiting for amendments to Territory Ordinances which will be necessary. The government looks to officials who may now hold statutory powers by delegation or otherwise to exercise these with the concurrence of the ministerial member in the spirit of these arrangements.

Some changes are also being made in relation to the Administrator's Executive Council. Again these changes are within the framework of the existing Papua and New Guinea Act. The Council has been exercising increasing authority over the past 2 years and its scope is now being further enlarged. Under the present arrangements the Council advises the Administrator, who is broadly free to accept or disregard the advice. However, the government has been consulting the Council on a widening range of issues and has increasingly accepted the Council's views. In future the Council's authority will be enhanced in three ways. Firstly, it will be consulted on all significant policy issues; secondly, it will advise on the more important departmental questions referred to it by a ministerial member; thirdly, it will have a greater voice in the procedures for the framing of the Territory budget, as explained later....

Apart from these specific matters the government has been giving and will continue to give increasing weight to the views and advice of the Administrator's Executive Council. This increase in the power and influence of the Council is qualitative in character. It is not to be measured in terms of specific powers, individual acts of administration or areas of policy or increased financial delegations, but it will be apparent by the degree to which the Administrator's Executive Council in future influences the government's attitude on



important issues. An example of this kind of increasing influence is the recent reference to the Council by the Minister of the question whether the Papuan Medical College should become part of the University of Papua and New Guinea. This is a matter related to the responsibilities of the Ministerial Member for Health. The Council concluded that it was highly desirable for the Medical College to become part of the University provided arrangements could be made for government controls to be maintained over costs and the broad direction of the medical course. Such a formula would meet the difficulties previously seen by the government and the government has said it accepts the Council's conclusion so that if the University agrees to the Council's recommendations they will be put into effect.

Having regard to the changes I have mentioned, regulations will be made under the Act to govern some procedural matters including the recording of Council decisions and their transmission to the Commonwealth government. There will also be changes in the procedures by which the Territory budget is framed so that elected members of the House of Assembly will have a greater say in the budget. The Administrator's Executive Council will be invited to establish immediately an Estimates Sub-committee. Officials of the Territory Treasury will keep the Sub-committee closely in touch with plans and progress in respect of the forthcoming financial year's estimates. The Sub-committee will be invited to discuss the draft estimates with the Minister for External Territories before these are finalised. After those discussions no important alterations will be made in the draft estimates without the knowledge of the Estimates Sub-committee and without their having a full opportunity to comment. Throughout the period during which the budget is being framed it is expected that the Estimates Sub-committee of the Council will keep in touch with the existing Budget Committee of the House of Assembly, a body made up wholly of elected members, with a view to informing themselves of any points which members of the House may wish to have considered in the draft estimates for the following year.

Self-government will not be forced on the people against their wishes. Nevertheless the government considers steps should be taken now so that the elected representatives of the people take on additional responsibilities in the government of the Territory. The government is satisfied that the changes now proposed accord with the climate of opinion of the House of Assembly and of the Territory generally. The changes I have outlined reflect the government's approach of

progressively transferring responsibility to elected members of the Territory House of Assembly. The new arrangements are a definite and material step along the road to self-government.

Further constitutional changes to be put into effect later this year are now under examination. None of the changes I have outlined requires amendment to the Papua and New Guinea Act. Important or major changes in the constitutional arrangements for Papua and New Guinea of the sort that might be expected to require substantial amendment to the Act should in the government's view await consideration by the Territory House of Assembly of the report of the Select Committee on Constitutional Development so that such substantial amendment of the Act would be decided upon in the light of the views of the Territory people.

10. Arrangements approved by the Minister for External Territories, Mr C.E. Barnes, pursuant to section 25 of the Papua and New Guinea Act 1949-1968, 4 March 1970

Whereas sub-section (2) of section 24 of the *Papua and New Guinea Act 1949-1968* provides that the Minister for External Territories shall determine from time to time the matters in respect of which the holder of a ministerial office is to perform his functions being all or any of the matters to which the functions of a specified department of the public service relate;

and whereas sub-section (1) of section 25 of the *Papua and New Guinea Act 1949-1968* provides that in respect of the matters so determined the functions of a ministerial member or assistant ministerial member are to assist in the administration of the government of the Territory and in particular -

- (a) To take part in the formulation of policies and plans and of proposals for expenditure in relation to those matters and in the direction of activities of the department of the public service dealing with those matters;
- (b) To represent or assist in representing the Administration in the House of Assembly; and
- (c) In the case of a ministerial member to make recommendations to the Administrator's Executive Council in relation to those matters.

And whereas it is further provided by sub-section (1) of section 25 that such functions are to be carried out to the extent and the manner provided by arrangements approved by the Minister of [sic] External Territories and applicable to the office of the ministerial member or assistant ministerial member, now therefore I, Charles Edward Barnes, Minister of State for External Territories, do hereby approve the following arrangements applicable to each office of ministerial member and assistant ministerial member.

#### PART I - MINISTERIAL MEMBERS

##### A. Responsibilities in connection with the department

1. Subject to the authority of the Commonwealth through the Administrator, a ministerial member shall be responsible to the Administrator's Executive Council for those matters in respect of which he is to perform his functions relating to a specified department of the public service. Within the approved budgetary provisions for the department he shall:

- (a) Be responsible within the framework of government policy for decisions regarding policy and for administrative actions of the department in its day-to-day activities (other than management and public service aspects);
- (b) Be responsible for the formulation of plans and proposals for departmental expenditure including the formulation of draft departmental estimates;
- (c) Refer policy decisions or other matters to the Administrator's Executive Council where
  - (i) he considers it necessary to do so, or
  - (ii) the Administrator's Executive Council or the Administrator so directs;
- (d) Consider papers and recommendations submitted to him by the department and his decisions shall be recorded in writing and shall be retained as part of the records of the department;
- (e) Receive advice in all matters relating to the exercise of his functions from the departmental head of the relevant department who is responsible for the general working of that department.

2. Powers may be delegated to ministerial members according to law.

3. When a decision to be made by a ministerial member involves a matter that does not fall wholly or exclusively within his functions -

- (a) Where the decision affects a matter falling partly within the responsibility of another ministerial member he may make the decision jointly with the ministerial member or members concerned or refer the matter to the Administrator's Executive Council; and
- (b) Where the decision affects a matter partly falling within the responsibility of a department for which no ministerial member has responsibility he may make the decision jointly with the Administrator (or his delegate) or the matter may be referred to the Administrator's Executive Council or the Minister, as may be appropriate.

B. Responsibilities in connection with the Administrator's Executive Council

1. Except as may be otherwise arranged in any particular instance a ministerial member shall in relation to matters within his competence -

- (a) Introduce submissions into the Council including proposals for legislation;
- (b) Present draft estimates of annual expenditure;
- (c) Give effect to decisions made by the Minister or the Administrator after consideration of the advice of the Administrator's Executive Council.

2. A ministerial member shall participate in general functioning of the Council under section 19 of the Papua and New Guinea Act.

3. A ministerial member who dissents from a decision taken on the advice of the Administrator's Executive Council may have his dissent recorded.

C. Responsibilities in connection with the House of Assembly

1. A ministerial member shall generally be responsible in the House of Assembly for matters within his competence and in particular -

- (a) He shall answer questions and make official statements concerning those matters and by arrangements [sic] other matters; and
- (b) He shall introduce legislation concerning those matters and by arrangement other matters, being legislation approved by the Administrator's Executive Council or the Minister for External Territories as the case may be, and shall guide the legislation through proceedings in the House.

PART II - ASSISTANT MINISTERIAL MEMBERS

1. The assistant ministerial member will be consulted by the ministerial member or departmental head wherever possible in relation to recommendations or decisions on matters in respect of which the assistant ministerial member is authorised to perform his functions and the consultation will be formally recorded on departmental papers. Responsibility for recommendations or decisions on such matters lies with the ministerial member or departmental head as the case may be.
2. The departmental functions of the assistant ministerial member include the following:-
  - (a) To assist during preparation of Bills;
  - (b) Representation at official functions;
  - (c) To meet official visitors;
  - (d) To participate in departmental functions;
  - (e) To participate in preparing budget estimates;
  - (f) To participate in departmental policy formation;
  - (g) Liaison with representative public bodies;
  - (h) Such other duties or responsibilities as are determined from time to time by the Administrator.
3. In the House of Assembly an assistant ministerial member shall represent the Administration by answering questions relating to the matters in respect of which he performs the functions of an assistant ministerial member in the handling of legislation, resolutions and motions affecting these matters. In relation to his responsibilities in the House of Assembly it will be necessary for the assistant ministerial member to co-operate with the ministerial member and official member responsible in the House for these matters and with the official member designated as senior official member of the House.
4. With respect to the Administrator's Executive Council the assistant ministerial member may, with the agreement of the Administrator, attend a meeting of the Council, when matters in respect of which he is performing the functions of an assistant ministerial member are under discussion, and may be heard at the meeting.
5. Assistant ministerial members will meet jointly from time to time with the Administrator, ministerial members (as appropriate) or senior officers to discuss and study proposed legislation and other matters of Territory interest.

PART III - ALL HOLDERS OF MINISTERIAL OFFICE

In addition to the foregoing in the performance of their functions under section 25 of the Act ministerial members and

assistant ministerial members should conform with the accepted Code of Conduct applicable to holders of ministerial office (notes attached). They should also respect the convention that they will not publicly oppose policies or decisions approved by the Administrator's Executive Council.

MINISTER FOR EXTERNAL TERRITORIES

Notes on the conduct of holders of ministerial office:  
attachment to approved arrangements as stated by the  
Minister for External Territories, 4 March 1970

There are no precise or legally prescribed rules for the conduct of ministers or holders of ministerial office but various points have been laid down on different occasions so that something like a code of conduct may be discerned from the experience of the countries with a parliamentary system of government. This pattern of conduct has gained broad general acceptance. These notes cannot in any sense be regarded as definitive nor are they intended to be exhaustive. The Administrator may be consulted in any doubtful case.

Before he assumes office a holder of ministerial office should curtail for the period of his appointment his activities in outside interests that could conflict with his public responsibilities, including private business and professional practices.

Apart from honorary directorships and directorships connected with charitable organisations or with private companies not primarily engaged in trade but dealing wholly or mainly with family affairs or interests, he should also resign any directorships he may hold. He should disclose in confidence to the Administrator any holdings he has of securities in companies having interests in the Territory whether or not such companies hold government contracts at the time. He should avoid any situation in which conflict could occur between his private interests and his public duty, e.g., by disposing of any such securities that might give rise to difficulty.

While in office he should not enter into transactions through which his private financial interest might come into conflict with his public duty or accept any favour from persons holding or seeking to obtain government contracts. He should not under any circumstances use official information he has received by virtue of his office for his own private profit

or for that of his friends or put himself, or allow himself to be put, in a position to use his official influence in support of any scheme or in the furtherance of any contract in regard to which he has an undisclosed private interest. No holder of ministerial office should speculate in securities regarding which, through receiving special early or confidential information, he may be at an advantage over other people in anticipating market changes.

There should be no communication with the press other than in an official capacity. This does not preclude writing of a literary, historical, scientific, philosophical or romantic nature.

In addition to these requirements, in relation to private affairs, there is an obligation on holders of ministerial office to avoid using or making public for political purposes information received by them in the course of their official duties.

11. Extracts from 'The ministerial member system', paper presented by the Ministerial Member for Health, Mr T. Lokoloko, MHA, at the Fourth Waigani Seminar, Port Moresby, 9-15 May 1970<sup>1</sup>

...We have three areas of work - in the House of Assembly, in the AEC, and in our departments - and I'll deal with these three separately.

Our work in the House of Assembly is fairly straightforward. The function of the ministerial member is to represent the Administration, and particularly his own department, in the House. This involves answering questions on the activities and policy of the department, making speeches and policy statements, and moving legislation through all stages....

The second and extremely important aspect of the ministerial member's job is his membership of the Administrator's Executive Council. As well as the seven ministerial members,

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<sup>1</sup> Published in M.W. Ward (ed.), 1970. The Politics of Melanesia, pp.509-16, The University of Papua and New Guinea and the Research School of Pacific Studies of the Australian National University, Canberra.

the Council consists of the Administrator, the two Assistant Administrators, Mr Ellis and Mr Tom Leahy, MHA. The AEC meets regularly and more and more frequently - in 1967 the old Administrator's Council met only 15 times, in 1969 the AEC met 32 times and in the first four months of this year has met already 14 times. Meetings usually last for a day or a day and a half. It is obvious that more and more matters are going to the AEC for consideration

In the AEC we consider three main types of business. Firstly there is the statutory business which, by law, must go to the AEC. This includes Land Board recommendations, authorisation of loans, statutory appointments, making of regulations and by-laws, making of statutes for UPNG and Institute of Higher Technology, establishment of local government councils, pioneer industry applications, exemptions from duty, deportations and so on. While some of these matters are approved almost automatically, many others are not approved until further information has been supplied to the AEC or alterations made....

The second type of business handled by the AEC consists of policy submissions which are submitted by departments. Where the department has a ministerial member, he presents the matter to the AEC - otherwise the departmental head, accompanied by an assistant ministerial member where appropriate, will present the matter and answer questions. The AEC may accept or alter the recommendations or request a resubmission taking into account objections by Council members. In many cases, the approval will result in legislation being drafted and the AEC, in such cases, has another opportunity to consider the matter after the legislation is ready.

The third type of business concerns matters which are referred to the AEC for consultation and for the information of the Council. Usually these are brought forward verbally by the Administrator, or as information papers, and are in the form of briefings....

His Honour the Administrator has himself adopted the policy of referring an increasing number of matters to the AEC for consideration and advice. What is also important is that in practice the Administrator has invariably accepted the advice of the AEC. Demands by the House of Assembly have also resulted in more matters going to the AEC for decision, for example, certain applications by West Irianese for permissive residency.

The result of all this is that, through spending some five days a month in AEC meetings, ministerial members have become well and truly involved in the government of Papua New Guinea.



Our collective views are being constantly sought on all important matters and we are making decisions. Increasingly we are the ones making the political decisions. When matters come before us, we consider not only the reasons why something should be done, but also how politically acceptable the policy would be. This then may result in alterations to the proposal or deferment until the political climate is better.

Within his department, the ministerial member was initially jointly responsible with the departmental head for the plans, policies and expenditure proposals of the department. How this was worked out in practice has varied depending on the personalities of ministerial members and departmental heads and on the type of department concerned. There was a difficult period of adjustment - ministerial members had to become familiar with the functions and problems of their departments, and departments and their permanent heads had to adjust to a new system which involved sharing responsibility. Moreover, departments had to rely on their ministerial members to represent them in the House of Assembly....

So far I have outlined how the system operated up until the last few months. Additional financial powers were granted to the AEC in November 1969, giving a greater degree of authority on works programme items, but more important changes were announced when the Australian Parliament resumed last March. Of course, the AEC had been consulted about these changes beforehand.

The main change was that ministerial members were to be solely responsible for their departments, within the framework of government policy, for policy and day-to-day administrative actions. Only responsibility for the management and public service aspects was retained by the permanent head. The Minister also indicated that the scope of authority of the AEC was being enlarged. It would be consulted on all significant policy issues and would have a greater voice in procedures for framing of Papua New Guinea's budget.

While all this was to be welcomed, it was obvious that some reorganisation was needed to enable ministerial members to adapt effectively to these changes. The House of Assembly meets for some ten weeks each year and duties on Select and Standing Committees of the House take up additional time. Ministerial members have been spending about five days a month in AEC meetings and have been spending considerable time on departmental duties....

So now we have reached the stage where it has become necessary to streamline our activities. Right now we are in the

process of arranging to have a suitable departmental officer allocated full-time to each ministerial member, to help streamline the handling of departmental matters. In addition we will have offices in our home District or sub-district headquarters, where we can attend to departmental business when we are in our home areas. This will also greatly improve communications between a ministerial member and his department when he is at home. Provision is also being made for ministerial members to be paid an allowance to employ a person to help in electorate matters - someone through whom constituents can reach their member when he is absent from the electorate, as is often the case.

To cope with the expanding work and responsibilities of the AEC three committees of the AEC are being established. The General Administrative Committee will handle all statutory business; the Legislation Committee examine draft legislation; and the Works and Estimates Committee consider works items and be involved in draft budget and budget review discussions throughout the year. It will also periodically meet with the Budget Sub-Committee of the House of Assembly to gain its views. All three Committees of the AEC consist of Council members only, except that the Treasurer and the Assistant Ministerial Member for Treasury are members of the Works and Estimates Committee....

I now finally want to speak briefly about the assistant ministerial members. The results here are not quite so happy. As I mentioned earlier, the first Select Committee wanted up to ten assistant ministers appointed to departments without ministers. The Select Committee also recommended that ten official members be appointed in the House of Assembly. Some problems resulted.

Firstly, the selection of ministerial and assistant ministerial members - with less power, work, responsibility and privileges for assistant ministers - meant two grades of ministers. This in some cases seems to have been resented by the assistant ministerial members, who argue that they are all elected representatives and that some AMM's are serving their second term of office and are therefore more experienced.

In some cases, both a ministerial member and an assistant ministerial member were appointed to the one department - for example, Ministerial Member for Trade and Industry, AMM for Co-operatives; MM for Education, AMM for Technical Education. I personally feel that this should not have happened. The Select Committee's recommendation that all departments have ministerial representation should have been followed. It does not matter if both the AMM and departmental head are in the

House of Assembly - this already happens with Treasury and Lands, and seems to cause no problems. This would also have avoided the problems of one department suddenly having to adapt to not one but two ministers....

12. Extracts from the farewell address to the House of Assembly by His Honour the Administrator, Mr D.O. May, 9 June 1970<sup>1</sup>

...In addition to seeing you at work as elected members, I have been closely associated with a smaller group, consisting of ministerial and assistant ministerial members. The former meet frequently in the Administrator's Executive Council, and the ministerial and assistant ministerial members also join together for regular discussions on policy matters. The Administrator's Executive Council succeeded, some two years ago, the former Administrator's Council. Two years ago ministerial members relied heavily on their officials to present departmental views. That reliance has been substantially lessened, and the presence of departmental officials for any other purpose than to explain a complex issue, as happens in any government, will before long be the exception.

In the Administrator's Executive Council the important decisions affecting this Territory are discussed and opinions of all the members are heard and debated. The predominant part is played by the elected members. The Administrator acts very much as a chairman. The languages of discussion are both English and Pidgin, as the members wish, with the use of English increasing and that of Pidgin decreasing. No votes have been taken - conclusions have been arrived at by consensus.

The Administrator's Executive Council is not responsible to this House, but it is responsive to it. Its responsiveness would be the more obvious if the House had more time to devote to its affairs. As it is, it has invariably been the practice to refer major matters for endorsement by the House. This applies both to policy and to major matters on which executive decisions have or will be taken....

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<sup>1</sup> House of Assembly Debates, Second House, Tenth Meeting of the First Session, vol.II, no.10, p.2853, 9 June 1970.

13. Statement in the House of Assembly by the Chairman of the Select Committee on Constitutional Development, Mr P. Arek, MHA, on the work of the Select Committee on Constitutional Development, 11 June 1970<sup>1</sup>

Mr PAULUS AREK (Ijivitari) - Mr Speaker, I ask leave of the House to make a statement.

Leave granted.

Mr PAULUS AREK - Mr Speaker and honourable members, as the Chairman of the Select Committee on Constitutional Development I would like to make a statement to this House concerning the recently completed tour of Papua and New Guinea by your Committee.

To cover this Territory completely in a short time is a demanding task. It is demanding on both the members of the Committee and on the resources of the Administration. The Committee firmly believes that a complete cross-section of the Territory population was covered and views expressed, both verbal and written, are indicative of the views of many people who were not able to attend or appear before the Committee. Each district of the Territory was covered during the period from 13 April 1970 to 27 May 1970. The Committee held 143 meetings, visiting each major town, the majority of sub-districts and many patrol posts and local government council centres. In addition many written submissions were received from people from isolated stations and centres not visited by the Committee.

It can be appreciated that evaluation of the submissions received is not an easy task, but on the surface certain issues appear to be relatively clear. However the Committee does not intend to table any recommendations involving constitutional changes until such time as full assessment and evaluation of the submissions already received, and which will be received during the second tour of the Territory during September and October of this year, have been carried out.

During the recently concluded tour it became evident that much needs to be done in the field of political education and the Committee appreciates the problem facing the Administration in its political education programme. In this context the Committee noted that many different interpretations of

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<sup>1</sup> House of Assembly Debates, Second House, Tenth Meeting of the First Session, vol.II, no.10, p.2935, 11 June 1970.

terms such as 'home rule', 'self-government' and 'independence' exist and are causing confusion in the minds of a large number of people.

The Select Committee, Mr Speaker, is pleased to receive the assurance of the Prime Minister and the Minister for External Territories that the Australian government firmly upholds the guidelines laid down in the Governor-General's speech on 3 March and the Minister's speech of 4 March 1970. The Committee firmly maintains that all major constitutional changes which require amendment to the Papua and New Guinea Act should, in future, be made only on the recommendation of the Select Committee as endorsed by this House of Assembly. The Select Committee sincerely requested all Australian political parties to respect this principle....

### Part III

#### Revolution in the operation of the ministerial system, July-August 1970

The determination and approved arrangement of 21 August 1970 represent in retrospect the major turning point in Papua New Guinea's progress to self-government and independence. The speeches of the Prime Minister, Mr Gorton (Document 14), and the Minister for External Territories, Mr Barnes (Document 15), in Port Moresby on 6 July 1970 provide the immediate background. The significance of the Prime Minister's speech lies primarily in its direct approach to the question of self-government. While Mr Barnes mentioned on 4 March 1970 (Document 9) that Papua New Guinea was 'on the road' to self-government, the Prime Minister clearly indicated, without reference to the 'overall responsibility' of the Minister for External Territories, that there would be a transfer of power to ministerial members and a corresponding reduction in the extent of Canberra control.

The constitutional ramifications of this speech are briefly dealt with below, but one point about the political context should be made here, and that is the independent initiative that the Australian government exercised in making these constitutional changes. The Australian government had its own policies on the forms and timing of constitutional change, and was able to promote them in a number of ways. One was through the official members of the select committees on constitutional development, who represented, ultimately, the Australian government (Gunther's remark quoted earlier<sup>1</sup> seems to imply that these members, acting on instructions from Canberra, prevented the committees discussing 'many exacting problems'). Another was its ability to put discreet pressure on committees not to adopt particular recommendations, although it would be difficult to ascertain just how often and how

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<sup>1</sup> See p.19.

effectively this tactic was used. A third was its ability to modify the recommendations of committees in the process of giving them legal force.<sup>1</sup> Finally, it could of its own volition introduce changes by statutory instrument (e.g., approved arrangements for ministerial members) or administrative direction (e.g., the instruction given to the Administrator). Most of the changes made in July-August 1970 fell into this last category, and the House of Assembly was highly critical of the failure of the Australian government to consult it, to the point of resolving that any future transfers of power must have the prior approval of the House (Document 20).

The constitutional changes necessary to accomplish the transfer of power were made by three legal instruments: a new determination made by the Minister under section 24(2) of the Papua New Guinea Act (Document 16); a new set of approved arrangements made by the Minister under section 25(1) of the Act (Document 17); and a set of instructions issued by the Governor-General to the Administrator under section 15 of the Act (Document 18). These three documents should be read in conjunction with the relevant sections of the Papua New Guinea Act (Document 2). The effect of these changes was outlined to some extent by Mr Barnes (Document 15), and the following remarks explain further the rather complex legal situation which resulted from them.

The determination of 21 August 1970 was similar to that of June 1968 (Document 5) although the introductory text was new. It provided for seven ministerial members. The matters in respect of which each member was to perform his functions were again indicated in a very general way. However, some departments of the public service were not under the jurisdiction of any member (for example, Department of Information and Extension Services), and only certain divisions of other departments were under a member's jurisdiction (for example, the Assistant Ministerial Member for Corrective Institutions had responsibility for only a very limited range of the functions of the Department of Law). The only purpose of a determination was to set out the matters with respect to which a member was to perform his functions; under section 25(2) of the Act these were to be exercised 'to the extent and in the manner provided by arrangements approved by the Minister'.

The approved arrangements of 21 August 1970 differed fundamentally from those of March 1970 and can only be understood

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<sup>1</sup> See, for instance, Document 7.

in conjunction with the Governor-General's instructions to the Administrator and the speeches of Mr Gorton and Mr Barnes. Part A(1) of the arrangements provided that a ministerial or assistant ministerial member 'shall exercise full authority, and accept full responsibility, in relation to the matters specified for the respective designations in the Annex attached hereto', with the reservation that they were not to act inconsistently with the 'programmes and policies of development' or 'any lawful agreement or obligation' of the Commonwealth of Australia or of the Administration of the Territory of Papua and New Guinea. The matters specified in the annex to the approved arrangements were grouped according to those departments of the public service indicated in the determination but they did not cover the whole range of functions of those departments. For example, only eleven specific functions of the Department of Education were detailed in the annex to the arrangements. The result was that there were some areas of authority within the functions of a ministerial office-holder over which he did not have full responsibility. The provisions of the arrangements concerning these residual matters will be considered later; it is necessary first to consider the Governor-General's instructions to the Administrator in order to fully appreciate the implications of the transfer of full authority over annex matters.

Paragraph 1(a) of the instruction provided in effect that in the exercise of a ministerial or assistant ministerial member's powers and functions concerning any matter in respect of which he had full authority (that is, the matters specified in the annex to the arrangements), the Administrator must 'act in accordance with any advice given to [him] by the Administrator's Executive Council'. Paragraph 1(b) provided that where advice was tendered to the Administrator by a ministerial or assistant ministerial member with respect to an annex matter, the Administrator should either follow that advice or refer the matter to the AEC. Paragraph 1(b) recognised that in respect of some matters it would be 'legally necessary' for the Administrator to consult the AEC, a reference to the fact that for some functions which were by law vested in the 'Administrator-in-Council' the Administrator was obliged to consult the Council.

In most cases, however, paragraph 1(b) enabled the Administrator to choose whether to follow the advice of the ministerial office-holder or refer the matter to the AEC, and this raised the problem of the relationship of the AEC to the office-holders. Mr Barnes indicated (Document 15) that the AEC was intended to stand in the same relationship to the ministerial office-holders



as the cabinet of the Commonwealth government stood in relation to Commonwealth ministers. Despite the ambiguity of the instructions, the primacy of the Administrator's Executive Council was assured by the provision in Part A(3)(a)(ii) of the approved arrangements that an office-holder was required to refer policy decisions or other matters to the AEC where the AEC or the Administrator so directed. Hence in respect of matters detailed in the annex to the approved arrangements, full authority was transferred from the Australian government to the ministerial office-holders, although they were subordinated to the AEC in the exercise of this authority - a case of the conventions of cabinet government being given legal force.

Before considering the position in relation to non-annex matters, some remarks are necessary concerning the legal position of the instructions. The result of the instructions was that in relation to annex matters the AEC was no longer in law a purely advisory body. This seems to conflict with section 19(2) of the *Papua and New Guinea Act* 1949-1968 which provided that 'the functions of the Council are to advise the Administrator...' (emphasis added); prior to August 1970 this was taken to mean that the Administrator was not bound by any advice tendered. However, it could be argued that the instructions were not in conflict with the Act. In English constitutional theory the Queen, as the head of the executive, merely receives advice from her ministers but by convention she is bound to accept that advice. Therefore the word 'advise' in section 19(2) could be interpreted in the light of this convention; in August 1970 there was a sufficient analogy between the position of the Queen and that of the Administrator to make the convention applicable. Even if the instructions can be said to be valid on this basis, the failure to amend the Act still produced a confusing constitutional situation.

Part A(2) of the approved arrangements dealt with the role of ministerial office-holders 'in respect of those matters not specified in the annex' (but which presumably were within their functions as specified by the determination). Their role in these matters was substantially the same as the role of the ministerial members under the March 1970 arrangements: the Australian government, 'acting through the Administrator', remained the paramount authority (see Document 15, paragraph 14). Part B(1)(c) of the arrangements seemed to be concerned with decisions made by the Minister or Administrator concerning all non-annex matters.

The arrangements did not apply to areas of government under the authority of departments or divisions of departments of

the Papua New Guinea public service which were not covered by the determination. Neither, of course, did they affect those areas administered by Australian departments and other instrumentalities operating in Papua New Guinea (for example, the Department of Civil Aviation and the Australian Broadcasting Commission). Mr Barnes indicated that the Australian government would continue to be 'fully responsible' in these areas (Document 15, paragraph 16).

Mr Gorton and Mr Barnes also announced other important changes related to the transfer of power to ministerial office-holders. Both stated that the various veto powers over Ordinances passed by the House of Assembly would not, as a matter of policy, be exercised to frustrate legislation relating to those subjects in respect of which the ministerial office-holders were to have full authority. Of greater practical importance were the alterations to the composition of the Papua New Guinea budget. Mr Gorton announced that future recurrent expenditure would be financed from locally raised revenue supplemented by a grant-in-aid from Australia, and that this part of the budget would 'be left to division among the Ministries by the Administrator's Executive Council' (Document 14). Apart from recurrent expenditure, the budget would - so far as the Australian government as a source of finance was relied upon - be financed by a development grant. The size of this grant would be negotiated between the Australian and Papua New Guinea governments 'but its expenditure... will remain the responsibility of the Australian government' (Document 14).

Documents 19, 20 and 21 relate to constitutional developments which followed the August changes. Both Mr Gorton and Mr Barnes foreshadowed the appointment of a 'spokesman' for the AEC, and Document 19 contains extracts from House of Assembly debates concerning this appointment and the functions of the office. The House was not in any way involved in the appointment of the spokesman or his deputy, and reference to the House was necessary only in order to secure alterations to the Standing Orders. The outline by Mr A.P.J. Newman, Assistant Administrator (Economic Affairs), of the functions of the spokesman stressed the representative character of the office, and in his speech of 3 September 1970 defending the appointment (Document 19) he argued that it was a logical consequence of the transfer of powers to ministerial office-holders. However, while it was logical that there should be some person to speak for the elected element of the AEC, such a person need not necessarily have had a merely representative role. The appointment of a spokesman with such a role was a further step towards the Westminster ideal of a cabinet and prime minister.

The House of Assembly agreed to amend its Standing Orders in order to recognise the spokesman but several members of the House criticised the manner in which the appointment had been made. The main objection was that neither the House nor its Select Committee on Constitutional Development had been consulted, and these criticisms were extended to the transfer of powers. In his speech of 3 September 1970 Mr Newman attempted to meet these criticisms but could only say that it was his 'understanding...that...there was consultation with at least representatives of the Select Committee' and that he was 'personally aware of statements being made here that proposals were agreed to'. Mr P. Arek, the Chairman of the Committee, confirmed that the 'matter of increased powers' was 'suggested by a meeting between the Select Committee and the Australian government' but that the question of a spokesman was not raised.

Further criticism of the Australian government concerning the transfer of powers occurred in September 1970 during debates which followed the tabling of the third interim report of the Select Committee on Constitutional Development. Mr W. Dutton's amendment to the motion of Mr P. Ou (Document 20) reflected the feeling voiced by other members of the House that major steps towards self-government had been taken without reference to the House or its Committee. Mr Dutton's amendment referred to further transfers of power or constitutional changes 'whether requiring amendments to the Papua and New Guinea Act or not'. In order to appreciate the significance of these words, it is necessary to bear in mind that in his speech of March 1970 (Document 9) Mr Barnes had promised that 'important or major changes in the constitutional arrangements for Papua and New Guinea of the sort that might be expected to require substantial amendment to the Act' should not be made until after the House of Assembly had considered the Select Committee's report. The August 1970 transfer of powers was accomplished without amendment to the Act, and if challenged, the Australian government could have argued that it had not retracted from Mr Barnes' statement of policy.<sup>1</sup> Mr Dutton's amendment was designed to

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<sup>1</sup> However, this argument is of doubtful validity. The determinations, the approved arrangements and the instructions are forms of delegated or subordinate legislation and have the same force and effect as the Act itself. Mr Barnes' statement could therefore be taken to refer also to these legal instruments made under the Act. Moreover, it has been noted above that the instructions, if valid, were based on a completely different view of the meaning of the word 'advise' in section 19(2) of the Act, and that it would have been better to have amended this section before the instructions were issued.

prevent any further alteration to the determination or to the approved arrangements without reference to the House of Assembly.

Documents 21 and 22 are official statements concerning the results of the August 1970 transfer of powers. The statement of the Administrator, Mr L. Johnson (Document 21, that 'effectively we are probably a bit more than halfway towards self-government right now' is a fair summation of the position following the transfer. It is somewhat remarkable that even after such a statement political debate in Papua New Guinea should have continued to focus on the question of when self-government should come.

The statement of Mr Pearsall in the United Nations Trusteeship Council (Document 22) was an attempt to summarise the 'main matters' of governmental activity still under the final control of the Australian government after the August 1970 transfer of powers. The exercise of Australian government authority over the twenty-nine matters listed differed according to the particular matter concerned: for example, through a department of the Commonwealth government, such as the Department of Defence (matter 2 in Mr Pearsall's list); through a Commonwealth government instrumentality, such as the Reserve Bank of Australia (matter 5); through the Administrator's responsibility to the Minister for External Territories and the Australian cabinet for the functions of all Papua New Guinea public service departments not covered by the August 1970 determination, such as most functions of the Department of Law (matter 13); through the Administrator's responsibility for the functions of departments covered by the determination but not included in the list of matters in the annex to the August 1970 approved arrangements, such as tertiary education (matter 7); and through the Administrator's or the Minister for External Territories' responsibility for a non-departmental instrumentality of the Papua New Guinea government such as the Public Service Board (matter 29).

There are two comments to be made concerning Mr Pearsall's statement. In his final paragraph he referred to the fact that in practice the AEC was consulted in relation to those matters over which the Australian government retained authority, and that 'agreement has always been reached'. The next sentence, which begins 'The veto power has been used only twice within the last six or seven years...' referred to use of the powers vested in the Administrator and in the Governor-General to refuse to assent to Ordinances of the House of Assembly.<sup>1</sup> The use of these powers over legislation is irrelevant to the use of controls of the exercise of executive power in Papua New Guinea, so these two sentences are unrelated. Also, in relation to the statement that the AEC was always consulted, it

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<sup>1</sup> For more details see the appendix.

should be noted that in the year 1 July 1970 to 30 June 1971 the Administrator's Executive Council met only thirty-five times,<sup>1</sup> which was five times less than in the previous year. Unless these meetings were lengthy it would appear that many such discussions with the AEC must have been perfunctory.

The final comment concerns Mr Pearsall's remark that 'the list given in annex 2 in the Visiting Mission's report', which was the list of powers in the annex to the August 1970 approved arrangements, had been 'enlarged since the Mission compiled its report'. This must be a reference to the additions that were made to the annex to the approved arrangements on 15 December 1970. On this date a new determination under section 24(2) of the *Papua and New Guinea Act* 1949-1968 and a new set of approved arrangements under section 25(1) were made by the Minister for External Territories. However, these changes were few in comparison with the determination and the approved arrangements of August 1970. The determination merely altered the designations of one ministerial member and one assistant ministerial member. The text of the approved arrangements was unaltered, but there were some additions to the matters specified in the annex as matters over which the ministerial office-holder had full authority; for example, the ministerial member for education was given full authority over two more matters, the Tertiary Education Board and the District Education Boards.

There were some further minor amendments to the approved arrangements up to April 1972 when a new set was issued (Document 30). On 10 July 1971 the December 1970 arrangements were amended by the addition of another page specifying the matters with respect to which the Assistant Ministerial Member for Information and Extension Services had full authority. This followed the making of a determination by the Minister for External Territories creating this position,<sup>2</sup> and the nomination by the Ministerial Nominations Committee of a member of the House to fill the position.<sup>3</sup> The page of the annex dealing with this ministerial office was revised on 3 September 1971.

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<sup>1</sup> Commonwealth of Australia, 1972. Administration of Papua New Guinea, 1 July 1970 - 30 June 1971, Report to the General Assembly of the United Nations, p.27, Australian Government Publishing Service, Canberra.

<sup>2</sup> H.A.D., vol.II, no.14, p.4196, 3 June 1971.

<sup>3</sup> H.A.D., vol.II, no.14, p.4412, 14 June 1971.

While these amendments to the annex to the August 1970 arrangements were few in number, there was nevertheless an important principle involved. The Ou-Dutton motion passed by the House of Assembly on 22 September 1970 (Document 20) required that 'any future transfers of power' be referred to the House of Assembly for approval. The amendments outlined above did involve a transfer of power, and it would appear that they were made either in ignorance or defiance of the House of Assembly motion.

14. Extracts from 'Steps towards self-government in Papua and New Guinea', speech given by the Prime Minister, Mr J. Gorton, at Papua Hotel, Port Moresby, 6 July 1970<sup>1</sup>

...I think that the Territory of Papua and New Guinea and the other islands which at the moment make up the whole, faces a most difficult period in its evolution towards self-government in the future and towards independence. We have reached a stage of political development inside the Territory at which there are vocal demands for progress, or at least demands for changes in various fields. But such changes are probably more difficult in this Territory than in any other area of which I can think....

I think the time has come for further advances to be made along that road. I do not speak of self-government in 1972 or in any calendar year that you may care to mention, because you are on a road towards self-government. You have started on it. There will necessarily be progress along it step by step and anyone who seeks to say that a given month at a given year a period will have been reached when that can be achieved is, I think, dangerously simplifying the problem and is acting to the detriment of the people for the future.

But there are further steps now short of self-government but towards self-government which I feel should be made and these I wish to outline to you tonight. We believe that the time has come when less should be referred to Canberra for decision and more should be retained for decision by the

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<sup>1</sup> Steps Towards Self-Government in Papua and New Guinea, 1970. Published for the Prime Minister's Department and the Department of External Territories by the Australian Government Publishing Service, Canberra, pp.3-7.

Administrator's Executive Council and by the ministerial members who for the most part make up that Council. What we suggest is this - that there should be negotiated between the Australian government and the government here, a sum of money for recurrent expenses and for minor works inside the Territory. And, speaking for the Australian government, we would expect that there would be more effort on the part of the local peoples to raise revenues inside this Territory, as years go by for the purpose of this recurrent expenditure and these minor works. But once this sum of money had been negotiated, made up partly by local revenue, partly by what we will call a grant-in-aid for these purposes from the Commonwealth, then that sum of money, we believe, should be divided by the Administrator's Executive Council among the various Ministries up here which will put in claims in the way Ministers put in claims to the Cabinet in Canberra.

So there will be a claim from the Minister of Education, there will be a claim from the Minister of Health, there will be a claim from the Minister of Public Works, and the Administrator's Executive Council - within the sum of money available to it - will apportion to these various Ministers the sums that they can spend. When that has been done, when a Minister, let us say, of Education, has received a sum within the total limits then we believe that he should have authority as to how that money should be spent in the Territory, should be able to make decisions here which now require reference to Canberra before they can be made.

If he has a new programme, he will need to get the agreement of the Administrator's Executive Council. If, as is not unknown in political circles in Canberra, he wishes to get more money in the course of the year for his own portfolio at the expense of somebody else's portfolio - and that is the only way he will get it, he won't get it by additional grant from Australia - then the Administrator's Executive Council can listen to the pleas of the two Ministers concerned and, as a Council, can decide what should be done.

This, I think, will be a great transference, not so much of power, but of administrative power to the elected members who are ministerial members in this Territory and to the Administrator's Executive Council. As there is to be this transference of power and in future, no doubt, other transferees of power, so concomitant with it will there need to be an assumption of responsibility by the ministerial members and the House of Assembly in Papua New Guinea. If there is a requirement for more money to be provided than has been provided by the existing level of local taxes, and what the

Australian government is prepared to provide by a grant-in-aid, then that's fine. It can be provided if the House of Assembly up here is prepared to impose the taxes required to raise it in the same way as the government of Australia has to impose the taxes required to provide what it wants to do. I hope you won't read into what I have just said any suggestion that Australian aid will cease for Papua and New Guinea. Of course it won't, but I hope you will read into it a realisation that as power is transferred so also must responsibility be transferred and these two things go hand in hand.

That is the first proposition we will make. We will have in the Australian Budget a negotiated amount of money for the Territory called a 'grant-in-aid' added to the sum of money raised by the decision of the local House in the number of taxes they propose to impose, and the rate of taxes they propose to impose, and that will be left to division among the ministries by the Administrator's Executive Council and for spending by the ministerial members concerned.

We will have also in the Australian Budget a development grant. That development grant for the general development of Papua and New Guinea Territories will remain with, and be negotiated, of course, by the Australian government and the government up here, but its expenditure, since it will be provided entirely by the Australian taxpayer, virtually entirely, will remain the responsibility of the Australian government. In other words, we will want to see that a general development grant is expended on those projects for which it is voted, and we will want to oversee that it is properly expended on those projects.

We propose, this is just a matter I suppose of presentation too, that in future we would have on our Australian Budget an item which is to pay all the overseas allowances of expatriate officers so that everyone can see that this comes from the Australian taxpayer and from what is provided inside Australia, and not from what is provided in the Territory. The base rates of public servants from the Territory and from Australia can of course be the same, but I think it is essential that people should know that the additional allowances paid do come from the Australian taxpayer, are shown in the Australian Budget and are paid to expatriate officers....

We propose that the Administrator's Executive Council, as a result of the new responsibilities which it assumes, will have a spokesman for that Council appointed in the House of Assembly to answer questions as to what the Administrator's Executive Council has done and why it has done it. And we



also propose that the Parliament of Australia will not exercise its veto power in relation to ordinances if those ordinances affect the actual responsibilities handed over to ministerial members.

Now let me indicate to you the kinds of areas in which we feel responsibility should be taken by ministerial members here and the kinds of areas in which we feel the Commonwealth of Australia should continue to exercise its present authority. They will be delivered later by my colleague, the Minister for External Territories, in more detail but for the moment the subjects on which we think that authority to take decisions should reside in the ministerial members or the Administrator's Executive Council are educational - primary, secondary, technical, but not tertiary - public health, tourism, co-operatives, business advisory services, workers' compensation, industrial training, posts and telegraphs, Territory revenue including taxation (for inherent in what I have said is the need for the House of Assembly to take greater responsibility in the levying of revenue in this Territory), price control, coastal shipping, civil defence, corrective institutions (that's prisons in case anybody's wondering), registration of customary land, land use, leasing of land and town planning and urban development.

The areas in which we wish and must at this stage retain final authority are the judiciary, the enforcement of law and order, internal security, external affairs, external trade and large-scale development projects in agriculture, in transport, forestry...in those things in the five-year development plan which we are now some half-way through and which will for the most part be financed by the Australian taxpayer and therefore overseen by the representatives of the Australian taxpayer rather than the representatives of the Territory.

I may say that other matters such as civil aviation and defence will, as they are at present, be paid for and controlled directly by the Commonwealth departments concerned.

In the Administrator's Executive Council, when decisions are being arrived at as to proposals put forward by ministerial members for authority to spend on this or that, the official members will sit in the Administrator's Council, as they sit at present, and they will offer advice to that Council and they will offer their experience to that Council. They will not take part in any vote that Council may have as to what it finally does. I suggest that these are very significant steps forward along the road to transferring power to the representative members of the Territory and to transferring responsibility to the representative members of the Territory....

15. Extracts from 'Increased responsibility for ministerial members and assistant ministerial members', statement made by the Minister for External Territories, Mr C.E. Barnes, in Port Moresby, 6 July 1970<sup>1</sup>

1. In the statement made by me to the Commonwealth Parliament on 4 March 1970 new approved arrangements under section 25 of the Papua and New Guinea Act were announced and changes were outlined in the powers and responsibilities of ministerial members. The statement reaffirmed that the government's approach was to transfer responsibility progressively to elected members of the Territory House of Assembly. It was indicated that further constitutional changes were under examination and that they would be put into effect later this year.

2. This statement sets out further intermediate steps in constitutional development in the Territory which take effect from the date the legal instruments under the Papua and New Guinea Act are tables in the Parliament when it resumes in August. Under these further arrangements ministerial members and assistant ministerial members, subject to the Administrator's Executive Council, exercise full authority in specified subjects or fields of government in the Territory. Within the overall responsibility of the Commonwealth government the purpose of these new arrangements is to bring about a significant transfer of power to elected representatives of the Territory people.

3. The proposal consists of the following elements:  
First - Under determinations<sup>2</sup> made by the Minister for External Territories under section 24(2) of the Papua and New Guinea Act certain matters are specified in respect of which ministerial members and assistant ministerial members in practice have full authority to make decisions subject only to the Administrator's Executive Council.

4. Second - In respect of specified matters ministerial office-holders are responsible to the Administrator's Executive Council.

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<sup>1</sup> Steps Towards Self-Government in Papua and New Guinea, 1970. Published for the Prime Minister's Department and the Department of External Territories by the Australian Government Publishing Service, Canberra, pp.10-15.

<sup>2</sup> This reference to only the determination is an error: it was the approved arrangements which specified the matters in respect of which the ministerial office-holders had full authority (eds).

5. Third - In respect of specified matters the Administrator's Executive Council will be in the same relationship to ministerial and assistant ministerial members as is the Cabinet to Commonwealth ministers. The Administrator's Executive Council will have some additional responsibilities as explained below.

6. Fourth - At present a number of broad policies in economic and social matters are set down in the Development Programme which has been endorsed by the Australian government and the House of Assembly. Decisions will be taken within that agreed policy framework. They will also be taken within agreed financial provisions set down in the annual Territory Budget. As indicated in the statement of 4 March 1970, the draft Budget will be the subject of discussion between the Estimates Committee of the Administrator's Executive Council and the Minister for External Territories.

7. Fifth - In accordance with the normal situation in government, those who are responsible in Papua and New Guinea for final decisions under these new arrangements will also carry the responsibility for meeting the financial implications. In these matters the Australian government will not be concerned with individual items of expenditure. These will be a purely local responsibility. In the budget discussions between the government and the Administrator's Executive Council, however, the total of the estimated expenditure in respect of the specified matters will need to enter into the discussions as an element in the total budget. Additional expenditures on particular specified matters arising in the course of the financial year could be met by transfers from other heads of expenditure within this broad category. Any addition to the total would in general be financed out of increased Territory revenue or loans.

8. Sixth - The present arrangements approved by the Minister for External Territories under section 25(1) of the Papua and New Guinea Act provide that subject to the overall responsibility of the Minister for External Territories (acting through the Administrator) ministerial members are responsible to the Administrator's Executive Council for the day-to-day running of their departments excepting public service aspects. Ministerial members will retain this overall responsibility and assistant ministerial members who have not hitherto had similar responsibilities will assume the same kind of day-to-day responsibility with regard to the parts or divisions of departments assigned to them. The new power of ministerial office-holders to make final decisions on specified subjects is additional to their day-to-day responsibility for the running of their respective departments or parts of departments.

9. Under the Papua and New Guinea Act and internationally the Australian government continues to be responsible for the administration of Papua and New Guinea and therefore on any particular matter the government will continue to have a formal right to intervene. However, on many matters powers of final decision have been handed over to ministerial and assistant ministerial members. In future there will be no need to refer these matters to the Commonwealth government.

10. These changes represent a definite devolution of authority from the Commonwealth government to ministerial office-holders in the Territory. They will not preclude further constitutional steps forward as may be appropriate in the future for example when the views of the House of Assembly are known about any conclusions reached by the Select Committee on Constitutional Development. The government reaffirms its policy that it will continue to develop the Territory for self-government and independence but it will not set any arbitrary date or timetable against the wishes of the people of the Territory. Moreover these changes do not in any way affect the Commonwealth's policy on the level of aid to Papua and New Guinea. They do not affect the government's intention that large-scale aid will be maintained after self-government or independence.

11. The new arrangements are a significant forward constitutional step. The authority of ministerial members is now substantially enlarged. Assistant ministerial members are given real authority....

14. The specified matters or subjects in respect of which ministerial members and assistant ministerial members will make final decisions are set out in the annex to this statement. As already indicated areas of government activity or subjects not specified will remain the responsibility of ministerial office-holders in so far as the day-to-day administration of these matters are concerned subject to the authority of the Commonwealth government acting through the Administrator as at present.

15. If necessary in the light of practical experience the government will amend the lists of specified matters or make other changes.

16. As part of its fundamental responsibility the Australian government will continue to be fully responsible in the same way as now for all other matters principally the judiciary, law and order, internal security, external affairs, international trade relations, defence and some matters which Commonwealth departments administer directly in the Territory such as civil aviation. The Australian government will also

continue to carry special responsibility for projects necessary to give effect to the Development Programme.

17. It is not necessary to amend the Papua and New Guinea Act to give effect to these changes. They will be effected by Governor-General's instruction under section 15 of the Papua and New Guinea Act, by changes in the determinations and approved arrangements made under the Act, by Regulations under the Act and in certain aspects by delegation or convention.

18. The arrangements outlined increase the authority of the Administrator's Executive Council, ministerial members and assistant ministerial members; that is, they give increased power to the executive arm of government in Papua and New Guinea. The changes also enhance the authority of the House of Assembly in that in respect of Ordinances relating to any of the specified matters the right to withhold assent or to disallow will not be employed; that is legislation in the same area as that for which ministerial members and assistant ministerial members have powers of final decision will not be blocked by the Commonwealth. Reflecting the greater responsibilities of elected members of the Administrator's Executive Council it is proposed that one of their number be spokesman for the Council in the House of Assembly. He will assume some of the duties of the senior official member.

19. Complementary with this transfer of authority to Papua and New Guinea new arrangements will be adopted for the way in which Australian aid to Papua and New Guinea is presented in the Commonwealth Estimates. The form of the Papua and New Guinea Budget will be unchanged.

20. When the Territory Budget as a whole is being formulated it will be the subject of discussions between the Administrator's Executive Council and the Commonwealth, and the Administrator's Executive Council will be the final authority within the Territory for the draft Budget.

21. In the Australian Estimates the amount of grant intended for development purposes in the Territory will be shown as a separate item. In each year's discussions on the draft Territory Budget the amounts to be spent on development projects and some other activities will be negotiated as part of the total Territory Budget. Some of these items will in future be regarded as being entirely financed by Australia and some as partly by Australia and partly by the Papua and New Guinea Administration. Under this heading will be included such works items as roads, ports, or buildings. There will also be included some special items such as finance for the Papua

and New Guinea Development Bank and part of the cost of the University and the Institute of Technology.

22. Other expenditure in the Papua and New Guinea Budget will be almost all recurrent expenditure. Such recurrent expenditure will be financed partly by funds provided under the Commonwealth Estimates item grant-in-aid. As the Territory's own revenue raising capacity increases the importance of this part of the Commonwealth's aid which may be regarded as the Commonwealth's contribution to this recurrent expenditure will diminish. The objective is progressively to reduce this kind of aid with Commonwealth assistance going mainly to development projects and other specific forms of aid. This arrangement will also assist in giving effect to the principle that the financial implications of particular decisions will be the responsibility of those who take the decisions.

23. It has been represented to the government that the morale of public servants in the Territory would be improved if the allowances and other benefits which represent the difference between the total remuneration of local and overseas officers were paid by the Commonwealth outside the Territory Budget. From now on the Commonwealth will do this. Basic salaries of all officers will continue to be paid under the Territory Budget but the cost of allowances and other benefits to overseas officers will be met by the Commonwealth out of funds appropriated by Parliament in the Commonwealth Estimates. These payments which it is estimated will amount to about \$33m in 1970-71 will be shown separately in the Commonwealth Estimates as allowances and other benefits for overseas officers of the public service of Papua and New Guinea. Once suitable accounting arrangements have been made these payments will not pass through the Territory Budget. The Commonwealth will increase this sum if necessary to take account of increases in allowances to overseas officers flowing from changes in Commonwealth public service salaries in Australia.

24. In addition to the grant-in-aid and the development grant the Commonwealth government may from time to time provide loans to the Territory for development purposes such as the loan of \$20m over three years towards the construction of Arawa township in Bougainville. Such loan aid will be additional to public loans and loans from international sources.

25. In harmony with these arrangements, Commonwealth aid to the Territory will be shown in the Commonwealth Estimates this year in four parts -

- (a) The amount intended for development purposes;
- (b) Grant-in-aid;
- (c) Allowances and other benefits for expatriate officers of the public service of Papua and New Guinea; and
- (d) Loans for special development projects.

26. In the Australian Estimates aid to the Territory is thus being presented so as to give a clearer picture of the purposes for which that aid is given. The individual items covered by the different headings in the Australian Estimates will of course be shown separately in the Territory Budget in the normal way. The changes in the method of presentation in the Australian Estimates do not affect the Commonwealth's aid policy now or in the future.

27. The Commonwealth will continue to maintain a general oversight of the aid it provides to the Territory. This general oversight will be directed to ensuring that Commonwealth funds are used to full advantage in the Territory. For example, the World Bank satisfies itself before there is any agreement to lend that the technical and economic aspects of a project are sound. It also oversees the carrying out of a project under arrangements which enable it to ensure due attention to economy and efficiency including such matters as the standards of construction arrangements for contracts, and the supervision of the work. This is the kind of control that the Commonwealth will exercise over the expenditure of funds provided as development aid.

28. To give effect to some aspects of the authority now vested in ministerial members and assistant ministerial members in Papua and New Guinea arrangements will be made for the Administrator to delegate to them all appropriate powers and functions under ordinance previously exercised by Administration officials. The Administrator will in practice exercise his authority in respect of specified matters in accordance with the advice of the Administrator's Executive Council and individual ministerial office-holders.

29. In taking decisions in respect of specified matters the Administrator's Executive Council and the ministerial office-holders will of course be free to accept or reject the advice of their departmental advisers.

30. There are normally three official members of the House of Assembly on the Administrator's Executive Council. When questions relating to specified matters are being considered in the Council, assistant ministerial members will attend as appropriate to the subject under discussion. Official members

will be available to advise as required by the ministerial members but will take no part in decisions; other department officers will similarly be invited as required.

31. The Administrator will continue to preside over meetings of the Administrator's Executive Council....

16. Sphere of authority of ministerial and assistant ministerial members: determination made by the Minister for External Territories, Mr C.E. Barnes, under section 24(2) of the Papua and New Guinea Act 1949-1968, 21 August 1970

WHEREAS paragraph (a) of sub-section (1.) of section 24 of the *Papua and New Guinea Act 1949-1968* provides that there shall be seven offices of ministerial member of the House of Assembly, of such respective designations as the Minister of State for External Territories determines;

AND WHEREAS paragraph (b) of the said sub-section provides that there shall be such number, being not more than ten, of offices of assistant ministerial member of the House of Assembly, and of such respective designations as the Minister of State for External Territories determines;

AND WHEREAS sub-section (2.) of the said section provides that in respect of each ministerial office, the Minister of State for External Territories shall determine the matters in respect of which the holder of the office is to perform the functions of a ministerial member or assistant ministerial member, as the case requires, being all or any of the matters to which the functions of a specified department of the public service relate:

Now therefore I, CHARLES EDWARD BARNES, Minister of State for External Territories, pursuant to the power conferred upon me by sub-section (1.) of section 24 of the *Papua and New Guinea Act 1949-1968* HEREBY DETERMINE the seven offices of ministerial member shall have the respective designations as set out in column 1 of Annex A attached hereto and that there shall be eight offices of assistant ministerial member which shall have the respective designations as set out in column 1 of Annex B attached hereto AND pursuant to the power conferred upon me by sub-section (2.) of the said section I HEREBY DETERMINE that the functions of the specified departments for



which the ministerial members and assistant ministerial members will be responsible in so far as the day-to-day administration of those matters are concerned shall be as set out in column 2 of Annexes A and B respectively.

I HEREBY REVOKE all prior determinations made pursuant to the powers conferred by section 24 of the *Papua and New Guinea Act* 1949-1968.

Dated this twenty-first day of August 1970.

C.E. BARNES  
Minister of State for External Territories

ANNEXE A

<u>FIRST COLUMN</u>	<u>SECOND COLUMN</u>
<u>NAME OF MINISTERIAL OFFICE</u>	<u>DEPARTMENT OF PUBLIC SERVICE AND MATTERS FOR PERFORMANCE OF FUNCTIONS</u>
1. Ministerial Member of the House of Assembly for Agriculture, Stock and Fisheries	Department of Agriculture, Stock and Fisheries All the matters related to the functions of the said Department
2. Ministerial Member of the House of Assembly for Education	Department of Education All the matters related to the functions of the said Department
3. Ministerial Member of the House of Assembly for Public Health	Department of Public Health All the matters related to the functions of the said Department
4. Ministerial Member of the House of Assembly for Trade and Industry	Department of Trade and Industry All the matters related to the functions of the said Department
5. Ministerial Member of the House of Assembly for Labour	Department of Labour All the matters related to the functions of the said Department
6. Ministerial Member of the House of Assembly for Public Works	Department of Public Works All the matters related to the functions of the said Department
7. Ministerial Member of the House of Assembly for Posts and Telegraphs	Department of Posts and Telegraphs All the matters related to the functions of the said Department

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ANNEXE B

<u>FIRST COLUMN</u>	<u>SECOND COLUMN</u>
<u>NAME OF MINISTERIAL OFFICE</u>	<u>DEPARTMENT OF PUBLIC SERVICE AND MATTERS FOR PERFORMANCE OF FUNCTIONS</u>
1. Assistant Ministerial Member of the House of Assembly for Treasury	Department of the Treasury All the matters related to the financial aspects of revenue raised within the Territory including participation in discussions with the Commonwealth on the quantum of aid from the Commonwealth
2. Assistant Ministerial Member of the House of Assembly for Transport	Department of Transport All the matters related to the functions of the said Department
3. Assistant Ministerial Member of the House of Assembly for Local Government	Department of the Administrator All the matters related to the functions of the Local Government Office in the said Department
4. Assistant Ministerial Member of the House of Assembly for Lands and Surveys	Department of Lands, Surveys and Mines All the matters related to the functions of the Divisions of Lands and Surveys of the said Department
5. Assistant Ministerial Member of the House of Assembly for Social Development and Home Affairs	Department of Social Development and Home Affairs All the matters related to the functions of the said Department
6. Assistant Ministerial Member of the House of Assembly for Forests	Department of Forests All the matters related to the functions of the said Department
7. Assistant Ministerial Member of the House of Assembly for Corrective Institutions	Department of Law All the matters related to the functions of the Corrective Institutions Branch of the said Department and the Liquor Licensing Commission
8. Assistant Ministerial Member of the House of Assembly for Mines	Department of Lands, Surveys and Mines All the matters related to the functions of the Division of Mines of the said Department

17. Arrangements approved by the Minister for External Territories, Mr C.E. Barnes, pursuant to section 25 of the Papua and New Guinea Act 1949-1968, 21 August 1970

WHEREAS sub-section (2.) of section 24 of *Papua and New Guinea Act 1949-1968* provides that the Minister for External Territories shall determine from time to time the matters in respect of which the holder of a ministerial office is to perform his functions being all or any of the matters to which the functions of a specified department of the public service relate:

AND WHEREAS sub-section (1.) of section 25 of the *Papua and New Guinea Act 1949-1968* provides that in respect of the matters so determined the functions of a ministerial member or assistant ministerial member are to assist in the administration of the government of the Territory and in particular -

- (a) to take part in the formulation of policies and plans and of proposals for expenditure in relation to those matters and in the direction of activities of the department of the public service dealing with those matters;
- (b) to represent or assist in representing, the Administration in the House of Assembly; and
- (c) in the case of a ministerial member to make recommendations to the Administrator's Executive Council in relation to those matters;

AND WHEREAS it is further provided by sub-section (1.) of section 25 that such functions are to be carried out to the extent and in the manner provided by arrangements approved by the Minister for External Territories and applicable to the office of the ministerial member or assistant ministerial member;

NOW THEREFORE I, Charles Edward Barnes, Minister of State for External Territories, DO HEREBY APPROVE the following arrangements applicable to each office of ministerial member and assistant ministerial member.

A. Responsibilities in connection with the department

- (1) In accordance with the Governor-General's instructions given to the Administrator, pursuant to the powers conferred by section 15 of the *Papua and New Guinea Act 1949-1968*, a ministerial member or assistant ministerial member shall exercise full authority, and accept full responsibility, in relation to the matters

specified for the respective designations in the annexe attached hereto. In so doing a ministerial or assistant ministerial member shall not act inconsistently with -

(a) the programmes and policies of development from time to time agreed upon by the Commonwealth of Australia and the House of Assembly or the Administrator's Executive Council, as the case may be;

or

(b) any lawful agreement or obligation entered into by the Administration of Papua and New Guinea or by the Commonwealth of Australia in respect of the Territory of Papua and New Guinea.

(2) In respect of those matters not specified in the annexe, a ministerial or assistant ministerial member shall -

(a) be responsible within the framework of broader government policy for decisions regarding policy and for administrative actions of the department, or part of the department as may be determined, in its day-to-day activities (other than management and public service aspects);

(b) be responsible for the formulation of plans and proposals for departmental, or part of the department as may be determined, expenditure including the formulation of draft departmental estimates.

(3) In carrying out his functions, a ministerial or assistant ministerial member shall -

(a) refer policy decisions or other matters to the Administrator's Executive Council where  
(i) he considers it necessary to do so;

or

(ii) the Administrator's Executive Council or the Administrator so directs;

(b) consider papers and recommendations submitted to him by the department and his decisions shall be recorded in writing and shall be retained as part of the records of the department;

(c) receive advice in all matters relating to the exercise of his functions from the departmental head of the relevant department who is responsible for the general working of that department.

B. Responsibilities in connection with the Administrator's Executive Council

- (1) Except as may be otherwise arranged in any particular instance a ministerial or assistant ministerial member shall in relation to matters within his competence -
  - (a) introduce submissions into the Council including proposals for legislation;
  - (b) present draft estimates of annual expenditure;
  - (c) give effect to decisions made by the Minister or the Administrator after consideration of the advice of the Administrator's Executive Council;
- (2) A ministerial member shall participate in the general functions of the Council under section 19 of the Papua and New Guinea Act;
- (3) With respect to the Administrator's Executive Council an assistant ministerial member may, with the agreement of the Administrator, attend a meeting of the Council, when matters in respect of which he is performing the functions of an assistant ministerial member are under discussion, and may be heard at the meeting.

C. Responsibilities in connection with the House of Assembly

A ministerial or assistant ministerial member shall generally be responsible in the House of Assembly for matters within his competence and in particular -

- (a) he shall answer questions and make official statements concerning those matters and by arrangements other matters; and
- (b) he shall introduce legislation concerning those matters and by arrangement other matters, being legislation approved by the Administrator's Executive Council or the Minister for External Territories as the case may be, and shall guide the legislation through proceedings in the House.

In addition to the foregoing in the performance of their functions under section 25 of the Act ministerial members and assistant ministerial members should conform with the accepted code of conduct applicable to holders of ministerial office, notes on which were attached to the approved arrangements of 4 March 1970. They should also respect the convention that they will not publicly oppose policies or decisions approved by the Administrator's Executive Council.

I HEREBY REVOKE all prior approved arrangements made pursuant to the powers conferred by section 25 of the *Papua and New Guinea Act* 1949-1968.

Dated this twenty-first day of August 1970.

C.E. BARNES  
Minister of State for External Territories

ANNEXE (P.2)<sup>1</sup>

Ministerial Member for Education

Department of Education

Location, administration and operation of schools, vocational centres and teachers' colleges excluding Goroka Teachers' College  
 Syllabi  
 Fees and charges  
 Mission education operations including grants-in-aid  
 School commencing age  
 P. and C. subsidies  
 Correspondence tuition for secondary schools and vocational centres  
 Maintenance of students  
 Scholarships allocation for tertiary training  
 Education research and teaching methods  
 Transport of school children

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<sup>1</sup> There were fifteen annex pages to the August 1970 approved arrangements; this page is included as illustrative (eds).

18. The Governor-General's instructions to the Administrator,  
20 August 1970<sup>1</sup>

Commonwealth of Australia  
to wit  
PAUL HASLUCK  
Governor-General

By His Excellency the  
Governor-General in  
and over the Commonwealth  
of Australia

WHEREAS it is provided by section 15 of the *Papua and New Guinea Act 1949-1968* that the Administrator of the Territory of Papua and New Guinea shall exercise and perform all powers and functions that belong to his office in accordance with the tenor of his Commission and in accordance with such instructions as are given to him by the Governor-General:

AND WHEREAS my government has decided on new arrangements in relation to the government of the said Territory for the purpose of bringing about a significant transfer of power to elected representatives of the people of the Territory:

AND WHEREAS it is intended that, under the said arrangements, the ministerial members, and assistant ministerial members, of the House of Assembly of the said Territory will exercise full authority, and accept full responsibility, in relation to certain matters and that the powers and functions of the Administrator of the said Territory will be exercised consistently with the said arrangements:

NOW THEREFORE I, SIR PAUL MEERNAA CAEDWALLA HASLUCK, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, hereby give the following instructions to the person from time to time holding the office of Administrator of the Territory of Papua and New Guinea or exercising and performing the powers and functions that belong to that office:

- (1) Subject to your duty to act in accordance with law, in the exercise of your powers and functions in relation to a matter that is included in the matters that are specified, for the purposes of arrangements for the time being approved in accordance with section 25 of the *Papua and New Guinea Act 1949-1968*, as matters in respect of which a ministerial member or assistant ministerial member is to have full authority -

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<sup>1</sup> Commonwealth Gazette, no.73, 1970.

- (a) you shall act in accordance with any advice given to you by the Administrator's Executive Council; and
  - (b) in the case of a matter with respect of which it is not legally necessary for you to obtain the advice of the Administrator's Executive Council and in respect of which advice is tendered to you by the ministerial member or assistant ministerial member concerned without the matter having been considered by the Administrator's Executive Council, you shall either act in accordance with that advice or refer the matter to the Administrator's Executive Council.
- (2) You shall cause a record to be made of the decision of the Administrator's Executive Council as to the advice to be given in relation to a matter referred to in the foregoing instruction that has been considered by the Council and shall forward to the Minister of State for External Territories, as soon as practicable, a copy of the papers submitted to the Council for the purposes of its consideration of any such matter and of the record so made of the decision of the Council.

(L.S.)

Given under my Hand and  
Great Seal of the  
Commonwealth this  
twentieth day of August  
in the year of Our Lord,  
One thousand nine hundred  
and seventy, and in the  
nineteenth year of Her  
Majesty's reign.

By His Excellency's Command,

C.E. BARNES  
Minister of State for External Territories



19. The role of the spokesman of the Administrator's Executive Council

- A. Statement in the House of Assembly by the Assistant Administrator (Economic Affairs), Mr A.P.J. Newman, on the duties of the spokesman of the Administrator's Executive Council, 31 August 1970<sup>1</sup>

Mr NEWMAN (Assistant Administrator (Economic Affairs)) -

...Honourable members will be aware that the Papua and New Guinea Act and Standing Orders of this House make no reference to other than ministerial members, assistant ministerial members, official members and elected members. A specific reference is included both in the Papua and New Guinea Act and Standing Orders to a senior official member but there is no reference to anyone who might be regarded as a spokesman for the Administrator's Executive Council.

It is elementary that:

- (1) because the Administrator's Executive Council will arrive at many of its decisions without a vote by the official members in that Council; and
- (2) because of its obvious importance and standing;

the Council, as such, should have a voice not only for public purposes, but in this Chamber.

The mere fact that the Council could be required to explain, to inform, to be questioned by the elected members, necessitates that there should be a spokesman for it. It has been publicised and, Mr Speaker, I am aware that His Honour the Administrator has informed you of the election by ballot of the elected members of the Administrator's Executive Council of a spokesman for that body in the person of Mr T. Leahy and a deputy spokesman in the person of Mr T. Lokoloko. The re-arranged seating reflects your recognition of the Administrator's Executive Council as the voice of government.

It remains for me to inform this Chamber of the division of responsibilities between the spokesman and the senior official member. I think this is important because honourable members will be accustomed to the senior official member performing many of the tasks which in the new situation should

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<sup>1</sup> House of Assembly Debates, Second House, Eleventh Meeting of the First Session, vol.II, no.11, pp.3008-9, 31 August 1970.

be the responsibility of the spokesman for the Administrator's Executive Council. These responsibilities will include:

Questions directed at information on the Administrator's Executive Council activities and decisions, should be addressed to the spokesman. Questions directed at activities which are clearly the concern of the Commonwealth and activities not represented in the House of Assembly, such as the Public Service Board, should be directed to the senior official member. Statements will be made by the spokesman in respect of those matters which are the concern of the Council, in so far as policies, deliberations and decisions are concerned. Statements, however, which are the primary concern of the Australian government will be made by the senior official member.

Liaison with political parties and groups will be the sole responsibility of the spokesman for the Administrator's Executive Council. As required, however, official members, including myself, will support and operate closely with the spokesman and the deputy spokesman. Chairmanship of meetings between ministerial, assistant ministerial and official members on House matters will rest with the spokesman or the deputy spokesman. Control of House business often demands consultation between the Speaker and the leaders of parties and groups in this Chamber and in this respect it is anticipated that the spokesman and I will jointly contact the Speaker.

Standing Orders requirements will have to be observed and, Mr Speaker, I note that Standing Orders Nos. 88, 164, 165, 294 and 295, which are directed to statements, questions, papers and documents, contain no provision for recognition of a member of the Administrator's Executive Council. I would here like to propose that the House consider amendments to these to include 'a member of the Administrator's Executive Council'. If so amended, there would be no difficulty then in the spokesman's acting in that capacity on behalf of the Council in this Chamber....

B. Debate in the House of Assembly on the appointment of a spokesman and deputy spokesman of the Administrator's Executive Council, 3 September 1970<sup>1</sup>

[On 3 September 1970 the Standing Orders Committee recommended to the House that amendments be made to the Standing Orders to accommodate the appointment of a spokesman and deputy spokesman of the Administrator's Executive Council. The report was adopted by the House, but all the elected members who spoke were critical of the manner in which the office of spokesman had been introduced.]

Mr MICHAEL SOMARE (East Sepik) -

...The government decided to bring about this change, but members of this House were not told about it. It just went ahead and did things according to its own ideas and now it has introduced this change in the House, it has created a lot of confusion among the members. Mr Speaker, I do not think this is right. However I do want to make it clear to members that I am not, in any way, questioning the right of a member of the AEC to answer questions. This does not concern me but what I am trying to drive home now, is that we have already agreed on the floor of the House that if and when there are to be any changes made, this House must be, before anyone else, consulted. But this present situation seems to indicate to us that this arrangement which we agreed upon some time ago has now been disregarded. This is not right.

Furthermore, it is believed that the government did not even consult the Select Committee on Constitutional Development about this change. The government should always collect our views and consider them before making decisions. Again, I wish to say that I am not questioning the right of either the Honourable Prime Minister or Minister for External Territories to give direction, but I emphasise that members must be consulted before changes are implemented. It is absolutely ridiculous if things are done contrary to policies previously agreed upon. This is what I am disappointed about. The government should tell this House of any changes because, after all, we as members must be aware of all aspects of the Administrator's Executive Council. It is, therefore, logical that we must always be made aware of any changes.

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<sup>1</sup> House of Assembly Debates, Second House, Eleventh Meeting of the First Session, vol.II, no.11, pp.3053-6, 3 September 1970.

Mr MATIABE YUWI (Tari) - I too am a bit confused about this new person they call a spokesman. I do not understand. On many occasions we have told the government that if it wants to introduce anything new then it must talk clearly to we members and the people about it. When we understand and agree, then changes can be implemented. But this move was not discussed with members of the House and this is why we are angry. This is not the right way to go about things. If something new is to be introduced members must first be consulted. Also the government has nominated a Select Committee to hear the views of the people concerning constitutional changes in this country. We committee members had no knowledge of this move by Mr Gorton and I have told the newspaper of my concern in this regard. I am not clear about the new move and I am sure that other members feel the same.... I think this matter should be postponed to a later date so that members and the people can be informed fully about this new move....

Mr NEWMAN (Assistant Administrator (Economic Affairs)) -

...Let me repeat a couple of points I made on Monday. Ministerial members, assistant ministerial members and particularly the AEC, have been given powers and authorities which they never possessed before. Ministerial members and assistant ministerial members have been given these powers with, as I understand it, the concurrence of the Select Committee. It is my understanding, Mr Speaker, that before any of these announcements were made, there was consultation with at least representatives of the Select Committee and I am personally aware of statements being made here that proposals were agreed to. Now obviously if these individual ministerial office-holders have been given these powers and, more particularly, the AEC as a body has authority in such a way that official members do not have a say in that authority, and as a result of that the Administrator is in a position where he has to take cognisance of the Council's decisions, surely that body has to be accountable. It has to be accountable, both publicly and in this Chamber and, if it is going to be accountable, it must have a recognisable voice. There must be some identifiable person who can speak for that Council. Now this is the whole idea behind having this spokesman. There is nothing ulterior in it - it is a perfectly logical and sensible proposal. The spokesman, as such, was elected by the elected members in the Council. The official members did not participate in the election. They did not even participate in the discussion which led to the election. The eight elected members only participated in the election.

Mr PAULUS AREK (Ijivitari) - Mr Speaker, I rise to welcome the direction that the government has taken. However, I must point out a few things that the government should have done. I would also like to express a few points of which the Administration should take note.

Firstly, Mr Speaker, at no time has the Select Committee on Constitutional Development discussed anything about a spokesman for the government. As far as I can remember there was no discussion on the appointment of a spokesman among the Select Committee on Constitutional Development. This suggestion about a spokesman for the AEC emanates from the Australian government. It is true that the matter of increased powers for ministerial members was suggested by a meeting between the Select Committee and the Australian government....

20. Motion in the House of Assembly by MHA (Hagen), Mr P. Ou, concerning a further tour of the Territory by the Select Committee on Constitutional Development, 22 September 1970<sup>1</sup>

[On 3 September 1970 Mr Paulus Arek, the Chairman of the House Select Committee on Constitutional Development, tabled the Committee's third interim report and indicated that the Committee would make a tour of Papua New Guinea in January 1971 (House of Assembly Debates, vol.II, no.11, pp.3061-2). Mr Pena Ou moved a motion concerning this proposed tour.]

Mr PENA OU (Hagen) - I move -

That this House directs the Select Committee on Constitutional Development to tour the entire Territory again seeking the true consensus of opinion of the people of this Territory on vital issues, especially that of self-government, before it tables any further reports on constitutional development in this House, and, further, that this tour should be undertaken early in 1971.

Mr Speaker, I move this motion concerning the work of the Select Committee on Constitutional Development. For the whole

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<sup>1</sup> House of Assembly Debates, Second House, Eleventh Meeting of the First Session, vol.II, no.11, pp.3372-8, 22 September 1970.

of last week I was trying to find out the missing opinions expressed by the people in the Committee's Report. We understand that there were a lot of things expressed to the Committee by the people and knowing also that this is not the final report, we accept it. However some of the suggestions given by the people to the Committee during its tour are not included in the Report. We have been told by the Committee that there will be a further statement at the November meeting.

My motion asks the House to postpone the Committee's further report in November and to direct the Committee to carry out another tour, commencing next year, to seek the views of the people again....

[Debate on this motion followed.]

Mr DUTTON (North Fly) - Mr Speaker, I wish wholeheartedly to support Mr Pena Ou's motion and I wish to move an amendment.

I move -

That the following amendment be made:

That the following words be added to the motion:

'and further, that any future transfers of power or constitutional changes, whether requiring amendments to the Papua and New Guinea Act or not, will be unacceptable to the House unless such changes have been agreed to by a majority of members of this House'.

I am moving this amendment in order to support Mr Pena Ou and all the people of the highlands who are worried about self-government; and to help the Select Committee on Constitutional Development at the same time. I believe the Select Committee is being wrongly blamed for suggesting early self-government. It is not to blame: the responsibility lies with the changes that have already been made in Australia....

[Debate on the motion and the amendment concluded on the motion of Mr Michael Somare.]

Motion (by Mr Michael Somare) agreed to -

That the question be now put.

Question - That the amendment be agreed to - resolved in the affirmative.

Mr PENA OU (Hagen) - Mr Speaker, I think the Chairman of the Select Committee agreed to my motion; therefore I have no objection to the amendment. I support the amendment.

Question - That the motion, as amended, be agreed to - resolved in the affirmative.

21. Extracts from press conference held by His Honour the Administrator, Mr L.W. Johnson, in Port Moresby, 28 January 1971<sup>1</sup>

...In fact there is already a substantial degree of self-government operating here now. This degree of self-government can be extended virtually into complete internal self-government, either step by step or in one fell swoop if it is decided to do it that way, merely by extending the final powers of ministers here and by varying the Governor-General's instructions to the Administrator.

The Minister for External Territories can extend the final powers of ministers as he did last year. He has the power under the Papua and New Guinea Act, section 24: 'The Minister for External Territories shall determine from time to time the matters in respect of which the holders [sic] of a ministerial office is to perform his functions.'

The functions which were to be performed by ministerial office-holders have been set out in a pretty comprehensive list of final power. In two departments, Health and Education, the ministerial member is virtually responsible for all of the departmental functions with some minor exceptions. In education there is perhaps the considerable exception of tertiary education which is financed entirely from the development grant and so was excluded from the final powers of the ministerial member.

Effectively we are probably a bit more than halfway towards self-government right now.

On the other side of the coin there are the Governor-General's instructions to the Administrator:<sup>2</sup> 'In matters in respect of which the ministerial member or the assistant ministerial member is to have full authority that is as indicated by the Minister, you shall act in accordance with any advice given to you by the Administrator's Executive Council and any matter in respect of which it is not legally necessary for you to obtain the advice of the AEC and in respect of which the advice which is tendered to you by the ministerial member or the assistant ministerial member you can either act in accordance with that advice or refer the matter to the AEC.'

<sup>1</sup> Australian External Territories, vol.11, no.2, pp.38-9, April/June 1971.

<sup>2</sup> Cf. pp.89-90.

In short in any area where a minister has final power, the Administrator has to act in accordance with the wishes of the ministerial member or with the wishes of the AEC.

This really means the AEC can disagree with the minister but my options are to act either as the ministerial member tells me or as the AEC tells me in the final power areas.

Discussions on self-government tend to ignore the fact that these powers do exist. These powers are exercised and certainly more than half of the departmental functions are controlled here by elected members of parliament.

The most outstanding example of this of course is internal revenue. Internal revenue is a matter for the Assistant Ministerial Member of the Treasury. That means all taxes are a matter to be decided here by the assistant ministerial members and/or the AEC. In a tax matter of course no minister would take a final decision himself. He would automatically refer this to the AEC.

As you know and has been said on a number of occasions, the reason you aren't paying more income tax this year than last year is because the ministerial members here decided to do it another way and that was their decision in fact quite unprompted by anybody....

22. Statement in the Trusteeship Council of the United Nations by the Special Representative of Australia, Mr Pearsall, on matters over which Australia still retained authority, 7 June 1971<sup>1</sup>

Mr ASHWIN (Australia): The representative of the Soviet Union asked a question relating to powers not yet transferred to ministerial members, on Papua and New Guinea. The Special Representative answered that question in broad terms, but the Soviet representative asked that he be supplied with more details, if it was possible for us to do so, before the commencement of the general debate. The representative of

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<sup>1</sup> United Nations Trusteeship Council Provisional Verbatim Record of the Thirteen Hundred and Eighty-first Meeting (held at Headquarters, New York, on Monday, 7 June 1971, at 10.30 a.m.), Document no.T/PV. 1381, pp.6-7.



the Soviet Union also asked a question about profits of private enterprises, to which we were unable to reply immediately. He did not seek an answer to that question before the general debate, but as we now have certain information available, the Soviet representative might like to have it at this stage. The Special Representative will comment on those two matters.

Mr PEARSALL (Special Representative): The representative of the USSR requested clarification of areas where the Administering Authority still retained final authority and where it could exercise its veto power. A complete list would have to be a mirror list of the list given in annex 2 in the Visiting Mission's report,<sup>1</sup> which has, in any case, been enlarged since the Mission compiled its report. I have made the list as full as I could in the time and with the information available to me. It is not complete but lists for certain the main matters over which the Administering Authority still retains authority. It is as follows:

(1) international relations; (2) defence and security; (3) civil aviation; (4) meteorology; (5) banking and currency; (6) approval of works programme in respect of items costing more than \$200,000 which are those financed by the Commonwealth Development Grant; (7) tertiary education; (8) medical training other than paramedical; (9) external trade and marketing; (10) malaria eradication; (11) entry and deportation where security is involved; (12) granting of pardons and remission of sentences; (13) maintenance of law and order; (14) the judicial system; (15) control of District services; (16) determination of wages and conditions of employment; (17) offshore fisheries to which the Commonwealth of Australia Fisheries Act applies; (18) granting of permits, licences and leases for search and production of petroleum; (19) granting of special mining leases and leases for mining purposes associated therewith; (20) overseas telecommunications; (21) protective tariffs; (22) control of operations and activities in ports under Harbours Board control; (23) the Papua and New Guinea Electricity Commission; (24) area authorities; (25) appointment of members to various bodies such as Land Board, Development Bank Board, Investment Corporation; (26) registration of land titles; (27) grants of permits and licences under the Forestry Ordinance; (28) expenditure of revenue derived from external sources such as Commonwealth Development grant; (29) certain powers relating to the control, salaries, conditions, etc., of public servants.

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<sup>1</sup> This refers to the list of powers in the annex to the August 1970 approved arrangements (eds).

In practice, any matters arising from the above are always discussed with the Administrator's Executive Council, and agreement has always been reached. The veto power has been used only twice within the last six or seven years, and in one notable case it was not used when many people thought that it would be. That was when the House of Assembly reduced the budget by \$50,000 as a mark of its displeasure over certain sections within the budget.

## Part IV

### Legislative modification, 1971-72

Documents 23 and 24, both of which are concerned with the work of the Select Committee on Constitutional Development of the 1968-72 House of Assembly, provide background material to legislative changes to the ministerial system in late 1971 and early 1972. In relation to this Committee it is important to recall the remark of Dr J.T. Gunther that the Australian government had interfered in its work (Gunther 1970:427):<sup>1</sup> despite appearances, it cannot be simply concluded that the initiative for and the direction of constitutional change at this time were prompted by the elected members on the Committee.

Mr P. Arek's statement to the House on 17 November 1970 (Document 23) indicated that the pace of constitutional change would quicken, but its primary significance was that it provided the first attempt by a Papua New Guinean politician to define the concept of self-government. The definition offered, however, was very guarded for, apart from defence and external affairs, for which the Australian government would remain responsible, he suggested that 'some sharing arrangements' might be made with respect to such matters as the police, internal security, the public service, the judiciary, trade, banking and perhaps civil aviation. In comparison with British colonial practice this was a very conservative definition and reflected the hesitant manner in which the question of self-government was being introduced into political discussion in Papua New Guinea. Mr Arek's statement should be compared with the definition offered by Mr Somare in June and September 1972 (Document 41). The remaining point to note is the statement concerning Australian financial assistance. Ever since the debate over self-government began, Papua New Guinean politicians have been concerned with the relationship between self-government and such financial assistance; Mr Arek's statement that assistance would continue attempted to dispel fears on this issue.

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<sup>1</sup> See p.19.

The ambivalent attitude of the Committee towards self-government was also reflected in its final report (Document 24), perhaps indicating that it was a compromise statement between widely divergent views. The Committee recognised that 'the majority...feel that internal self-government should come about no sooner than during the life of the 1976-80 House of Assembly' but believed 'that the rate of political development and awareness...is accelerating'; it therefore felt there was a 'possibility' that the majority might request a move to self-government before the end of the 1972-76 House and that constitutional development should be geared towards this possibility.

The sections of the report dealing with the executive and the legislature are largely self-explanatory. An interesting innovation was the recommendation that the House itself should have the power to elect up to three additional members 'for special purposes', who could become ministers. This suggestion was one of the few significant departures from the Australian version of the Westminster model, towards which, consciously or unconsciously, the Committee seemed to be working. The Committee also suggested the appointment of a Deputy Chairman of the AEC, but did not attempt to explain his role in detail.

The Committee's report was followed by further legislative change. The *Papua and New Guinea Act* 1971 (No.58 of 1971) which implemented the Committee's proposals on the size of the House, was passed in March to enable the redistribution to be carried out in time for the 1972 elections, but the rest of the changes were incorporated in the *Papua New Guinea Bill* 1971, which Mr Barnes introduced into the House of Representatives on 4 November 1971. His second reading speech (Document 25) did little more than elaborate on how the recommendations of the Select Committee were to be implemented in the Bill, but of some importance was his statement that 'in the allocation of the portfolios of the ministers' (which under section 24(3) of the Act was a matter within his sole discretion) he would consult with the Administrator and the Deputy Chairman of the AEC. The Bill, which became the *Papua New Guinea Act* 1971 (No.123 of 1971), amended the principal act in a number of important respects but only those concerning the structure of the executive branch of government are included in Document 26. The title of the principal act was amended to read '*Papua New Guinea Act* 1949-1971', and it was provided that for the purposes of the Act the two Territories were to be called 'Papua New Guinea'. In addition, the Act retrospectively validated the *National Identity Ordinance* 1971

(No.41 of 1971) which had purported to effect this same name change and which had also provided for the use of a national emblem and a national flag. Other amendments concerned the composition of the House of Assembly. The amendments to the composition of the House which had been effected by the Act passed earlier in the year were incorporated into this later bill. (It was, however, the earlier Act which provided the legal basis for the 1971 amendments to the electoral laws of Papua New Guinea under which the 1972 elections were held.) By the provisions of the *Papua New Guinea Act* 1971 the size of the House was fixed at 82 members from open electorates, 18 members from regional electorates, and 4 official members. Provision was also made for the House to elect 3 additional members if it wished to do so, although such appointees could not come from the ranks of the defeated candidates in the previous national election.

The amendments relating to the executive required the insertion into the principal Act of new sections 20, 21, 24 and 25, and some amendment of sections 19, 22, 26 and 28. In order to fully comprehend the outcome of these amendments it is necessary to refer back to Document 2, which contains the relevant sections of the principal Act as it stood after the 1968 amendments. There were few significant changes in 1971.

The amendment to section 19 was only incidental to the change of the country's name; of more importance was the failure to amend section 19(2), which provided that the AEC should have only an advisory role. The new section 20(1) altered the composition of the AEC to consist of the Administrator, a Deputy Chairman, nine other ministers and three official members.

The provisions of the Act relating to the Administrator remained but there were some changes in relation to the ministers. The new section 24(1) provided for the appointment of up to seventeen ministers of the House of Assembly, and thus the distinction between ministerial and assistant ministerial members was abolished. Section 26, relating to the appointment of the ministers, was only slightly amended, and the system for appointment by a Ministerial Nominations Committee was unaffected. Section 20(1)(c) provided that the Minister for External Territories should appoint nine of the ministers to the AEC 'on the nomination of the Administrator, being a nomination made after consulting the Deputy Chairman', and section 20(5)(a) provided that they might be removed in the same way.

Section 20(2) provided that the ministers shall appoint one of their number to be the Deputy Chairman of the Council,

and that the House of Assembly must approve the appointment. By section 20(4) the Deputy Chairman ceased to hold office if he ceased to be a minister, which in effect meant that he could only be removed if the Ministerial Nominations Committee and the House so resolved and the Minister for External Territories exercised his discretion to terminate the Deputy Chairman's appointment as a minister under section 26(1) and (3) (see Document 2). Thus although the ministers of the House are directly concerned in the Deputy Chairman's appointment they do not play any formal role in his removal.

In relation to the functions of ministers, the new section 24 expanded slightly on its predecessor. It is now section 24(3) which empowered the Minister for External Territories 'to determine, from time to time, the matters in respect of which' the ministers were to perform their functions, and section 24(4) made it clear that these matters 'may include all or any of the matters to which the functions of a specified department of the public service relate'. However, section 24(4) did not limit the generality of section 24(3) and ministers might therefore be given other functions; for instance, in relation to non-public service bodies such as the Papua and New Guinea Public Museum and Art Gallery.

The new section 25 was substantially identical to the parallel section in the 1968 Act, and it is to be noted that section 25(2) was not repealed. Sections 26 and 28 were only slightly amended, and sections 27, 29 and 29A were unaffected by the *Papua New Guinea Act 1971*.

The *Papua New Guinea (Ministerial Appointments) Regulations 1972* (Document 27) were identical to those of 1968 except that the size of the Ministerial Nominations Committee was increased from five to seven elected members of the House.<sup>1</sup>

The *Papua New Guinea (Deputy Chairman of the Administrator's Executive Council) Regulations 1972* (Document 28)<sup>2</sup> regulated the manner of the appointment of the Deputy Chairman. Essentially they provided no more than that the ministers of the House should elect a Deputy Chairman at a meeting of their number, and in detail they attempted to provide for the various contingencies that could arise in relation to such a meeting.

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<sup>1</sup> See pp.20-1 for a commentary on the operations of the Ministerial Nominations Committee.

<sup>2</sup> These regulations were made by the Governor-General under sections 20(8) and 78 of the *Papua New Guinea Act 1949-1972*.

It is noteworthy that this scheme provided only a minimal role for the Administrator and provided another of the few instances in which the Westminster pattern was not rigidly adhered to.

23. Statement in the House of Assembly by the Chairman of the Select Committee on Constitutional Development, Mr P. Arek, on internal self-government, 17 November 1970<sup>1</sup>

Mr PAULUS AREK (Ijivitari) -

...The Committee feels that internal self-government for the Territory of Papua and New Guinea would mean that the executive authority and responsibility for the internal affairs of government of the Territory would be transferred from the Commonwealth of Australia to the ministers of the House of Assembly. Australia would not intervene in the Territory's internal executive government and the Administrator - who would then possibly be called Governor or High Commissioner - would act on the advice of the ministers as the Territory's Head of State.

The Government - by that I mean ministers - of the Territory would be responsible to the House of Assembly; that is it would be able to be dismissed by the House of Assembly and would only remain in power if it had the support of the House.

While Australia would remain responsible for the Territory's defence and external affairs, arrangements might be made for a sharing of the police and internal security matters between the governments of the Territory and Australia and some sharing arrangements might also be made regarding the public service, judiciary, trade, banking and perhaps some areas of civil aviation. The Committee feels that it is important that consideration be given to the sort of arrangements which might be negotiated between the two governments regarding these matters as internal self-government approaches. Your Committee would expect the internal functions of government carried out at the moment by the Commonwealth departments or instrumentalities would be taken over and financed by the Territory Government.

<sup>1</sup> House of Assembly Debates, Second House, Twelfth Meeting of the First Session, vol.II, no.12, pp.3626-7, 17 November 1970.

The Territory might have a new name, but Papua and New Guinea would continue as two separate territories; the Territory's constitution would remain in a Commonwealth Act and the United Nations Trusteeship Agreement would continue in force in New Guinea.

As the Right Honourable the Prime Minister indicated in July this year, the present arrangements under which Australia provides financial aid to the Territory would be likely to continue; that is the Australian and Territory governments would negotiate aid for development purposes, a grant to assist the Territory to meet recurrent expenses and loans for various purposes.

As far as the Australian grant to assist recurrent expenditure is concerned your Committee notes that the Right Honourable the Prime Minister said, in part, in his statement on 6 July 1970:

...But I emphasise again that the total sum available for recurrent and minor works will be a total sum, only able to be added to, if the House of Assembly wishes to find some new avenue of expenditure, by imposing taxation to raise the revenue for that new expenditure because as the Territory progresses towards the ability to exercise greater power, so it must accept the greater responsibility for financing the decisions which it makes.

Even when in the future self-government comes or independence comes, there will be continuing Australian assistance for this Territory, but the amount of recurrent assistance provided will, to a great extent, depend on the amount of self-help which the Territory is prepared to impose upon itself....

The Committee believes that the above will be the situation during the period of internal self-government for Papua and New Guinea. The Committee feels that if the people are made aware of the sort of situation which will exist during internal self-government then they will be better able to give their views on when this situation should come about....



24. Extracts from the Final Report from the Select Committee on Constitutional Development, presented to the House of Assembly on 4 March 1971<sup>1</sup>

#### CHAPTER II - INTERNAL SELF-GOVERNMENT

4. On the evidence submitted to the Committee during its tour in 1970 the majority of the people of Papua and New Guinea expressed opposition to early internal self-government. The Committee also noted that there was a widespread lack of appreciation and understanding of the meaning and implications of internal self-government....

6. Your Committee's understanding of the position at internal self-government was put to the people of the Territory before your Committee toured earlier this year.

7. The majority of the people of Papua and New Guinea again expressed their opposition to early internal self-government during your Committee's tour. However, while in the first tour the majority of the people were not prepared to consider when internal self-government should come about in Papua and New Guinea, your Committee found in its recent tour that the response of the people to this question had changed. Most people are now prepared to discuss when they feel the time would be appropriate for internal self-government to come to Papua and New Guinea.

8. At the moment the majority of the people of Papua and New Guinea feel that internal self-government should come about no sooner than during the life of the 1976-1980 House of Assembly. Many people, particularly those of the Western and Southern Highlands, oppose early internal self-government. Those who oppose early internal self-government feel that there is a need for much economic, social and educational development and that there is a need for skilled local manpower in all aspects and areas of government before internal self-government can become a reality for the Territory. On the other hand, there are a number of people who feel that the time is now ready for internal self-government to come about in Papua and New Guinea....

9. Your Committee believes that the rate of political development and awareness in Papua and New Guinea is accelerating. Your Committee is aware that the policy of the Australian Government is for the steady advancement of Papua

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<sup>1</sup> House of Assembly Debates, Second House, Thirteenth Meeting of the Third Session, vol.II, no.13, appendix G.

and New Guinea along the road to self-government under the terms of the Papua and New Guinea Act. The changes announced by the Right Honourable the Prime Minister in July 1970 have resulted in an acceleration in the advancement of this country towards internal self-government. Because of this rate of advance the possibility may exist that the majority of the people of the Territory may request that the country move to internal self-government before the end of the life of the next House of Assembly. Also your Committee is aware that there could be a change of government in Australia which could result in internal self-government becoming a reality before the majority of the people are prepared to accept it.

10. Your Committee therefore recommends that the development of the Territory be geared to preparing the country for internal self-government during the life of the next House of Assembly so that should it become a reality earlier than expected or if it is in fact requested by the people then, then the move to internal self-government can be made at that time with the least possible amount of administrative disruption.

11. Your Committee is concerned that attention be given to the sort of economic and political arrangements and relationships which might be developed between Papua and New Guinea and Australia at internal self-government and recommends that these be considered as part of the programme of development towards internal self-government.

12. Your Committee feels that target dates for internal self-government and independence should not be arbitrarily set. Your Committee nevertheless believes that an approximate timetable, such as it now recommends, will provide a sense of direction to the development of Papua and New Guinea for internal self-government.

13. If programmes are developed now with the view that the Territory may become internally self-governing during the life of the 1972-1976 House, your Committee feels this should ensure a smooth transition to internal self-government when the people are ready for it.

14. Your Committee believes in the planned gradual development of Papua and New Guinea for internal self-government and believes that the attainment of internal self-government should merely be a further step in an orderly process of development....

#### CHAPTER IV - STRUCTURE OF THE LEGISLATURE

41. In its Third Interim Report your Committee recommended the abolition of official members and their replacement by nominated members and nominated official members.

42. Your Committee did not intend that nominated official members be appointed in a different manner or play a different role than the official members now present in the House and to prevent confusion your Committee has decided to vary its recommendation by continuing to call them official members, rather than nominated official members.

43. Your Committee suggested to the people that four official members be appointed in the 1972-1976 House of Assembly. There was some call, particularly in the highlands region, for ten official members to remain but the majority of people agreed with the Committee's suggestion and your Committee recommends that four official members be appointed in the 1972-1976 House of Assembly.

44. Your Committee therefore recommends the following representation in the 1972-1976 House of Assembly:

18 persons elected by the people to represent regional electorates;  
82 persons elected by the people to represent open electorates;  
up to three nominated members, nominated by the House of Assembly for special purposes; and  
four official members.

This structure would provide a legislature of 100 members elected by the people, provision for up to three nominated members if considered necessary by the House and four official members.

#### CHAPTER V - STRUCTURE OF THE ADMINISTRATOR'S EXECUTIVE COUNCIL

45. The majority of the people agreed to the Committee's suggestion regarding the structure of the Administrator's Executive Council at the start of the 1972-1976 House of Assembly. In its Third Interim Report your Committee had suggested that there be seven to ten ministers on the council but there was some call on the Committee's tour for the number of ministers to be fixed at ten. Your Committee has considered this and now recommends that the composition of the Administrator's Executive Council at the start of the 1972-1976 House of Assembly be as follows:

Administrator  
Three official members  
Ten ministers.

#### CHAPTER VI - THE MINISTRY

46. The majority of people agreed to the Committee's suggestions regarding the ministry for the 1972 House of Assembly.

Your Committee recommends that the ministry should be chosen wholly from the legislature (which may comprise nominated as well as elected members), but that although the three nominated members may be appointed as ministers, not more than two of them should be members of the Administrator's Executive Council.

47. The Committee also recommends that following nomination of the ministers in the 1972 House of Assembly by a Ministerial Nominations Committee composed of seven members of the House, the ministers should choose one of their number to be the Deputy Chairman of the Administrator's Executive Council. The ministers' choice for Deputy Chairman of the Council should be approved by the House of Assembly....

25. Extracts from the speech in the House of Representatives by the Minister for External Territories, Mr C.E. Barnes, moving the second reading of the Papua New Guinea Bill 1971, 4 November 1971<sup>1</sup>

Mr Speaker -

...The purpose of this Bill is to give effect to certain recommendations made by the Papua New Guinea House of Assembly Select Committee on Constitutional Development and agreed to by that House....

In a statement to this House on 27 April 1971, I outlined the recommendations of the Select Committee. I also informed the House that the Government had accepted these recommendations. As a result, the Government is now preparing a programme for movement to full internal self-government in the period 1972-1976. The execution of this programme will have regard to the state of opinion as it develops after the 1972 House of Assembly elections and to the policies of the political leaders who then emerge.

The Government also placed before this House in May 1971, amendments to the Papua and New Guinea Act which gave effect to the Select Committee's recommendations on changes in the elected representation in the House of Assembly. The

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<sup>1</sup> Commonwealth of Australia, Parliamentary Debates (Hansard), Twenty-Seventh Parliament, Second Session, House of Representatives, no.18, pp.3033-5, 4 November 1971.

amendment to the Papua and New Guinea Act at that time provided for the recommended increases in the number of open and regional electorates for the House of Assembly from 69 to 82 and from 15 to 18 respectively, and was introduced in advance of the present proposals to allow the necessary electoral redistribution to be carried out before the elections for the 1972-1976 House of Assembly in February-March 1972....

Clause 10 of the Bill gives effect to recommendations on the composition of the Administrator's Executive Council. It will be composed of the Administrator, 10 ministers and three official members. The effect of this change is to add three ministers to the seven previously in the Council and to eliminate the one member previously nominated by the Administrator without reference to the House of Assembly. The seventeen ministers of the House of Assembly will choose one of their number to be the Deputy Chairman of the Administrator's Executive Council, this choice to be approved by the House of Assembly. Although nominated members of the House of Assembly may be appointed as ministers, not more than two such members may be members of the Administrator's Executive Council.

The Select Committee report was silent on the method of choosing the ministers to sit on the Administrator's Executive Council, with the exception of the Deputy Chairman. The Bill provides that this will be a matter for the Minister for External Territories to determine on the advice of the Administrator, who will consult the Deputy Chairman. I propose, in addition, to consult with the Deputy Chairman through the Administrator in the allocation of the portfolios to the ministers, and in any subsequent changes in portfolios that may be necessary. These provisions will give the Deputy Chairman an important part in the selection of members of the Administrator's Executive Council and in the allocation of ministerial responsibilities. Clauses 12-15 deal with ministers and ministerial offices.

In its third interim report of September 1970, the Select Committee recommended that the offices of ministerial member and assistant ministerial member be abolished and replaced by up to seventeen offices of ministers of the House of Assembly of such respective designations as the Minister for External Territories from time to time determines. The titles ministerial member and assistant ministerial member were used because the office-holders did not when first appointed in 1968 exercise full executive authority nor take final decisions in respect of their areas of responsibility. However, since August 1970, all ministerial office-holders have exercised final responsibility in respect of a wide range of

governmental matters specified in the arrangements approved under section 25 of the Papua and New Guinea Act. The change of name therefore reflects a change of function already introduced. Clause 13 of the Bill provides for the replacement of the offices of ministerial member, and assistant ministerial member, with up to seventeen offices of minister of the House of Assembly.

The Select Committee recommended that the House of Assembly should, after the next elections, be composed of not less than 104 members and not more than 107 members, as follows: 18 persons elected by the people to represent regional electorates; 82 persons elected by the people to represent open electorates; up to 3 nominated members, nominated by the House of Assembly for special purposes; and four official members, appointed by the Governor-General on the Administrator's nomination; and Clause 16 of the Bill so provides. The recommended increase in the elected membership from 83 to 100 was provided for in the amendments to the Papua and New Guinea Act earlier this year and these provisions are merely re-enacted now. At the time of the earlier amendment no change was made in the number of official members in the House nor was provision made for nominated members.

Another of the Committee's recommendations is the creation of not more than three positions of nominated member of the House of Assembly which is provided for under Clause 17 of the Bill. The inclusion of non-elected nominated members in the House is a new concept in Papua New Guinea but there is a widespread feeling in Papua New Guinea of the need to provide a means for the representation of special groups, for example, women, or persons having a special expertise, in the legislature. As recommended by the Committee the Bill provides for the House to decide itself whether these positions should be filled. A two-thirds vote of the total members of the House is required to agree to the setting up of a seven-man committee of the House to choose the nominated member or members. When the committee, in consultation with the Administrator, has chosen a person or persons, their choice must be endorsed by a simple majority of the Members of the House present and voting. The committee would cease to operate after it had chosen the person or persons concerned. The procedure of selecting nominated members is similar to the existing method of selecting ministerial office-holders.

The Bill also sets out in Clauses 17 to 19 the conditions of eligibility for nominated members. To qualify for appointment as a nominated member, a person must have lived in Papua New Guinea for not less than five years. A defeated candidate

at the general elections for the House to which members are to be nominated is not eligible for nomination. Should a nominated member chosen by the committee be a public servant or a holder of a statutory office he must resign his position to accept appointment. Once a person has accepted nomination to the House, he will hold office on the same basis as if he were an elected Member of the House. These provisions accord with the recommendations of the Select Committee.

The Committee's recommendation to create the positions of nominated member arose in conjunction with its wish to reduce the number of official members in the House from 10 to 4, who are appointed by the Governor-General on the nomination of the Administrator. The reduction in the number of official members from 10 to 4 is effected by Clause 16 of the Bill and is in keeping with the responsibilities of ministerial office-holders. Four official members remain to ensure that government business regarding matters still under the control of the Commonwealth is introduced in the House, and to explain Commonwealth Government matters to the members....

26. Extracts from the *Papua New Guinea Act 1971*<sup>1</sup>

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

1. - (1.) This Act may be cited as the *Papua New Guinea Act 1971*.

(2.) The *Papua and New Guinea Act 1949-1971*\* is in this Act referred to as the Principal Act.

(3.) The Principal Act as amended by this Act, may be cited as the *Papua New Guinea Act 1949-1971*.

9. - (1.) Section 19 of the Principal Act is amended by omitting from sub-section (1.) the words "the Territory of Papua and New Guinea" and inserting in their stead the words "Papua New Guinea".

<sup>1</sup> No.123 of 1971.

\* Act No.9, 1949, as amended by No.80, 1950; No.41, 1954; No.15, 1957; Nos. 4 and 47, 1960; No.27, 1963; No.103, 1964; No.84, 1966; Nos. 25 and 157, 1968; and No.58, 1971.

(2.) In -

- (a) a law of Papua New Guinea; or
- (b) an instrument under such a law,

being a law or instrument passed or made before the commencement of this section, a reference to the Administrator's Council for the Territory of Papua and New Guinea or to the Administrator's Executive Council of the Territory of Papua and New Guinea shall be read as a reference to the Administrator's Executive Council of Papua New Guinea.

10. Sections 20 and 21 of the Principal Act are repealed and the following sections inserted in their stead:-

"20. - (1.) Subject to this section, the Council shall consist of -

- (a) the Administrator;
- (b) a Deputy Chairman of the Council, being a Minister of the House of Assembly, appointed in accordance with the next succeeding sub-section;
- (c) nine other Ministers of the House of Assembly appointed by the Minister on the nomination of the Administrator, being a nomination made after consulting the Deputy Chairman; and
- (d) three official members of the House of Assembly appointed by the Minister on the nomination of the Administrator.

"(2.) The Ministers of the House of Assembly shall, in accordance with the regulations, appoint one of their number to be the Deputy Chairman and, as often as the office of Deputy Chairman becomes vacant, again appoint one of their number to be the Deputy Chairman, but an appointment under this sub-section does not become effective unless and until the House of Assembly has, by resolution, approved the appointment.

"(3.) Not more than two of the members of the Council shall be nominated members of the House of Assembly.

"(4.) The Deputy Chairman ceases to hold office if he ceases to be a Minister of the House of Assembly.

"(5.) A member of the Council appointed under paragraph (c) of sub-section (1.) of this section -

- (a) may be removed from office as a member of the Council by the Minister on the recommendation of the Administrator, being a recommendation made after consulting the Deputy Chairman; and



(b) ceases to be a member of the Council if he ceases to be a Minister of the House of Assembly.

"(6.) A member of the Council appointed under paragraph (d) of sub-section (1.) of this section -

(a) may be removed from office as a member of the Council by the Minister; and

(b) ceases to be a member of the Council if he ceases to be a member of the House of Assembly.

"(7.) The performance of the functions of the Council is not affected by reason of a vacancy or vacancies in the membership of the Council.

"(8.) Regulations for the purposes of this section may make provision for and in relation to the procedure by which the Ministers of the House of Assembly may appoint a Deputy Chairman and, in particular, may make provision for the power of the Ministers of the House of Assembly to appoint a Deputy Chairman to be capable of being exercised notwithstanding a vacancy in the office of a Minister of the House of Assembly or vacancies in the offices of Ministers of the House of Assembly and for a decision of a majority of the Ministers of the House of Assembly to be deemed to be a decision of the Ministers of the House of Assembly.

"21. - (1.) The Minister of the House of Assembly who is the Deputy Chairman may resign his office as Deputy Chairman by delivering a written resignation signed by him to the Administrator, who shall, as soon as practicable, inform the other Ministers of the House of Assembly of the resignation.

"(2.) Subject to the succeeding provisions of this section, a member of the Council appointed under paragraph (c) of sub-section (1.) of the last preceding section may resign his office as a member of the Council by delivering a written resignation signed by him to the Deputy Chairman or, if the Deputy Chairman is absent from Papua New Guinea or there is a vacancy in the office of Deputy Chairman, to the Administrator.

"(3.) Where a written resignation of a member of the Council is delivered to the Deputy Chairman in accordance with the last preceding sub-section, the Deputy Chairman shall, as soon as practicable, send the resignation to the Administrator.

"(4.) Subject to the succeeding provisions of this section, a member of the Council appointed under paragraph (d) of sub-section (1.) of the last preceding section may resign his office as a member of the Council by delivering a written resignation signed by him to the Administrator.

"(5.) Where a written resignation is delivered or sent to the Administrator in accordance with any of the last three preceding sub-sections, the Administrator shall transmit the resignation to the Minister.

"(6.) A resignation of a member of the Council appointed under paragraph (c) of sub-section (1.) of the last preceding section does not become effective until it is received by the Minister.

"(7.) A resignation of a member of the Council appointed under paragraph (d) of sub-section (1.) of the last preceding section does not become effective unless and until it has been accepted by the Minister."

11. Section 22 of the Principal Act is amended by omitting sub-sections (2.) and (3.) and inserting in their stead the following sub-sections: -

"(1A.) In the absence of the Administrator from a meeting of the Council, the Deputy Chairman shall preside.

"(2.) In a case where the Administrator is absent from a meeting of the Council and -

(a) the Deputy Chairman is also absent from the meeting;  
or

(b) there is a vacancy in the office of Deputy Chairman, a member of the Council appointed by the Administrator to preside in such cases shall preside.

"(3.) At a meeting of the Council, a quorum consists of the Administrator, the Deputy Chairman or a member appointed in accordance with the last preceding sub-section, and four other members."

12. The heading to Division 3 of Part IV of the Principal Act is repealed and the following heading inserted in its stead:-

"Division 3 - Ministers of the House of Assembly".

13. Sections 24 and 25 of the Principal Act are repealed and the following sections inserted in their stead:-

"24. - (1.) There shall be such number, being not more than seventeen, of offices of Minister of the House of Assembly as the Minister from time to time determines.

"(2.) The ministerial offices shall have such respective designations as the Minister from time to time determines.

"(3.) In respect of each ministerial office, the Minister shall determine, from time to time, the matters in respect of

which the holder of the office is to perform the functions of a Minister of the House of Assembly.

"(4.) Without limiting the generality of the last preceding sub-section, the matters that may be determined by the Minister under that sub-section in relation to a ministerial office may include all or any of the matters to which the functions of a specified department of the Public Service relate.

"25. - (1.) The functions of a Minister of the House of Assembly are, in relation to the matters determined in relation to his office under the last preceding section, and to the extent and in the manner provided by arrangements approved by the Minister and applicable to that office, to assist in the administration of the government of Papua New Guinea and, in particular -

- (a) to take part in the formulation of policies and plans, and of proposals for expenditure, in relation to those matters;
- (b) to make recommendations to the Council in relation to those matters;
- (c) where any of those matters are dealt with by a department of the public service - to take part in the direction of the activities of that department relating to those matters; and
- (d) to represent the Administration in the House of Assembly.

"(2.) Powers, functions or duties in relation to the government of Papua New Guinea shall not be conferred or imposed by Ordinance on a Minister of the House of Assembly in his capacity as such a Minister, but this sub-section does not operate so as to prevent the delegation to such a Minister of powers or functions under an Ordinance".

14. Section 26 of the Principal Act is amended -

- (a) by inserting in sub-section (1.), after the word "member", the words, "or a nominated member,"; and
- (b) by omitting from sub-section (2.) the words "An elected member" and inserting in their stead the words "A person".

15. Section 28 of the Principal Act is amended by inserting in paragraph (a), after the words "elected member", the words "or a nominated member".

27. Papua New Guinea (Ministerial Appointments) Regulations 1972<sup>1</sup>

1. These Regulations may be cited as the Papua New Guinea (Ministerial Appointments) Regulations.

2. The Papua and New Guinea (Ministerial Appointments) Regulations (being Statutory Rules 1968, No.65) are repealed.

3. In these Regulations -

"member of the House" means an elected member or a nominated member of the House;

"the Committee" means the Ministerial Nominations Committee constituted in accordance with regulation 5 of these Regulations;

"the House" means the House of Assembly for Papua New Guinea.

4. Nominations by the House in pursuance to sub-section (2.) of section 26 of the *Papua New Guinea Act 1949-1971* shall be made, and resolutions of the House in pursuance of sub-section (3.) of that section shall be adopted, in accordance with these Regulations and not otherwise.

5. - (1.) As soon as practicable after the House first meets following a general election of the House, the House shall, in such manner as it determines, appoint a Committee consisting of seven members of the House, to be known as the Ministerial Nominations Committee.

(2.) Subject to this regulation, members of the Committee hold office during the pleasure of the House, and the House may at any time in such manner as it determines, appoint a member of the House to fill a vacancy in the membership of the Committee.

(3.) A member of the Committee may resign his office by writing under his hand delivered to the Speaker.

(4.) A member of the Committee ceases to be such a member if he ceases to be an elected member or a nominated member of the House.

(5.) All members of the Committee holding office immediately before the time at which the House first meets following a general election cease to be members of the Committee at that time.

<sup>1</sup> Statutory Rules 1972, no.45. Made under the *Papua New Guinea Act 1949-1971* and 6 April 1972; notified in the Commonwealth Gazette on 20 April 1972.

(6.) At a meeting of the Committee, the presence of all the members of the Committee is required, but agreement by a majority of the members of the Committee shall be taken to be agreement by the Committee.

6. - (1.) As soon as practicable after the first appointment of members of the Committee following a general election, the Administrator shall consult with the Committee for the purpose of reaching agreement with the Committee on a list of members of the House, equal in number to the number of ministerial offices, for submission to the House as a list of members of the House eligible to be nominated by the House for appointment to ministerial offices.

(2.) If the Administrator and the Committee agree, in accordance with the last preceding sub-regulation, on a list of members of the House equal in number to the number of ministerial offices, the House may, by resolution, nominate all the persons whose names are on the list for appointment to ministerial offices.

7. - (1.) Where -

- (a) there is a vacancy in a ministerial office; or
- (b) the Administrator and the Committee have, after consultation, agreed that a person holding a ministerial office should cease to be the holder of a ministerial office,

the Administrator may consult with the Committee for the purpose of reaching agreement with the Committee on a member of the House as a person eligible to be nominated by the House for appointment to a ministerial office.

(2.) If the Administrator and the Committee agree on a member of the House in accordance with the last preceding sub-regulation, the House may, by resolution, nominate the person agreed on for appointment to a ministerial office, but, in a case referred to in paragraph (b) of the last preceding sub-regulation, the House shall not so nominate the person unless the House has, in accordance with these Regulations, resolved that the appointment to a ministerial office of the person referred to in that paragraph should be terminated.

8. If, after consultation, the Administrator and the Committee agree that a person holding a ministerial office should cease to be the holder of a ministerial office, the House may resolve that the appointment of that person to a ministerial office should be terminated.

28. Papua New Guinea (Deputy Chairman of the Administrator's Executive Council) Regulations 1972<sup>1</sup>

1. These Regulations may be cited as the Papua New Guinea (Deputy Chairman of the Administrator's Executive Council) Regulations.

2. - (1.) As soon as reasonably practicable after -
- (a) the appointment of Ministers of the House of Assembly following a general election; or
  - (b) the office of Deputy Chairman becomes vacant.

the Administrator shall convene a meeting of those Ministers for the purpose of appointing one of their number to be the Deputy Chairman.

(2.) Where a meeting of the Ministers of the House of Assembly has been duly convened for the purpose of appointing one of their number to be the Deputy Chairman but a quorum is not present at any time within half an hour after the time fixed for holding the meeting or where -

- (a) the Ministers of the House of Assembly present at a meeting duly convened for the purpose of appointing a Minister of the House of Assembly to be the Deputy Chairman fail to appoint such a Minister to be the Deputy Chairman; and
- (b) the meeting is not adjourned to another day,

the Administrator shall, as soon as reasonably practicable, convene a further meeting of the Ministers of the House of Assembly for the purpose of appointing one of their number to be the Deputy Chairman.

(3.) A meeting of Ministers of the House of Assembly for the purpose of appointing one of their number to be the Deputy Chairman shall be convened by giving notice of the date, time and place fixed for holding the meeting and of the purpose of the meeting to each Minister of the House of Assembly -

- (a) if the meeting is held on a day on which the House of Assembly is sitting - not less than twenty-four hours before the time fixed for holding the meeting; or
- (b) in any other case - not less than seven days before the day fixed for holding the meeting.

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<sup>1</sup> Statutory Rules 1972, no.49. Made under the *Papua New Guinea Act 1949-1971* on 12 April 1972; notified in the Commonwealth Gazette on 20 April 1972.

(4.) A meeting of Ministers of the House of Assembly may be convened and held for the purpose of appointing one of their number to be the Deputy Chairman, and the persons holding office as Ministers of the House of Assembly may appoint one of their number to be the Deputy Chairman, notwithstanding a vacancy in the office of a Minister of the House of Assembly or vacancies in the offices of Ministers of the House of Assembly.

(5.) Sub-regulation (1.) of this regulation does not apply to a vacancy in the office of Deputy Chairman caused by the termination of the appointment of the Deputy Chairman as a Minister of the House of Assembly when the House of Assembly first meets after a general election.

3. A quorum at a meeting of Ministers of the House of Assembly convened for the purpose of electing one of their number to be the Deputy Chairman is -

- (a) if seventeen persons hold office as Ministers of the Assembly - thirteen Ministers of the House of Assembly; or
- (b) in any other case - twelve Ministers of the House of Assembly.

4. - (1.) In this regulation, "meeting" means a meeting of Ministers of the House of Assembly duly held for the purpose of appointing one of their number to be the Deputy Chairman.

(2.) Where a meeting is held, the Ministers of the House of Assembly present shall first elect one of their number to be the Chairman of the meeting.

(3.) The Chairman of the meeting has a deliberative vote but does not have a casting vote.

(4.) A meeting may, by decision of the Ministers of the House of Assembly present, be adjourned from time to time to a time and date specified in the decision.

(5.) Where a meeting is adjourned -

- (a) the adjourned meeting shall, unless another place at which the adjourned meeting is to be held is specified in the decision of the Ministers of the House of Assembly, be held at the same place as the original meeting; and
- (b) notice of the time, date and place fixed for holding the adjourned meeting shall, except as provided in the next succeeding sub-regulation, be given, as soon as practicable after the meeting is adjourned, to each Minister of the

House of Assembly who is not present at the meeting when the decision to adjourn the meeting is taken.

(6.) It is not necessary for notice of the time, date and place fixed for holding an adjourned meeting to be given to a Minister of the House of Assembly if it would not be practicable for the Minister to attend the adjourned meeting.

(7.) It is not necessary for all the Ministers of the House of Assembly or all the Ministers of the House of Assembly present at a meeting, to concur in a decision by those Ministers at the meeting but a decision by the Ministers of the House of Assembly present at a meeting has no force or effect -

- (a) if it is a decision appointing a Minister of the House of Assembly to be the Deputy Chairman - unless a majority of the Ministers of the House of Assembly concur in the decision; or
- (b) in the case of any other decision - unless a majority of the Ministers of the House of Assembly present and voting concur in the decision.



## Part V

### The formation of a ministry

The general election for the Third House of Assembly was held in February and March 1972 and the new House met for the first time on 20 April 1972. The most important business of its first meeting concerned the nomination of ministers and the approval of the ministers' nominee to the office of Deputy Chairman of the AEC. Document 29 contains extracts from the debates relevant to these matters and to the other legal steps necessary under the Papua New Guinea Act and the Regulations to form a ministry.

On the first day the House dealt initially with its composition and speakership. The Clerk of the House laid on the table of the House the returns to ninety-nine<sup>1</sup> of the writs which had been issued and the notice of appointment of four official members. The elected and official members then took the appropriate oath. The first proceeding of political significance was the election of the Speaker, which revealed that there was a delicate balance of political groupings in the House. Mr Perry Kwan, who was elected as Speaker, was nominated by the National Coalition, a group composed of members of the Pangu Pati, the National Party, the People's Progress Party, the Mataungan Association, a group of independents led by Dr John Guise, and several other independent members.<sup>2</sup> Mr Mathias To Liman was the nominee of the United Party and its supporters. The election of the Speaker was

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<sup>1</sup> The returns covered 81 open electorates and 18 regional electorates. The election for the open electorate of Middle Ramu failed owing to the death of one of the candidates before the closing of the poll (see section 79(2)(b) of the *Electoral Ordinance* 1963-1971).

<sup>2</sup> For an informed account of the manner in which the National Coalition was formed see Standish (1972). Mr Kwan subsequently resigned as Speaker and was replaced by Mr B. Holloway.

not an integral part of the process of ministry formation, and the vote on this issue was not simply a party division but reflected in part Mr To Liman's personal standing in the House; however, there may well have been a realignment of political groupings in the House if this vote had been lost by the National Coalition.

The final business of the first day was the election by the House of the Ministerial Nominations Committee. Regulation 5(1) of the *Papua New Guinea (Ministerial Appointments) Regulations* 1972 (Document 27) provides that the House may appoint the seven-member committee 'in such manner as it determines'. In this case Mr Michael Somare, the leader of the National Coalition, moved simply that the House nominate seven named persons to be members of the Committee. The House was not bound to proceed in this way and alternative methods of appointment could have produced different results. However, a National Coalition supporter successfully moved that the question be put immediately after Mr Somare's motion and the United Party had no opportunity to suggest any alternative mode of appointment. The House passed Mr Somare's motion, the vote on this issue reflecting more accurately the strength of the National Coalition.

Following the appointment of the Ministerial Nominations Committee the House adjourned and did not meet again until four days later. On the following day, that is, on the 'Third Day' of this first meeting of the first session, the House returned to the business of the election of ministers. Regulation 6(2) of the appointments regulations requires the House to approve the nominations of the Committee, and Mr Somare moved that the Standing Orders should be suspended in order that a motion for approval be put to the House. However, this motion was withdrawn following some misunderstandings about the correct procedure to be followed, and Mr Paul Langro of the United Party moved that the House should delay further action on the appointment of ministers 'until members can consult their electorates on their opinion of immediate self-government'.

An interesting constitutional situation would have resulted if this motion had been passed by the House. Section 28(d) of the Papua New Guinea Act provides that the appointment of a ministerial office-holder ceases, inter alia, when 'the House of Assembly first meets after a general election of that House that takes place after the appointment takes effect'. At the time Mr Langro moved this motion therefore, all the ministerial office-holders of the previous House had ceased to hold office, and if the motion had succeeded and been implemented the result

would have been that the only members of the House responsible for executive government would have been the four official members. Of course, if the motion had passed the United Party might have attempted to rescind the earlier appointments to the Ministerial Nominations Committee and to nominate its own supporters to a new Committee, but such action would have appeared to be contrary to Mr Langro's motion.

However, the Langro motion was defeated and Mr Somare re-submitted his motion for the suspension of the standing orders. In this situation Order 336 applied: 'In cases of necessity, any standing orders of the House may be suspended, on motion, duly moved and seconded, without notice; provided that such motion is carried by an absolute majority of members.' On 26 April 1972 there were 103 members of the House - the 99 elected members and the 4 official members - and in order therefore to obtain an absolute majority it was necessary for Mr Somare's motion to be supported by at least 52 members. The motion was supported by 54 members so the National Coalition had a majority of only two. The four official members did not vote, as their general policy was not to vote on any issue relating to the appointment of ministers. While the basis of this policy may be easily appreciated, its effect on a vote requiring an absolute majority of all members of the House was that the proponent of the motion had to obtain four votes more than an absolute majority of the number of elected members of the House. To maintain impartiality, the official members should have divided equally on any vote requiring an absolute majority.

Following the suspension of the standing orders, Mr Somare moved that the House nominate seventeen members for ministerial office. The motion itself indicated that the Ministerial Nominations Committee had consulted with the Administrator, as required by Regulation 6(1), and the communication from the Administrator read to the House by the Speaker confirmed this. The House resolved to nominate the seventeen members without a division.

On the Fourth Day of the House the Speaker read another communication from the Administrator which indicated that the Minister for External Territories had appointed to ministerial office the seventeen persons nominated by the House (see sections 26(1) and (2) of the Papua New Guinea Act). Mr Somare then informed the House that the ministers had appointed him to be Deputy Chairman of the AEC (see section 20(2) of the Act and the *Papua New Guinea (Deputy Chairman of the Administrator's Executive Council) Regulations 1972* (Document 28)). Mr Julius Chan then moved that the House approve the appointment

of Mr Somare (see section 20(2) of the Act), and this motion was carried without a division. Mr Somare then stated that the ministers had also elected Dr John Guise as Assistant Deputy Chairman of the AEC. This position is not provided for in either the Act or the Regulations, and the appointment probably reflected a political agreement between the various groups in the National Coalition.

The process of ministry formation was completed by the Minister for External Territories acting under various provisions of the Papua New Guinea Act; the communication from the Administrator read to the House by the Speaker on the Fifth Day indicates the steps that were taken. These steps were: (i) the determination by the Minister of the designations of seventeen ministerial office-holders (section 24(2)); (ii) the appointment of nine ministers and three official members to the AEC (section 20(1)(c), (d)); (iii) the making of a determination (section 24(3)); and (iv) the making of approved arrangements (section 25(1)).

The role of the opposition was also debated in this first session of the House. In a speech which followed the House vote to nominate seventeen members for ministerial office, Mr Tei Abal had stated that he felt 'a bit ashamed because, as leader of the United Party, I have been defeated'<sup>1</sup> and he went on to voice the hope that the new government would permit the opposition to freely express itself in the House. Mr John Maneke's motion requesting the Minister for External Territories to recognise the position of 'Leader of the Opposition' referred directly to Mr Abal's speech. The House approved Mr Maneke's motion, and the matter was taken up again on the Fifth Day of the House when Mr To Liman made a statement about the opposition 'shadow ministry' (Document 32).

In this statement Mr To Liman referred to a comment which had been made earlier that day by the Administrator, Mr L.W. Johnson. Mr Johnson had stated that he had 'ambivalent feelings' about the House's approval of Mr Maneke's motion: 'I have some worries...that this is really consolidating what is growing into a Westminster system of government before the country itself has really made a decision that this is the sort of government that it does want.'<sup>2</sup> Mr To Liman answered

<sup>1</sup> H.A.D., vol.III, no.1, p.60, 26 April 1972.

<sup>2</sup> The Canberra Times, 28 April 1972. It appears that the Administrator favoured instead a 'grand coalition' of all political groups in the House; this view was also expressed by Mr A. Newman, as Acting Administrator, just after the 1972 election (Standish 1972).

these criticisms in their own terms, arguing that as the Westminster system had been adopted it should be fully implemented so that an assessment could be made of its utility in Papua New Guinea. The opposition later carried the matter further by the appointment of individual opposition members as shadow ministers (see Document 32).

However, although Mr To Liman's arguments have intrinsic merit, and perhaps would have been supported by some members of the National Coalition,<sup>1</sup> it would seem that a desire to follow the Westminster pattern was only part of the rationale behind Mr Maneke's motion. In Westminster practice 'attacks upon the Government and the individual ministers are the function of the Opposition. The duty of the Opposition is to oppose' (Jennings 1959:499). In contrast, Mr Maneke supported his motion on the grounds that recognition of the opposition would 'stamp out' any feelings of 'shame' and would encourage 'unity'. Also, prior to the moving of this motion, Mr Abal and other opposition members had spoken of the need to work together with the new government.<sup>2</sup> It would appear therefore that some members of the House saw the concept of a 'Loyal Opposition' as a means of encouraging consensus politics, on the basis that its formal recognition would avoid feelings of shame and would encourage opposition members to work with the government. Mr Johnson may have been concerned that it would encourage divisiveness but some politicians apparently expected that formal recognition would prevent division. There is no inherent reason why this expectation should be frustrated, as the constitutional experience of many former British colonies provides ample evidence that Westminster forms are not necessarily used in Westminster fashion.<sup>3</sup>

The determination and approved arrangements of 28 April 1972 (Document 30) followed the pattern of those of 21 August 1970 (Documents 16 and 17), and reference may be made back to the introduction to Part III. The page of the annex relating to the functions of the Minister for Education has again been included as illustrative of the range of matters over which

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<sup>1</sup> Mr Maneke was a member of the People's Progress Party.

<sup>2</sup> H.A.D., vol.III, no.1, pp.60-1, 26 April 1972.

<sup>3</sup> In retrospect (as at June 1973) Mr Johnson's fears seem to have been realised. There have been quite bitter clashes between government and opposition, and an atmosphere has developed in which co-operation is hardly possible. See H.A.D., vol.III, no.9, pp.1112-16, 16 November 1972.

the ministers exercised final powers. Some relatively minor matters were added to the Minister for Education's final powers in April 1972. Again, these additions were not approved by the House of Assembly as required by the Ou-Dutton motion of 22 September 1970 (Document 20).

The extract from the address by the Minister for External Territories, Mr A. Peacock, on 18 May 1972 (Document 31) contains a statement of constitutional convention concerning the relationship between the Australian and Papua New Guinea governments in relation to the exercise of executive power. He explained that the official members of the AEC would play 'a reduced role and would not vote on any matters for which Papua New Guinea ministers are finally responsible'. Of greater significance was the statement that in respect of those areas of government where the Australian government retained final responsibility (that is, the non-annex matters), it would seek the views of the AEC 'on all important policy matters' within these areas and would 'continue to give increasing weight to its views and advice', so that 'the Papua New Guinea cabinet would be involved in the full spectrum of government activities'.

The significance of this latter policy is that it reduced the practical importance of the distinction between annex and non-annex matters. This was illustrated by the manner in which the Minister for External Territories dealt with a situation which arose in October 1972. It concerned the Royal Papua and New Guinea Constabulary which is a statutory authority whose administrative head is the Administrator as Commandant,<sup>1</sup> however, the power to appoint to the senior ranks of the Constabulary is vested in the Minister for External Territories (sections 29, 30). The Constabulary is not a body which is included in any of the annexes to the approved arrangements of 28 April 1972, and the AEC did not therefore have final power in respect of the force. The Police Association expressed concern about what it conceived to be the policy of the Papua New Guinea government towards appointments to the senior ranks of the police force and resolved 'to ask the Minister for External Territories, Mr Peacock, to direct Mr Somare on future police appointments policy'.<sup>2</sup> However, the Minister refused to intervene, explaining that

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<sup>1</sup> *Royal Papua and New Guinea Constabulary Ordinance* 1965-1970, sections 7, 8.

<sup>2</sup> Post-Courier, 26 October 1972.

the manner in which I execute my authority is that I look to the Government of Papua New Guinea to discuss this matter, even though it is an area of residual authority with me.

29. Extracts from House of Assembly debate on the formation of a ministry, 20-28 April 1972<sup>1</sup>

FIRST DAY

Thursday 20 April 1972

The House of Assembly for Papua New Guinea met at 9.30 a.m., pursuant to the notice of His Honour the Administrator which was published in the 'Gazette'.

The Clerk read the notice.

DEPUTY ADMINISTERS THE OATH  
TO MEMBERS

The Honourable Mr John Patrick Minogue, Chief Justice of the Supreme Court of Papua New Guinea, having been ushered into the Chamber and conducted by the Serjeant-at-Arms to the Chair, handed to the Clerk at the Table a Commission from His Honour the Administrator of Papua New Guinea authorising him to administer the oath or affirmation to those members of the House of Assembly then present.

The Clerk read the Commission.

RETURNS TO WRITS FOR GENERAL ELECTION  
AND NOTICE OF APPOINTMENT OF  
OFFICIAL MEMBERS

The Clerk laid on the Table Returns to 99 writs for the General Election held on 19 February 1972. The said Returns showed that for the several electorates the following were elected:

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<sup>1</sup> House of Assembly Debates, Third House, First Meeting of the First Session, vol.III, no.1, pp.1-2, 6-7, 47-8, 55-8, 62, 65, 77, 95-6, 20-28 April 1972.

## OPEN ELECTORATE

Alotau  
 Angoram  
 Bewani  
 Bogia  
 Bulolo  
 Central Bougainville  
 Chuave  
 Daulo  
 Dei  
 Dreikikir  
 Esa'ala  
 Finschhafen  
 Gazelle  
 Goilala  
 Goroka  
 Gumine  
 Hagen  
 Henganofi  
 Huon Gulf  
 Ialibu-Pangia  
 Ijivitari  
 Jimi  
 Kabwum  
 Kagua-Erave  
 Kainantu  
 Kairuku-Hiri  
 Kandep-Porgera  
 Kandrian-Gloucestera  
 Karimui-Nomane  
 Kavieng  
 Kerema  
 Kerowagi  
 Kikori  
 Kokopo  
 Kompiam-Baiyer  
 Koroba-Kopiago  
 Kula  
 Kundiawa  
 Lae  
 Lagaip  
 Lufa  
 Madang  
 Manus  
 Maprik  
 Markham  
 Mendi

## MEMBER

John Guise  
 William Eichhorn  
 Bewa Tou  
 S.B. To Liman  
 Gedisa Gwaju  
 Raphael Bele  
 J. Numoi Kaupa  
 Sinake Giregire  
 Parua Kuri  
 Toromble Kabai  
 Tim Ward  
 Popou Malengudoi  
 Mathias T. To Liman  
 Louis (Sebu) Mona  
 Akepa Miakwe  
 Ninkama Bomai  
 Pena Ou  
 Atiheme Kimi  
 Gideon Apeng  
 Turi Wari  
 Paulus Arek  
 Thomas Kavali  
 Buaki Singeri (Wayongi)  
 Yano Belo  
 Sasakila Moses  
 Ron Slaughter  
 Nenik Pasul  
 Galopo Masa  
 Inuabe Egaiano  
 Perry Kwan  
 Tore Lokoloko  
 Wena Wili  
 Dodobai Wautai  
 Oscar Tammur  
 Traimya Kambipi  
 Andagari Wabiria  
 John C. Fifita  
 Joseph Teine Iuanga  
 Toni Ila  
 Waitea Yaphipa Magnolias  
 Suinavi Otio  
 Angmai Bilas  
 Michael Pondros (Pokayou)  
 Pita Lus  
 Phillip Buseng  
 Momei Pangial



Menyamya  
 Moresby Coastal  
 Moresby Inland  
 Mount Wilhelm  
 Mul  
 Namatanai  
 Nawae  
 Nipa  
 North Bougainville  
 North Fly  
 Obura  
 Okapa  
 Pomio  
 Proma-Kutubu  
 Rabaul  
 Rai Coastal  
 Rigo-Abau  
 Sinasina  
 Sohe  
 South Bougainville  
 South Fly  
 Sumkar  
 Talasea  
 Tambul-Nebilyer  
 Tari-Komo  
 Upper Sepik  
 Usino-Bundi  
 Wabag  
 Wahgi  
 Wapei-Nuku  
 Wapenamanda  
 West Sepik Coastal  
 Wewak  
 Wosera-Gau  
 Yangoru-Saussia

## REGIONAL ELECTORATE

Bougainville  
 Central  
 Chimbu  
 Eastern Highlands  
 East New Britain  
 East Sepik  
 Gulf  
 Madang  
 Manus  
 Milne Bay

Manasseh Voeto  
 Gavera Rea  
 Albert Maori-Kiki  
 Karigi Bonggere  
 Mek Nugints  
 Julius Chan Sungmen  
 Amenao Jongombe  
 Ibne Kor  
 Donatus Mola  
 Krenem Wonhenai  
 Onamauta Beibe  
 John Pokia  
 Koriem Michael Urekit  
 Awali Ungunaibe  
 John R. Kaputin  
 John Poe  
 Reuben Taureka  
 Kobale Kale  
 Stephen Tago  
 Paul Lapun  
 Niwia Ebia Olewale  
 John Middleton  
 Harry Humphreys  
 Koitaga Mano  
 Matiabe Yuwi  
 Anskar Karmel  
 Marcus Kawo  
 Tei Abal  
 Kaibelt Diria  
 Yakob Talis  
 Pato Kakarya  
 Brere Awol  
 Sno (O'Shannessy)  
 John Matik  
 Matias Yaliwan

## MEMBER

John Momis  
 J.M. Abaijah  
 Iambakey Palma Okuk  
 Barry Holloway  
 Damien Kereku  
 Michael Thomas Somare  
 Tom Koraea  
 Bruce Jephcott  
 Pika Leli Kasau  
 Dennis Young

Morobe  
 New Ireland  
 Northern  
 Southern Highlands  
 Western  
 Western Highlands  
 West New Britain  
 West Sepik

Boyamo Sali  
 Obed Boas  
 Mackenzie Daugi  
 Ronald Thomas Neville  
 Naipuri Maina  
 Anton Parao  
 John Maneke  
 Paul Langro

The Clerk also laid on the Table notice of termination of appointment of Leslie Wilson Johnson, Anthony Philip John Newman, Thomas William Ellis, Donald Stuart Grove, Lindsay James Curtis, Henry Parker Ritchie, Charles Geoffrey Littler, Stanley Michael Foley, Ronald Thomas Galloway and Herbert Percy Seale as official members and Notice of Appointment of the following as official members:

Anthony Philip John Newman  
 Thomas William Ellis  
 Henry Parker Ritchie  
 William John Francis Kearney

#### MEMBERS SWORN

The members whose names are above set forth made and subscribed the Oath required by law, except Mr Oscar Tammur who was not present.

#### ELECTION OF SPEAKER

The CLERK - Honourable members, it is now the duty of the House to elect a member as Speaker.

Mr JULIUS CHAN (Namatanai) - I propose to the House, for its Speaker, Mr Perry Kwan, and I move -

That he do take the Chair of this House as Speaker.

Mr KAIBELT DIRIA (Wahgi) - I second the motion.

Mr PERRY KWAN - I accept nomination.

Mr TEI ABAL (Wabag) - I propose to the House, for its Speaker, Mr Matthias To Liman, and I move -

That he do take the Chair of this House as Speaker.

Mr TRAIMYA KAMBIPI (Kompiam-Baiyer) - I second the motion.

Mr MATTHIAS TO LIMAN - I accept nomination.

The CLERK - Is there any further proposal?

There being no further proposal -

The CLERK - The time for proposals has expired.

The House proceeded to ballot.

The CLERK - The result of the ballot is, informal 1, Mr Matthias To Liman 48, Mr Perry Kwan 49, I declare that the member proposed, Mr Perry Kwan, has been elected as Speaker.

Mr Julius Chan and Mr Kaibelt Diria conducted Mr Perry Kwan to the Chair.

Mr SPEAKER - I wish to express my grateful thanks for the high honour the House has been pleased to confer upon me.

[The afternoon session of the House commenced with an Address of Welcome to the Governor-General of the Commonwealth of Australia made by the Speaker. The Governor-General then made an Address to the House. Following an adjournment, the House elected a Chairman of Committees (Mr John Momis). Mr John Kaputin then made an Address-in-Reply to the Governor-General's Address and moved that the Address be agreed to. Debate on this motion was then adjourned.]

#### MINISTERIAL NOMINATIONS COMMITTEE

Mr MICHAEL SOMARE (East Sepik) - I ask leave of the House to move a motion without notice.

Leave granted.

Mr MICHAEL SOMARE - I move -

That Mr Julius Chan, Mr John Guise, Mr Kaibelt Diria, Mr Michael Somare, Mr Obed Boas, Mr Paul Lapun and Mr Thomas Kavali be members of the Ministerial Nominations Committee. Motion (by Mr Pita Lus) proposed -

That the question be now put.

The House divided (the Speaker, Mr Perry Kwan, in the Chair) -

Mr SINAKE GIREGIRE - Mr Speaker, Point of Order. Things are not yet correct.

Mr JOHN GUISE - A motion for conclusion of the debate may be put to the House. However we should receive a direction from the Chair as to whether the debate has concluded or not. You should make a statement now.

Mr NEVILLE - Mr Speaker, I support Mr Guise. No ruling was given from the Chair as to whether the question was to be put or not.

Mr SPEAKER - I ask members to be responsible when I order the bells for the division.

[The result of the division was 'ayes' 55, 'noes' 42.]

Question so resolved in the affirmative.

Question - That the motion be agreed to - put.

The House divided (the Speaker, Mr Perry Kwan, in the Chair) -

[The result of the division was 'ayes' 55, 'noes' 42.]

Question so resolved in the affirmative.

#### ALTERATION OF DAY OF NEXT SITTING

Motion (by Mr Newman) agreed to -

That the House, at its rising, adjourn until Monday next.

#### ADJOURNMENT

Motion (by Mr Newman) agreed to -

That the House do now adjourn.

The House adjourned at 4.42 p.m.

[The Second Day of the First Session of the House was taken up by the continuation of the debate on the Address-in-Reply to the Governor-General's Address.]

#### THIRD DAY

Wednesday 26 April 1972

[The first business of the day was the Questions Without Notice, which were directed to the official members. The debate on the Address-in-Reply to the Governor-General's Address then resumed, but after a short time was adjourned.]

#### SUSPENSION OF STANDING ORDERS - MINISTERIAL NOMINATIONS

Mr MICHAEL SOMARE - I move -

That so much of Standing Orders be suspended as would prevent my moving a motion for the nomination of members to ministerial office.

Mr TEI ABAL - Mr Speaker, Point of Order. I feel this is not correct. As we all know, we already have Mr Paul Langro's motion before the House.<sup>1</sup> Mr Somare's motion will conflict

<sup>1</sup> Mr Langro's motion was not put before the House until later in this debate; see below (eds).

with that of Mr Langro's. I do not think it is correct to allow Mr Somare's motion to proceed. We must debate Mr Langro's motion so that the members can understand its purpose.

[Following this point of order, some misunderstandings concerning procedure developed which led to a short adjournment. Debate resumed 11.45 a.m.]

Mr KEARNEY (Secretary for Law) - Mr Speaker, I rise to a Point of Order. Shortly before the House adjourned, there appeared to be some confusion as to the motion which was being put. Mr Somare had moved that the Standing Orders be suspended. Mr Tei Abal had taken a Point of Order on that motion and you had ruled against him. You were then in the course of putting Mr Somare's motion to the House, but I suggest, Mr Speaker, that that motion was not properly put to the House and that the proper procedure should now be that Mr Somare's motion be put to the House. That means, Sir, that you should call for those in favour to vote 'aye' and those against the motion to vote 'no' and then give a ruling as to whether the 'ayes' or the 'noes' have it. Then, Sir, if someone is not content with your ruling, they can call for a division.

Mr MICHAEL SOMARE (East Sepik) - Mr Speaker, I ask leave of the House to withdraw my motion for suspension of Standing Orders in order that Mr Paul Langro's motion may be debated immediately.

Motion, by leave, withdrawn.

#### MINISTERS - DELAY IN APPOINTMENT

Mr PAUL LANGRO (West Sepik) - I move -

That, in view of the closure of the debate on the appointment of the Ministerial Nominations Committee, this House is of the opinion that further action on the appointment of ministers should be delayed until members can consult their electorates on their opinion of immediate self-government.

[Mr Langro continued his speech in support of his motion, and this was followed by other speeches both for and against the motion. The final speaker was Mr KAIBELT DIRIA who concluded as follows.]

I do not support the motion and I move -

That the question now be put.

The House divided (the Speaker, Mr Perry Kwan, in the Chair) -

[The result of the division was 'ayes' 53, 'noes' 41.]

Question so resolved in the affirmative.

Question - that the motion be agreed to - put.

The House divided (the Speaker, Mr Perry Kwan, in the Chair) -

[The result of the division was 'ayes' 42, 'noes' 54.]

Question so resolved in the negative.

#### SUSPENSION OF STANDING ORDERS - MINISTERIAL NOMINATIONS

Motion (by Mr Michael Somare) put -

That so much of Standing Orders be suspended as would prevent my moving a motion for the nomination of members to ministerial office.

The House divided (the Speaker, Mr Perry Kwan, in the Chair) -

[The result of the division was 'ayes' 54, 'noes' 42.]

Question so resolved in the affirmative.

#### MINISTERIAL OFFICES - NOMINATIONS

Mr MICHAEL SOMARE (East Sepik) - I move -

That this House nominates for appointment to ministerial offices the following persons, being all the persons whose names are on the list of elected members submitted to this House after consultation between His Honour the Administrator and the Ministerial Nominations Committee of this House as the list of elected members eligible to be nominated by the House for such appointment, namely:

Mr Albert Maori-Kiki	Mr Iambakey Okuk
Mr Boyamo Sali	Mr [Bruce] Jephcott
Mr Donatus Mola	Mr John Guise
Mr Ebia Olewale	Mr John Poe
Mr Gavera Rea	Mr Julius Chan
Mr Kaibelt Diria	Mr Reuben Taureka
Mr Michael Somare	Mr Sasakila Moses
Mr Paul Lapun	Mr Thomas Kavali
Mr Paulus Arek	

Mr Speaker, it is difficult for me to be able to say how we have come to choose the above names. These names were suggested by the coalition and these names had to go through

a process lasting two days, trying to make out what the Coalition Government would do. These men, I personally feel, have the calibre to work in this ministry and I am sure, Sir, that these men have been in all walks of life and these men have Papua New Guinea at heart. I can assure you, Sir, that in consultation with His Honour the Administrator, this Ministerial Nominations Committee has had a lot of strain trying to work out who are the people who will be leading this country in our new ministry. Each and every one of us has done a lot of work in trying to work out the best men.

As you can see from this ministerial nomination list, Sir, we did not emphasise regionalism or any parochialism at all. We picked people because we feel these are men who will be running the Government of this country, and they form a true representation for national government. The people that you see in the ministry are from all communities, different districts and various regions. We have people who are in this ministry and not necessarily from one particular area. When my Committee had a look around it talked a lot about what kind of people we were going to have in this ministry and the final decision was made yesterday afternoon.

We had to make this decision that we submit now to the House. And I am sure that these men will be working with everyone, both in the public and private sector, if the Minister approves of their appointment. I am sure these are our men, and these will be the people who are going to shape this nation, this country, into nationhood.

I remind honourable members that this is part of life, and this is politics. We have been talking about party politics and we have now really seen it on the Floor of the House. Even though you and I may argue that we have not the majority on the Floor of the House, proof a few moments ago has shown that we have the majority, and the National Coalition will do something for this country. I am not going to say here, Sir, that when we are in office we will do this and we will do that. We know we have a lot of hard work ahead of us, and co-operation and assistance must come from all honourable members. Irrespective of where you are, who you are or what colour your skin is, you must remember Papua New Guinea is our country and I ask every honourable member here to give every assistance to those ministers who will be appointed very shortly.

Our doors are open; if you have grievances from your district, from your region, from your subdistrict, my men will all be ready and the Public Service in the Coalition Government [sic] will be prepared to support you.

Mr SPEAKER - I wish to report receipt of the following communication from His Honour the Administrator dated 26 April 1972:

'Dear Mr Speaker,

This is to inform you that in accordance with the Papua New Guinea (Ministerial Appointments) Regulations made under the Papua New Guinea Act the Administrator has consulted with the Ministerial Nominations Committee of the House of Assembly which was duly appointed by the House of Assembly on 20 April 1972.

Agreement has been reached with the Committee on a list of seventeen (17) Members of the House eligible to be nominated for ministerial office in accordance with Regulation 6(1). The seventeen (17) Members are as follows:

Mr Michael Somare	Mr Paul Lapun
Dr John Guise	Mr Gavera Rea
Mr Julius Chan	Mr Boyamo Sali
Mr Donatus Mola	Mr Sasakila Moses
Mr Thomas Kavali	Mr Paulus Arek
Mr Iambakey Okuk	Mr Kaibelt Diria
Mr Albert M. Kiki	Mr Bruce Jephcott
Dr Reuben Taureka	Mr John Poe
Mr Ebia Olewale	

Yours sincerely,

(Sgd) L.W. Johnson,  
Administrator'

Mr PAUL LANGRO (West Sepik) - Mr Speaker, I congratulate the Coalition Government on its victory and I wish it every success. It now bears a tremendous responsibility and we shall watch its efforts and its success in governing this country. I am satisfied and happy about the nomination list of ministers. I know them to be good men with enough wisdom to perform their ministerial duties. We in the United Party will watch their performances during the next four years and we will rejoice in their success.

[Debate on Mr Somare's motion continued until Mr PITA LUS moved the following motion.]

Motion (by Mr Pita Lus) agreed to -

That the question be now put.

Question - That the motion be agreed to - resolved in the affirmative.



## LEADER OF THE OPPOSITION - RECOGNITION

Mr JOHN MANEKE (West New Britain) - I move -

That this House requests the Minister for External Territories to recognise formally the position of Leader of the Opposition, both inside and outside the House of Assembly, and to accord the Leader of the Opposition the same status, salary and services as a senior minister of the Administrator's Executive Council.

My motion simply requests the Minister for External Territories to recognise the position of the Leader of the Opposition both inside and outside the House of Assembly. The Leader of the Opposition must have the same status as a senior minister of the AEC.

Mr Speaker, though it is late afternoon now, I think the motion I am introducing is a good one. I therefore think that you should support it wholeheartedly. Firstly let me say to the members that we should not ridicule others in this debate. Let us deal with the motion on its merit.

Mr Speaker, we have already seen a move successfully made by the Leader of the Coalition Government and we have just heard the Leader of the Opposition saying that he could not get up quickly to say something because he felt ashamed after being defeated. That is not something about which we have to feel ashamed. The intention of my motion is to see that it stamps out such feelings. The Opposition Leader's position must be recognised and he must have prestige equal to that of the senior members of the Administrator's Executive Council. It is a good motion and I think all the members will support it.

Mr Speaker, in the previous two Houses we did not create a position of Leader of the Opposition. But, because of the nature of the Third House, it is pertinent that the position of Leader of the Opposition be created and the status of his office recognised. He must enjoy prestige in his office equal to that enjoyed by the ministers. Mr Speaker, I do not intend to say any more on this motion because we are all aware that this will be the same as the situation in Australia. Those who really believe in unity can see no alternative but to support this motion. It is a good motion, therefore we must all support it.

Mr PAULUS AREK (Ijivitari) - Mr Speaker, I think all members are pretty well in agreement with this. I move -

That the question be now put.

Question resolved in the affirmative.

Question - That the motion be agreed to - resolved in the affirmative.

#### ADJOURNMENT

Motion (by Mr Newman) agreed to -

That the House do now adjourn.

The House adjourned at 4.18 p.m.

#### FOURTH DAY

Thursday 27 April 1972

[The first business of the day was again the Questions Without Notice, followed by the first written question. The Speaker then read to the House a communication from the Administrator.]

#### MINISTERIAL APPOINTMENTS

Mr SPEAKER - I wish to report the receipt of the following communication from His Honour the Administrator dated 27 April 1972:

'Dear Mr Speaker,

This is to inform you that in accordance with section 26 of the *Papua New Guinea Act* 1949-1971, the following seventeen (17) Members of the House of Assembly, having been nominated by the House of Assembly for ministerial office, with the concurrence of the Administrator, have been formally appointed to ministerial office by the Minister for External Territories, by instrument dated 26 April 1972:

Messrs Albert Maori-Kiki  
 Boyamo Sali  
 Donatus Mola  
 Ebia Olewale  
 Gavera Rea  
 Iambakey Okuk  
 [Bruce] Jephcott  
 John Guise  
 John Poe  
 Julius Chan  
 Kaibelt Diria  
 Michael Somare

Paul Lapun  
 Paulus Arek  
 Reuben Taureka  
 Sasakila Moses  
 Thomas Kavali

Yours sincerely,

(Sgd) L.W. Johnson,  
 Administrator'

Mr MICHAEL SOMARE (East Sepik) - I ask leave of the House to make a statement.

Leave granted.

Mr MICHAEL SOMARE - I wish to inform the House that this morning a meeting of the ministers of the House of Assembly duly convened by His Honour the Administrator appointed me, Michael Thomas Somare, as Deputy Chairman of the Administrator's Executive Council.

Mr Speaker, in informing the House of my appointment to the position of Deputy Chairman of the Administrator's Executive Council I wish to point out that my appointment does not become effective until this House approves the appointment.

Mr JULIUS CHAN (Namatanai) - I ask leave of the House to move a motion without notice.

Leave granted.

Mr JULIUS CHAN - I move -

That this House approves the appointment of Mr Michael Somare, being the minister appointed by the ministers of the House of Assembly according to the *Papua New Guinea Act* 1949-1971 as Deputy Chairman of the Administrator's Executive Council.

Question resolved in the affirmative.

Mr MICHAEL SOMARE (East Sepik) - I ask leave of the House to make a statement.

Leave granted.

Mr MICHAEL SOMARE - I would like to thank my ministerial colleagues for the confidence that they have shown in me in appointing me to this high office. I am deeply indebted to my parliamentary colleagues on both sides of this House for ratifying this appointment. I regard this appointment as the greatest honour that has ever been given to me. I will try to live up to this expression of confidence.

Many of my colleagues are older than I and have had a great deal more political experience. The fact that they have chosen me indicates a high degree of confidence and trust. I will not betray that trust. Mr Speaker, my colleagues and I will work together as a team for the good of our country, Papua New Guinea. Sometimes we will be criticised; we will accept it. It is a fact of political life. However we will at all times try to do what is best for our country and our people. There will be times when our views will be opposed, sometimes quite strongly. While we cannot at all times expect full support from every member of this House we will always respect the opposing views put to us.

Mr Speaker, I would also on behalf of my colleagues, wish to announce that we have unanimously elected Dr John Guise as Assistant Deputy Chairman of the Administrator's Executive Council. I will be proud to work closely with Dr Guise. He is a man of great wisdom and experience. I would also like to pay a tribute to my ministerial colleagues and I believe that at this vital time in our history we have assembled a team which will, to the best of its ability, come to grips with the problems that will face our nation over the next few years. Mr Speaker and fellow members, thank you.

[Debate on the Address-in-Reply was resumed and continued until the adjournment of the House.]

#### FIFTH DAY

Friday 28 April 1972

[Following the Questions Without Notice, Mr Matthias To Liman made the following statement.]

#### SHADOW MINISTRY

Mr MATTHIAS TO LIMAN (Gazelle) - Mr Speaker, I rise to congratulate the new ministers on their portfolio appointments. Because of the very nature of the coalition and the very diverse political views and characters of its members, the ministers will sometimes have to compromise on what course they would really like to take. They have a very difficult time ahead of them. This will be added to by the fact that nearly all of them are without previous ministerial experience, although they are mostly men of good education.

Mr Speaker, we all want good government for this country. As the Leader of the Loyal Opposition, I wish to assure the ministers that we are sensible to their difficulties and do

not intend to oppose them merely for the sake of opposition. Our shadow ministry will be a responsible one whose main aim is to secure good and democratic government for this country.

The news reports of His Honour's reservations regarding the recognition of the Leader of the Opposition is regarded with dismay by my party. The result of His Honour's statement could be that there would be no form of government in this country. We have half-started to try the Westminster system of government, but not sufficiently to know whether it really suits us or not. We must find out definitely by trying whether or not this system of government is for us. If we adopt some other system of government in the future and find it unsuitable, we will not be sure whether to investigate the Westminster system further, if we have abandoned it inconclusively, or seek some other system. Much valuable time would be lost and the stability of our government threatened. Mr Speaker, in the face of the statement, one could well wonder whether it is the Australian government's intention to weaken the Opposition because it desperately wants Pangu to govern for, as Miss Abaijah so rightly pointed out, its policies very well suit the apparent short-term policy of the Australian government. At this time of transition of powers to this House, we would have expected that the need for an organised opposition to ensure stable government should the coalition fail, would have been a more important consideration to His Honour the Administrator, than speculation on the abandonment of the only system of government we have attempted before we are in a position to evaluate it or modify it.

[The House then proceeded to the election of members of various statutory bodies and of the Committees of the House. Following the elections, debate on the Address-in-Reply resumed, and at the conclusion of this debate, the House adopted the motion that the Address be agreed to. The Speaker then read to the House a communication from the Administrator.]

#### MINISTERIAL OFFICE AND ADMINISTRATOR'S EXECUTIVE COUNCIL APPOINTMENTS

Mr SPEAKER - I wish to report the receipt of the following communication from His Honour the Administrator dated 28 April 1972:

'Dear Mr Speaker,

I wish to advise that the Minister for External Territories has today signed instruments under sections 24 and 26 of the *Papua New Guinea Act* 1949-1971 appointing the following members of the House of Assembly to the Ministerial offices shown opposite their names:

Iambakey Okuk - Minister for the House of Assembly for  
 Agriculture, Stock and Fisheries  
 Donatus Mola - Minister of the House of Assembly for  
 Business Development  
 Ebia Olewale - Minister of the House of Assembly for  
 Education  
 Sasakila Moses - Minister of the House of Assembly for  
 Forests  
 Reuben Taureka - Minister of the House of Assembly for  
 Health  
 Paulus Arek - Minister of the House of Assembly for  
 Information  
 John Guise - Minister of the House of Assembly for the  
 Interior  
 Julius Chan - Minister of the House of Assembly for  
 Internal Finance  
 Gavera Rea - Minister of the House of Assembly for Labour  
 Albert Maori Kiki - Minister of the House of Assembly  
 for Lands and Environment  
 Boyamo Sali - Minister of the House of Assembly for  
 Local Government  
 Paul Lapun - Minister of the House of Assembly for Mines  
 Kaibelt Diria - Minister of the House of Assembly for  
 Posts and Telegraphs  
 John Poe - Minister of the House of Assembly for Trade  
 and Industry  
 Bruce Jephcott - Minister of the House of Assembly for  
 Transport  
 Thomas Kavali - Minister of the House of Assembly for  
 Works

I also wish to advise that the Minister for External  
 Territories, by instrument under section 20 of the *Papua  
 New Guinea Act 1949-1971*, after consultation with the  
 Deputy Chairman of the Administrator's Executive Council  
 and on the nomination of the Administrator, has appointed  
 the following ministers of the House of Assembly and  
 official members of the House of Assembly to be members  
 of the Administrator's Executive Council in addition to  
 the Deputy Chairman:-

Iambakey Okuk - Minister of the House of Assembly  
 for Agriculture, Stock and Fisheries  
 Donatus Mola - Minister of the House of Assembly for  
 Business Development  
 Ebia Olewale - Minister of the House of Assembly for  
 Education  
 Reuben Taureka - Minister of the House of Assembly  
 for Health

John Guise - Minister of the House of Assembly for  
the Interior  
 Julius Chan - Minister of the House of Assembly for  
Internal Finance  
 Albert Maori Kiki - Minister of the House of Assembly  
for Lands and Environment  
 Paul Lapun - Minister of the House of Assembly for  
Mines  
 Thomas Kavali - Minister of the House of Assembly  
for Works  
 Anthony Philip John Newman - Official Member of the  
House of Assembly  
 Henry Parker Ritchie - Official Member of the House  
of Assembly  
 William John Francis Kearney - Official Member of the  
House of Assembly

Copies of instruments making the above appointments and setting out the designations and functions of the offices of the ministers of the House of Assembly together with approved arrangements in respect of those functions, are attached.

Yours sincerely,

(Sgd) L.W. Johnson,  
Administrator'

I now lay on the Table the following Papers:

Papua New Guinea Act -

Appointment of Ministers of the House of Assembly to  
the Administrator's Executive Council  
 Appointment of Official Members to the Administrator's  
Executive Council  
 Appointment to Ministerial Office  
 Approved arrangements under Section 25  
 Determination under Section 24.

#### LEADERSHIP OF OPPOSITION

Mr MATTHIAS TO LIMAN (Gazelle) - I ask leave of the House to make a statement.

Leave granted.

Mr MATTHIAS TO LIMAN - Mr Speaker, I wish to inform the House that the United Party has elected 13 shadow ministers. Further shadow ministers will be appointed and announced at the next meeting of the House. Under myself, as the party's leader, will be Mr Sinake Giregire as chairman and Mr Tei Abal

as my deputy. I am happy to inform the House that a large part of our shadow ministry has had experience in ministerial office and will therefore provide experienced and competent opposition for the ministerial benches. The party may be appointing more than 17 shadow ministers should we decide that certain areas of government are sufficiently important to require an over-sighting of this special ministry.

[Following this speech, a motion for the adjournment of the House was debated and passed.]

30. Sphere of authority of ministers: determination made under section 24 of the *Papua New Guinea Act* 1949-1971, and arrangements approved by the Minister for External Territories, Mr A.S. Peacock, pursuant to section 25 of the *Papua New Guinea Act* 1949-1971, 28 April 1972<sup>1</sup>

A. Determination

WHEREAS sub-section (2) of section 24 of the *Papua New Guinea Act* 1949-1971 provides that the ministerial offices shall have such respective designations as the Minister of State for External Territories, from time to time determines;

AND WHEREAS sub-section (3) of the said section provides that in respect of each ministerial office the said Minister shall determine, from time to time, the matters in respect of which the holder of the office is to perform the functions of a Minister of the House of Assembly;

AND WHEREAS sub-section (4) of the said section provides that without limiting the generality of the last preceding sub-section, the matters that may be determined by the said Minister under sub-section (3) in relation to a ministerial office may include all or any of the matters to which the functions of a specified department of the public service relate:

NOW THEREFORE I, ANDREW SHARP PEACOCK, Minister of State for External Territories, pursuant to the power conferred upon me by sub-sections (2) and (3) of section 24 of the *Papua New Guinea Act* 1949-1971

HEREBY DETERMINE:

<sup>1</sup> Papua New Guinea Government Gazette, no.67, 10 August 1972.



- (i) that the offices of Minister of the House of Assembly shall be of such respective designations as are set out in column one of the Annexe attached hereto; and
- (ii) that the matters in respect of which the holder of the office is to perform the function of a Minister of the House of Assembly insofar as the day-to-day administration of those matters is concerned shall be as set out in column two of the said Annexe attached hereto.

I HEREBY REVOKE all prior determinations made pursuant to the powers conferred by sub-sections (2) & (3) of section 24, of the *Papua New Guinea Act 1949-1971*.

Dated this Twenty-eighth day of April, 1972

signed ANDREW PEACOCK

(ANDREW PEACOCK)

Minister of State for External Territories

COLUMN ONE

DESIGNATION OF MINISTERIAL OFFICE

Minister of the House of Assembly for Agriculture, Stock and Fisheries

Minister of the House of Assembly for Business Development

Minister of the House of Assembly for Education

Minister of the House of Assembly for Forests

Minister of the House of Assembly for Health

Minister of the House of Assembly for Information

COLUMN TWO

DEPARTMENT OF THE PUBLIC SERVICE AND MATTERS FOR PERFORMANCE OF FUNCTIONS

Department of Agriculture, Stock and Fisheries  
All the matters related to the functions of the said Department

Department of Business Development  
All the matters related to the functions of the said Department

Department of Education  
All the matters related to the functions of the said Department

Department of Forests  
All the matters related to the functions of the said Department

Department of Public Health  
All the matters related to the functions of the said Department

Department of Information and Extension Services  
All the matters related to the functions of the said Department

Minister of the House of Assembly for the Interior	Department of Social Development and Home Affairs and Department of Law All the matters related to the functions of the Department of Social Development and Home Affairs and to the Corrective Institutions Branch of the Depart- ment of Law and to the Liquor Licensing Commission
Minister of the House of Assembly for Internal Finance	Department of the Treasury All the matters related to the financial aspects of revenue raised within Papua New Guinea including participation in discus- sions with the Commonwealth on the amount of aid from the Commonwealth
Minister of the House of Assembly for Labour	Department of Labour All the matters related to the functions of the said Department
Minister of the House of Assembly for Lands and Environment	Department of Lands, Surveys and Mines All the matters related to the functions of the Division of Lands of the said Department, and the National Parks and Gardens Board
Minister of the House of Assembly for Local Government	Department of the Administrator All the matters related to the functions of the Division of Local Government in the said Department
Minister of the House of Assembly for Mines	Department of Lands, Surveys and Mines All the matters related to the functions of the Division of Mines of the said Department
Minister of the House of Assembly for Posts and Telegraphs	Department of Posts and Telegraphs All the matters related to the functions of the said Department
Minister of the House of Assembly for Trade and Industry	Department of Trade and Industry All the matters related to the functions of the said Department
Minister of the House of Assembly for Transport	Department of Transport All the matters related to the functions of the said Department
Minister of the House of Assembly for Works	Department of Public Works All the matters related to the functions of the said Department

B. Approved arrangements

[The text of the April 1972 arrangements was identical to that of August 1970, and reference should be made back to Document 17. The 'Notes on conduct for holders of ministerial office' which had been attached to the March 1970 approved arrangements were also attached to those of April 1972 (see Document 10).<sup>1</sup> There are sixteen annex pages to these arrangements; only that relating to the Minister for Education is reproduced here as illustrative.]

Minister of the House of Assembly  
for Education

Department of Education

Primary and secondary education including the administration and operation of Administration Teachers' Colleges but excluding Goroka Teachers' College

Syllabi

Fees and charges

Mission education operations including grants-in-aid

School commencing age

P. and C. subsidies

Correspondence tuition for secondary schools and vocational centres

Tertiary scholarship allocation

Education research and teaching methods

Pupil transport

Territory Education Board

PNG Public Museum and Art Gallery

Museum Trust

31. Address by the Minister for External Territories, Mr A.S. Peacock, to the Australian Universities Liberal Federation, Sydney, 18 May 1972<sup>2</sup>

[The Minister referred to the formation of the National Coalition Government, and to the 'continuing and growing devolution' of powers to the ministers.]

<sup>1</sup> However, the second last paragraph of the March 1970 notes, relating to communications with the press and 'writings of a literary, historical, scientific, philosophical or romantic nature', was not included in the April 1972 notes (eds).

<sup>2</sup> Papua New Guinea Press Release B, no.1353, 18 May 1972.

The official members of the House of Assembly will also have a reduced role and will not vote on any matters for which Papua New Guinea ministers are finally responsible. Their role now is advisory plus a responsibility to explain policy on matters for which the Commonwealth continues to have final responsibility.

Thus we now have a situation in Papua New Guinea in which ministers who are part of an elected executive will formulate and determine policy over a wide range of government activities. Together with this goes the responsibility of the government of Papua New Guinea as a whole for translating the decisions of the executive into legislation or other action in the House.

There are, of course, a number of areas of government where the Commonwealth retains final responsibility - for example, the judiciary, internal security, defence, international trade, foreign affairs and civil aviation. It is not the intention of the Commonwealth government to exercise these residual responsibilities exclusively. For some time now the policy of the Commonwealth has been to take part in full consultations with the AEC on decisions in these areas. Wherever the Administrator thinks it in the public interest he is empowered to submit a matter for discussion to the AEC. In this way the Australian government has sought the views of the AEC on all important policy matters since 1970 and will continue to give increasing weight to its views and advice in such areas. The result of this policy will be apparent by the degree to which the AEC in future influences the Commonwealth's attitude on important issues.

It may be that the government of Papua New Guinea would like some closer connection with all areas of government still retained by Australia. Should this be the case the Australian government would welcome a request for a connection closer than that which currently operates and it would be a subject that could then be discussed when talks are held between the Commonwealth and the Papua New Guinea government.

The effect would be that the Papua New Guinea Cabinet would be involved in the full spectrum of government activities and not just in those areas where Papua New Guinea ministers exercise final responsibilities. The Commonwealth has followed this approach in the past and considers it vital to the present given the emerging nation status of Papua New Guinea.

This is the general framework therefore within which the government of Papua New Guinea will operate.

32. Statement in the House of Assembly by the Leader of the Opposition, Mr M. To Liman, on the composition of the shadow ministry, 19 June 1972<sup>1</sup>

UNITED PARTY - OPPOSITION SHADOW MINISTRY

Mr MATTHIAS TO LIMAN (Gazelle - Leader of the Opposition) - I ask leave of the House to make a statement.

Leave granted.

Mr MATTHIAS TO LIMAN - Mr Speaker, I would like to introduce my shadow ministry. Before doing so, I would like to point out that six of these appointees have had previous ministerial experience and all but two of them have had at least one term as members of this House. This is not to say, Mr Speaker, that we have not made provision for the talent of the new members - the contrary is true, as we have left some positions vacant and, in cases where a shadow minister holds two portfolios, these will be split to allow for the appointment of members whose abilities become apparent as this House progresses. Additionally some shadow ministers would not be likely to accept a ministerial appointment should our party become the Government.

In addition to myself, as Leader of the Opposition, our shadow ministers are:

Mr Sinake Giregire - Shadow Minister, Business Development  
 Mr Tei Abal - Shadow Minister, Health  
 Mr Paul Langro - Shadow Minister, Interior and Lands  
 Mr Tore Lokoloko - Shadow Minister, Agriculture, Stock and Fisheries  
 Mr Angmai Bilas - Shadow Minister, Trade and Industry  
 Mr Ward - Shadow Minister, Transport  
 Mr Andagari Wabiria - Shadow Minister, Mines  
 Mr Anton Parao - Shadow Minister, Labour  
 Mr Neville - Shadow Minister, Public Works  
 Mr Matiabe Yuwi - Shadow Minister, Information and Extension Services  
 Mr Mackenzie Daugi - Shadow Minister, Education  
 Mr Yakob Talis - Shadow Minister, Local Government  
 Mr Ninkama Bomai - Shadow Minister, Forests  
 Mr Middleton - Shadow Minister, Internal Finance

Mr Speaker, in view of past misunderstandings, I wish to make it clear that the only sources authorised to make any

<sup>1</sup> House of Assembly Debates, Third House, Second Meeting of the First Session, vol.III, no.3, p.214, 19 June 1972.

statements concerning the policies and operations of the Opposition are myself, as leader, and the party's central secretariat, with Mr Paul Langro as spokesman.

We are still the biggest party in this House and twice as many votes were cast for candidates supporting the United Party's policies than any other party or, for that matter, the entire coalition. This is why we have questioned the coalition's mandate to govern. However our main concern is that this country is well governed in accordance with the wishes of the people. We have proved in the past that we are a responsible party. We intend to be constructive as well.

## Part VI

### Adjusting to the new ministry: July 1972 to April 1973

The formation of the Somare ministry was followed by negotiations between it and the Australian government on further transfers of executive power. The negotiations, which included formal constitutional talks in Port Moresby, culminated in the issue of a new determination and new approved arrangements on 30 April 1973. These instruments represented the first major alteration to the distribution of power since August 1970 (Documents 16 and 17), and differed from their predecessors in both their format and in the manner in which they were made.

The political situation after the formation of the Somare ministry was quite different to that existing in July-August 1970. Then there had been no demands from the ministerial office-holders for further transfers of power, nor (it appears) any formal consultation between them and the Australian government. Nor was the matter referred to the House of Assembly: at the most, there were suggestions made to members of the Select Committee on Constitutional Development (see Document 19). The transfer of power of July-August 1970 was essentially a unilateral act of the Australian government. By 1972, however, it was no longer possible for Canberra to impose change in this way. Some of the Pangu Pati members who had in the past pressed for a greater transfer of power became ministers and members of the AEC in April 1972, and it would have been difficult for the Australian government to have ignored their views. In addition, the position of Leader of the Opposition had been formally recognised and his interests had to be accommodated as well. The House of Assembly had clearly demanded a voice in the transfer of power process by the passage of the Ou-Dutton motion that proposals for the transfer of power should be referred to the House (Document 20). By mid-1972 the major issues which divided the House concerned the pace of progress towards self-government, and the 1970 resolution could not have been ignored.

The consultation between the two governments centred on a series of talks between 27 July and 7 August 1972. The nature

of these talks is explained in Mr Somare's opening statement to the talks (Document 33) and his subsequent report to the House on their outcome (Document 34). Mr Somare's report did not attract the immediate attention of the House, which was preoccupied between 5 and 19 September with the debate on the timetable for self-government (Document 41). It appears that the government intended that the report should be debated on 29 September, but the meeting of the House ended prematurely owing to the lack of a quorum.<sup>1</sup> The report was debated on the first day of the next sitting (13 November) and the House voted to accept it the next day.<sup>2</sup>

It is more difficult to explain the time-lag between this House of Assembly vote and the promulgation by the Minister for External Territories of the determination and approved arrangements. It might have been expected that both the Australian and the Papua New Guinea governments would have been anxious to provide a constitutional basis for the exercise of the powers concerned. Whatever the explanation, the time-lag was not of great significance in practical terms, as the Papua New Guinea government assumed full control over the matters concerned in advance of the 30 April 1973 instruments.

Two matters arising out of Mr Somare's report on the talks (Document 34) should be noted. First, the further talks which Mr Somare had indicated would be held in October 1972 were not held; the reason given was that 'progress was satisfactory'<sup>3</sup> and that formal talks were unnecessary. However, on 20 November 1972 Mr Somare told the House that the government intended to request the Australian government to transfer final power over certain matters which fell within the jurisdiction of the office of the Administrator, viz., district administration, intelligence and security. He explained:

My government intends to ask the Commonwealth to amend the approved arrangements to transfer the final power over the functions carried out by the Department of the Administrator with the exception of the functions of the Central Secretariat in its support role to the Administrator and its international relations functions.

<sup>1</sup> H.A.D., vol.III, no.9, pp.1033, 1054-72, 13 and 14 November 1972.

<sup>2</sup> H.A.D., vol.III, no.9, pp.1033, 1054-72, 13 and 14 November 1972.

<sup>3</sup> Papua New Guinea Press Release B, no.2072, 27 July 1972.



The powers to be transferred will be those in relation to the functions carried out by the Division of District Administration, Office of Local Government, the Division of Intelligence and Security and Civil Defence Organisation. Final power over some of the functions of the Office of Local Government have already been transferred and all that is necessary to complete the transfer is for the power over authorities to be transferred to the Papua New Guinea government.

At the ministerial discussions during the July-August constitutional talks I informed the meeting that it has been agreed with the Minister for External Territories that responsibility for the Division of District Administration could be transferred at the end of 1972. This power is in addition to those listed in my statement which was tabled during the September<sup>1</sup> meeting of the House of Assembly.<sup>2</sup>

After a spirited debate, the House resolved to take note of this statement.<sup>3</sup>

The second matter concerned the number of ministers. Mr Somare had asked for the limitation in the Papua New Guinea Act on the number of ministers to be removed; this was done in the *Papua New Guinea Act 1972* (No.74 of 1972), which came into effect on 5 September 1972. It was believed that Mr Somare wished to strengthen the Coalition by the appointment of additional ministers, but no new appointments were made, and in the determination of 30 April 1973 the number of ministers remained at seventeen.

The new determination differed from its predecessors in four broad areas. The first was that it defined the functions of the Chief Minister, and introduced the new position of Minister for State and Minister Assisting the Chief Minister. Somewhat paradoxically the determination of 28 April 1972 had specified the functions of the sixteen departmental ministers but had made no reference to the Deputy Chairman of the AEC (Document 30). Since then Mr Somare had in practice been referred to as the Chief Minister and the new determination provided a constitutional basis for the use of the term, and a definition of its functions. The Chief Minister assumed

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<sup>1</sup> Document 34.

<sup>2</sup> H.A.D., vol.III, no.10, pp.1168-9, 20 November 1972.

<sup>3</sup> H.A.D., vol.III, no.10, p.1234, 23 November 1972.

responsibility for the Department of the Chief Minister and Development Administration, which had been created since the April 1972 determination and which had absorbed the Division of Local Government. The position of Minister for Local Government was omitted in the new determination, and a new position created of Minister for State and Minister Assisting the Chief Minister, who was to exercise those functions of the Department of the Chief Minister 'as are delegated by the Chief Minister'.

The second broad area of change concerned the general definition of ministerial functions. The new determination extended ministers' functions to cover matters 'related to' various statutory bodies which were not formally part of the departments of the public service; for instance, the Museum Trust in relation to the Chief Minister, and the Liquor Licensing Commission in relation to the Minister for the Interior. Section 24(2) of the *Papua and New Guinea Act* 1968 (Document 2) expressly limited ministerial functions to 'any or all of the matters to which the functions of a specified department of the public service relate'; i.e., functions relating to statutory bodies were excluded. This limitation was removed by section 24(3) of the *Papua New Guinea Act* 1971 (Document 26), but the April 1972 determination (Document 30) still only listed 'departmental' functions for ministers, although the arrangements purported to convey final policy-making power in respect of some non-departmental bodies as well: for instance, the Museum Trust in the case of the Minister for Education (Document 30). In this respect these approved arrangements may have been invalid, for section 25(1) only permits the Minister for External Territories to approve by arrangements the extent and the manner to which the ministerial office-holders are to perform the functions of their offices as have been determined under section 24(3); it does not allow the Minister to increase the range of functions. This would require a fresh determination. The changes of April 1973 rectified the position by the express inclusion of non-departmental bodies in the determination.

One aspect of the definition of ministerial responsibilities was still left unclear. The determination allocated responsibility between the ministers by reference to the functions of various departments of the public service, and the question therefore arises as to what these functions are. This is not an entirely academic question, for inter-departmental disputes over responsibility for particular issues can give rise to political controversy. Section 21(1) of the *Public Service (Papua and New Guinea) Ordinance* 1963 (No.20

of 1964) provided that: 'The functions of each Department... shall be as determined by the Minister [for External Territories] after consideration of reports made to him by the Administrator and the Public Service Commissioner.' Any dispute could therefore be resolved by reference to these determinations. However, at the time of writing, such determinations as may have been made have not been made public.<sup>1</sup>

The third broad area of change, and perhaps the most significant innovation, was that the determination and the approved arrangements between them divided all the executive functions of government in Papua New Guinea into three categories: those for which Papua New Guinea ministers had final responsibility, those for which they had day-to-day responsibility but for which final authority lay with the Australian government, and those which lay completely outside their responsibilities.

This was set out in two stages. First, the determination set out the matters over which ministers were to perform their functions (Annex A). It then listed (Annex B) those matters for which 'full authority and responsibility remains [sic] with Australia'. Most, if not all, of the matters in Annex B did not fall within the functions of those departments and other bodies which were under the control of ministers, so Annex B did not limit the authority of ministers as set out in Annex A. It would appear that it was included primarily for the purpose of information. But it is significant that for the first time the determination spells out those areas of executive responsibility which lie completely outside the Papua New Guinea ministries. It is to be observed that a variety of governmental bodies exercise primary responsibility in respect of the matters set out in Annex B; for instance, a Papua New Guinean government department (legal aid); or a Papua New Guinea statutory authority (the University of Papua and New Guinea Council); or an Australian government department (defence); or an Australian statutory authority (Overseas Telecommunications Commission). However, ultimate policy control in all of these fields lies with the Australian Cabinet.

The approved arrangements then divided ministerial functions into the two categories of final responsibility and day-to-day responsibility. Previously the arrangements had specified in

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<sup>1</sup> A Directory published by the Department of Information and Extension Services in June 1971 lists the 'principal matters dealt with' by each department, but this guide has no legal status.

an annex those of a minister's functions over which he had final authority; over the rest, he exercised day-to-day control but final policy-making power remained with the Australian government (Documents 17 and 30). In the new arrangements the procedure was reversed: the annex specified those functions over which final authority remained with Australia, but over the remainder (except for public service matters), the minister would 'exercise full authority and accept full responsibility'.

In combination, therefore, the determination and approved arrangements of April 1973 lay down three categories of executive functions:

- (i) Matters in respect of which the ministers exercise full control and accept full responsibility; these matters embrace all those within the range of the functions of a minister as specified in Annex A of the determination minus those matters specified in the Annex to the approved arrangements.
- (ii) Matters in respect of which the ministers exercise day-to-day control; these are the matters specified in the Annex to the approved arrangements. In respect of these matters, the power to determine policy rests ultimately with the Australian government
- (iii) Matters which lie completely outside the control of the Papua New Guinea ministers; these are the matters specified in Annex B to the determination.

Although these distinctions were clearly defined in the instruments, they were less so in practice. In particular, the distinction between final authority and day-to-day control was eroded by increasing inter-governmental consultation in policy-making, and this consultation extended to matters formally outside ministerial responsibility. In his statement at the opening of the constitutional talks (Document 33), Mr Somare stressed that his government should be involved as much as possible in the formation of policy regarding all aspects of government, and there was no substantial difference between this statement and that of Mr Peacock on 18 May 1972 (Document 31). The decision to create ministerial spokesmen for defence and police is illustrative, for both these matters were areas over which the Papua New Guinea government had no formal authority. But the distinction still has some practical significance, and the Australian government did not relinquish its right to block policies of the Papua New Guinea government to which it was opposed.<sup>1</sup> The distinction also led

<sup>1</sup> In April 1973 the Australian government opposed AEC proposals concerning the composition of the national airline, and it was

some Papua New Guinea government officials to approach directly the Administrator or the Minister for External Territories on matters within an area where the final policy power lay with the Australian government.<sup>1</sup> The transfer of power remained a political issue in Papua New Guinea. On the one hand, some politicians were calling for a more rapid transfer of power,<sup>2</sup> while on the other, there was little reason to suppose that the opposition would not resist change on the ground that progress toward self-government had been too rapid.

The fourth general area of change was the omission of three significant matters which had been dealt with in previous arrangements. The first was the omission of any reference to a minister's role in relation to the AEC. The August 1970 arrangements required ministerial members to 'refer policy decisions and other matters' to the AEC where the AEC so directed (Document 17, clause A(3)(a)), and the Governor-General's instructions (Document 18, clause (1)(b)) allowed the Administrator to choose whether to follow the advice of a minister or to refer the matter to the AEC. The omission of clause A(3)(a) in the new determination removed the formal basis for the policy-making supremacy of the AEC over individual ministers, and while in practice it was likely that the Administrator and the ministers would by convention recognise the AEC as the supreme policy-maker, it is still difficult to understand why the reference to it was dropped. The second omission was to the minister's role in the House of Assembly (compare clause 1 of the August 1970 arrangements, Document 17). This is also a matter which might be said to be covered by the conventions of the Westminster system, but again it is difficult to understand the reason for the omission of the relevant clause.

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1 (continued)

implied that aid for civil aviation would be withdrawn if the Papua New Guinea government persisted in its view (Post-Courier, 25 May 1973). The result was a compromise which reflected more the Australian position. See Papua New Guinea Press Release B, nos 1091, 4 May 1973; 1099, 6 May 1973; 1107, 7 May 1973; and 1250, 19 May 1973.

<sup>1</sup> See pp.128-9.

<sup>2</sup> On 8 January 1973 the Minister for the Interior, Dr John Guise, requested that responsibility for 'law and order' should be transferred to the Papua New Guinea government (Papua New Guinea Press Release B, no.0063, 8 January 1973).

Thirdly, the 'Notes on conduct for holders of ministerial office' were omitted, and this omission may be of more practical significance. At least twice it has been alleged that ministers acted contrary to the standards of conduct set forth in the Notes on conduct. On the first occasion, in September 1970, the Ministerial Member for Labour was criticised for having accepted a directorship in a public company. The MHA who raised this issue referred to the Notes on conduct,<sup>1</sup> and the spokesman for the AEC seems to have conceded that there was a conflict.<sup>2</sup> In the event, the ministerial member resigned the directorship.<sup>3</sup> The second occasion was in March 1973, when members of the opposition alleged that the Minister for Agriculture, Stock and Fisheries had acted in violation of the Notes on conduct by virtue of his acceptance of a directorship in a public company. On this occasion the minister did not resign, as it was argued that the directorship was only honorary and that there was therefore no conflict with the Notes on conduct.<sup>4</sup> The applicability of the Notes on conduct was, however, fully accepted.

On the basis of this evidence, it would seem reasonable to conclude that both government and opposition politicians in Papua New Guinea had by April 1973 accepted that the Notes on conduct should govern the conduct of ministers. It is difficult therefore to understand the reason for their omission from the April 1973 approved arrangements. It may have been felt that the *Parliamentary Integrity Ordinance* 1971 (No.102 of 1971) dealt adequately with these matters. This Ordinance provides (sections 29 to 34) that ministers are not eligible to hold certain company directorships, and imposes on them a duty to disclose a wide range of financial transactions. In some respects, it is stricter than the Notes on conduct and a further advantage is that it provides machinery for legal enforcement of its provisions, although this machinery is so cumbersome that it may well be unworkable. However, in some respects the obligations imposed on ministers by the Notes on conduct were stricter than the Ordinance, and they were not limited to purely financial transactions. The Notes were also expressed in a language which was more positive and more comprehensible to laymen. Finally, it is to be noted that in April 1973 the Ordinance had not yet been brought into operation.

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<sup>1</sup> H.A.D., vol.II, no.11, p.3130, 8 September 1970.

<sup>2</sup> H.A.D., vol.II, no.11, p.3148, 8 September 1970.

<sup>3</sup> H.A.D., vol.II, no.11, p.3162, 10 September 1970.

<sup>4</sup> Papua New Guinea Press Release B, no.0803, 28 March 1973.

33. Statement by the Chief Minister, Mr M. Somare, MHA, at the opening of constitutional talks in Port Moresby, 27 July 1972<sup>1</sup>

Self-government is coming and we want it as soon as practicable. The time has come when our educated and capable men are ready to accept responsibility and once they get it and are seen to be doing the job the remaining people who have doubts will take confidence and support their leaders. If the handover of responsibility is too long delayed, however, the present climate of goodwill between ourselves and Australia could rapidly change under pressure of frustration. We are glad that our views on this issue seem to be shared by a progressive Minister for External Territories and by his Departmental officers.

This is the first in a proposed series of constitutional talks. At the outset I wish to state the principles which my government proposes to follow during these discussions.

(1) As the government, we shall take the initiative in preparing the country to accept the idea of self-government and independence and shall not press for the final legal handover until this step is in accordance with the will of our country's elected representatives in the House of Assembly.

(2) Prior to the handover to a legally recognised state of self-government there must be the maximum possible involvement of Papua New Guineans in the policy making for, and the practical administration of, every single part of government and semi-government machinery. This means that all practical day-to-day administrative decisions must be made here. Unless there is an absolutely vital Australian interest involved, the policy should be decided here also by my government. Given the present friendly relations with the Commonwealth, Australia's advice on policy will be carefully considered. We must get used to making our own decisions and it is my belief that it is we, who must live with the results, who will make the best decisions. I feel the Commonwealth should be prepared to handover final power in nearly all matters concerning internal self-government within the timetable agreed to by our governments and that Commonwealth efforts should now be directed towards ensuring that the best possible advice is put before us to help us make our own policy decisions. I ask the Commonwealth Minister before deciding to retain final power over something to consider whether it is vital to

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<sup>1</sup> Papua New Guinea Press Release B, no.2072, 27 July 1972.

Australia's interests to retain it. If not, then Australia's obligations to Papua New Guinea and to the United Nations would probably be best served by handing it over now to let us decide what sort of institutional or other arrangements need to be made.

(3) In all matters where formal handover is not immediately possible either because of temporary machinery or policy considerations the policy nevertheless should be as much involvement of Papua New Guinea ministers and officials as possible.

(4) These are really preliminary talks and it will not be possible to reach final agreement on many issues, especially as there has so far been insufficient time for us to work out our own policy on all matters. For instance, we have not yet considered all aspects of the future electoral machinery, or the economic development planning structure. On such matters as these we hope to have preliminary talks to sort out the issues and to determine which issues require AEC policy determinations and which issues fall within the terms of the Constitutional Planning Committee. During these talks we shall work out procedures and sort out issues to enable our officials to continue the handover operation. At the next talks, probably in October, we should be in a position to ratify the actual handover of substantial powers and the creation of new portfolios and institutions after the House of Assembly has had a chance to debate proposed changes. At that time it is hoped that the Constitutional Planning Committee will be in full operation and a target date for self-government will have been agreed to by the House of Assembly.

A smooth transition to self-government will require from Australia a great degree of tolerance, sensitivity and understanding.

Sir, my government is grateful for what Australia has done and we think you will continue to give us the support we need. We are prepared to do much more to help ourselves; however, we need special help to get over the last few hurdles. With that help our future is assured and Australia has discharged its trust.



34. Statement in the House of Assembly by the Chief Minister, Mr M. Somare, MHA, on the constitutional talks of July-August 1972, 31 August 1972<sup>1</sup>

Mr MICHAEL SOMARE (East Sepik - Chief Minister) - I ask leave of the House to make a statement.

Leave granted.

Mr MICHAEL SOMARE - Mr Speaker, I wish to report to this House on the constitutional talks which were held from 27 July to 7 August last and on matters arising from them.

The talks were attended by the ministers of this House, the Leader of the Opposition, Father John Momis, as Deputy Chairman of the Constitutional Planning Committee and the Minister for External Territories. During the closing stages a representative of the Mataungan Association attended.

Like myself, the Leader of the Opposition was assisted by advisers, one of whom was a lawyer provided from the Political Development Division of my own office.

After the first two days of ministerial discussion certain matters were referred to officials of the Australian and Papua New Guinea governments who discussed and reported on them. Father Momis also participated during these discussions. The ministerial talks were then resumed. Ministers considered the officials' reports and they reached agreement on some of those matters. Other topics were set aside for further study and discussion.

It was agreed that final powers over various matters could be transferred to the Papua New Guinea ministry now. In practice both this government and the previous government have been exercising these powers without reference to the Commonwealth for some time. What is about to happen is the step which formalises the constitutional position. The change will be made simply by the Minister for External Territories altering the approved arrangements regarding the powers of the Papua New Guinea ministers.

Unless this House objects, the matters over which power is to be transferred immediately are:

Cocoa Appeal Committee  
Coffee Appeal Committee  
Rubber Board

<sup>1</sup> House of Assembly Debates, Third House, Third Meeting of the First Session, vol.III, no.5, pp.461-3, 31 August 1972.

Supply of goods and services  
 Supply and Tenders Board  
 Wages and Industrial Relations Policy - private sector  
 Pollution etc., control  
 Arawa Municipal Commission  
 Area Authorities  
 Migration Policy - excluding security aspects  
 Papua New Guinea Harbours Board  
 Administration Fleet Policy  
 Political Education  
 Localisation and training - private sector  
 Parliamentary Drafting  
 Bankruptcy and Insolvency  
 Probate and Administration  
 Registration of births, deaths and marriages  
 Economic Development Programme structure  
 Culture  
 Volunteer Policy  
 Tariff Advisory Committee  
 Selective Entry for Employment  
 Land Settlement and Development Policy  
 Income Tax Review Tribunal

The proposed new arrangements by which this transfer of further power is to be effected are being prepared by the Commonwealth.

It was stated in the joint statement by the Minister for External Territories and myself that positions of Spokesman for Defence and Spokesman for the Police should be created.

It was agreed that the function of the Spokesman for Defence will be to:

- (a) answer parliamentary questions and make statements on defence matters;
- (b) consult the Administrator, present submissions to the AEC, and lead discussions in the AEC in regard to the development of the Papua New Guinea forces and defence policies; and
- (c) undertake ceremonial duties.

The Commonwealth has undertaken to second a suitably qualified senior public servant to head up a Defence Section to be created initially in the Department of the Administrator. This Section will support the Spokesman for Defence.

Although Australia will continue to be fully responsible as now for the final control over the defence of Papua New Guinea and for the defence forces employed in Papua New Guinea,

the creation of a ministerial Spokesman for Defence will provide the means for effective consultation which will ensure that the defence forces are trained and developed in ways which will satisfy Papua New Guinea's long-term national interests.

With regard to police the situation is very similar. It is not intended to transfer final power over the police at this stage and so it is not appropriate to create a ministerial portfolio. A minister will, however, be appointed as Spokesman for Police and will speak on police matters in this House. He will consult with the Administrator and the Commissioner for Police and will take part in discussions of policy concerning the Police Force and police actions.

Initially I intend to assume responsibility for both these positions myself.

The Minister for External Territories also agreed to my request that the Papua New Guinea Act be amended to remove the then existing restrictions on the number of ministers who can be appointed. The necessary amendment, to section 24 of the Papua New Guinea Act, has now been passed by the Commonwealth. I wish to ask the Minister for External Territories to create three additional positions of Minister but I shall not make this request if the House on resolution objects.

Constitutional talks will be held in October to discuss further constitutional matters, including future financial arrangements between Australia and Papua New Guinea, and to consider the transfer of further power to the Papua New Guinea government. The Leader of the Opposition, the Deputy Chairman of the Constitutional Planning Committee and a representative of the Mataungan Association will be invited to attend these talks.

I move -

That the House take note of the Paper. Debate adjourned.

35. Sphere of authority of ministers: determinations made by the Minister for External Territories, Mr W.L. Morrison, under section 24 of the Papua New Guinea Act 1949-1972, 30 April 1973

Determination under section 24(1)

WHEREAS sub-section (1.) of section 24 of the *Papua New Guinea Act 1949-1972* provides that there shall be such number of

offices of Minister of the House of Assembly as the Minister for External Territories from time to time determines:

NOW THEREFORE I, WILLIAM LAWRENCE MORRISON, the said Minister, pursuant to sub-section (1.) of section 24 of that Act

- (a) DETERMINE that there shall be seventeen offices of Minister of the House of Assembly; and
- (b) REVOKE all prior determinations made pursuant to the said sub-section.

Dated this 30th day of April 1973

W.L. MORRISON  
Minister for External Territories

Determination under section 24(2), (3), (4)

WHEREAS sub-section (2.) of section 24 of the *Papua New Guinea Act 1949-1972* provides that ministerial offices shall have such respective designations as the Minister for External Territories from time to time determines;

AND WHEREAS sub-section (3.) of that section provides that in respect of each ministerial office the said Minister shall determine, from time to time, the matters in respect of which the holder of the office is to perform the functions of a Minister of the House of Assembly;

AND WHEREAS sub-section (4.) of that section provides that without limiting the generality of the last preceding sub-section, the matters that may be determined by the said Minister under sub-section (3.) in relation to ministerial office may include all or any of the matters to which the functions of a specified department of the public service relate:

NOW THEREFORE I, WILLIAM LAWRENCE MORRISON, the said Minister, pursuant to sub-section (2.) and (3.) of section 24 of the Act -

- (a) DETERMINE
  - (i) that the offices of Minister of the House of Assembly shall be of such respective designations as are set out in column one of Annex A attached hereto; and
  - (ii) that the matters in respect of which the holder of the respective office is to perform the functions of a Minister of the House of Assembly shall be as set out in column two of the said Annex A; and

(iii) that none of the holders of the office of Minister of the House of Assembly as set out in column one of Annex A shall perform the functions of a Minister of the House of Assembly in respect of the matters set out in Annex B attached hereto. In respect of the matters set out in Annex B full authority and responsibility remains [sic] with Australia;

and

(b) REVOKE all prior determinations made pursuant to the said sub-sections.

Dated this 30th day of April 1973.

W.L. MORRISON

Minister for External Territories

ANNEX A

COLUMN ONE

COLUMN TWO

DESIGNATION OF MINISTERIAL OFFICE

MATTERS FOR PERFORMANCE OF FUNCTIONS

Chief Minister

All the matters related to the functions of the Department of the Chief Minister and Development Administration and the  
 . Museum Trust

Minister for State and Minister assisting the Chief Minister

All the matters related to the functions of the Department of the Chief Minister and Development Administration including the functions of District Administration and Local Government as are delegated by the Chief Minister

Minister for Agriculture, Stock and Fisheries

All the matters related to the functions of the Department of Agriculture, Stock and Fisheries and the -  
 . Cocoa Appeal Committee  
 . Coffee Appeal Committee  
 . Papua New Guinea Coffee Marketing Board  
 . Papua New Guinea Copra Industry Stabilisation Board  
 . Papua New Guinea Copra Marketing Board

	<ul style="list-style-type: none"> <li>. Rubber Board</li> <li>. Veterinary Surgeons Board</li> </ul>
Minister for Business Development	<p>All the matters related to the functions of the Department of Business Development and the -</p> <ul style="list-style-type: none"> <li>. Co-operative Education Trust</li> </ul>
Minister for Education	<p>All the matters related to the functions of the Department of Education and the -</p> <ul style="list-style-type: none"> <li>. Territory Education Board</li> </ul>
Minister for Finance	<p>All the matters related to the functions of the Department of the Treasury and the -</p> <ul style="list-style-type: none"> <li>. Income Tax Review Tribunal</li> <li>. Retirement Benefits Board</li> <li>. Public Officers Superannuation Board</li> <li>. Supply and Tenders Board</li> </ul>
Minister for Forests	<p>All the matters related to the functions of the Department of Forests</p>
Minister for Health	<p>All the matters related to the functions of the Department of Public Health and the -</p> <ul style="list-style-type: none"> <li>. Institute of Human Biology</li> <li>. Medical Board</li> <li>. Nursing Council</li> </ul>
Minister for Information	<p>All the matters related to the functions of the Department of Information and Extension Services</p>
Minister for the Interior	<p>All the matters related to the functions of the Department of Social Development and Home Affairs, the Corrective Institutions Branch of the Department of Law and the -</p> <ul style="list-style-type: none"> <li>. Cemetery Authority</li> <li>. Child Welfare Council</li> <li>. Housing Commission</li> <li>. Liquor Licensing Commission</li> </ul>

## Minister for Labour

All the matters related to the functions of the Department of Labour and the -

- . Apprenticeship Board
- . Metric Conversion Board
- . Minimum Wages Board
- . Bureau of Industrial Organisations

## Minister for Lands and Environment

All the matters related to the functions of the Divisions of Lands and Surveys of the Department of Lands, Surveys and Mines (except those functions specified for the Minister for Mines) and the -

- . Land Board
- . National Parks and Gardens Board
- . Recreation Reserve Trust
- . Sir Hubert Murray Stadium Trust
- . Surveyors Board
- . Surveyors Appeal Board
- . Town Planning Board
- . Valuers Registration Board

## Minister for Mines

All the matters related to the functions of the Division of Mines of the Department of Lands, Surveys and Mines and the -

- . Board of Examiners (Mines and Works)
- . Mining Advisory Board
- . Petroleum Advisory Board

## Minister for Posts and Telegraphs

All the matters related to the functions of the Department of Posts and Telegraphs

## Minister for Trade and Industry

All the matters related to the functions of the Department of Trade and Industry and the -

- . Tariff Advisory Committee
- . Tourist Board

## Minister for Transport

All the matters related to the functions of the Department of Transport and the -

- . Harbours Board
- . Marine Boards
- . Passenger Transport Control Board
- . Receiver of Wrecks in Territorial Waters

Minister for Works

All matters related to the functions of the Department of Public Works and the -

- . Appeals Tribunal under Building Regulations
- . Building Boards
- . Water Resources Advisory Board

ANNEX B

Matters in respect of which responsibility is not at present applicable to the functions of any office of Minister of the House of Assembly as designated in Annex A attached hereto and for which full authority and responsibility remains [sic] with Australia:

Defence matters including defence frequency allocation and reserves  
 International matters including relations with other countries  
 Internal security  
 Civil aviation  
 Constitutional development  
 House of Assembly matters  
 Supervisory role over land in accordance with Article 8 of the Trusteeship Agreement  
 Australian Government occupied land  
 Land Titles Commission  
 Custodian of expropriated property  
 Citizenship  
 Development Bank  
 Banking  
 Currency  
 Electricity Commission  
 Meteorology  
 Audit  
 Supreme Court and the judiciary  
 Administration of justice  
 Bankruptcy and insolvency  
 Probate and administration  
 Registration of births, deaths and marriages  
 Parliamentary drafting  
 Crown Solicitor  
 Public Solicitor  
 Prosecutions  
 Lower courts  
 Legal aid



Law revision and consolidation  
 Copyright, designs, patents and trade marks  
 Registration of companies  
 Companies Auditors Board  
 Public service and other public employment  
 Teaching Service Commission  
 Australian Broadcasting Commission  
 Overseas Telecommunications Commission  
 Police  
 Police Appeal Tribunal  
 Police Promotions Appeal Tribunal  
 Police Promotions Selection (Commissioned Officers) Board  
 Police Promotions Selection (Other Ranks) Board  
 Papua New Guinea Institute of Technology Council  
 University of Papua New Guinea Council  
 Commissions of inquiry

36. Arrangements approved by the Minister for External Territories, Mr W.L. Morrison, pursuant to section 25 of the Papua New Guinea Act 1949-1972, 30 April 1973

WHEREAS sub-section (3.) of section 24 of the *Papua New Guinea Act 1949-1972* provides that the Minister for External Territories shall determine, from time to time, the matters in respect of which the holder of each ministerial office is to perform the functions of a Minister of the House of Assembly;

AND WHEREAS sub-section (4.) of that section provides that, without limiting the generality of the last preceding sub-section, the matters that may be determined by the said Minister under that sub-section in relation to a ministerial office may include all or any of the matters to which the functions of a specified department of the public service relate:

AND WHEREAS sub-section (1.) of section 25 of that Act provides that in respect of the matters so determined the functions of a Minister of the House of Assembly are to assist in the administration of the government of Papua New Guinea and, in particular -

- (a) to take part in the formulation of policies and plans, and of proposals for expenditure, in relation to those matters;
- (b) to make recommendations to the Administrator's Executive Council of Papua New Guinea in relation to those matters;

- (c) where any of those matters are dealt with by a department of the public service - to take part in the direction of the activities of that department relating to those matters;

and

- (d) to represent the Administration in the House of Assembly;

AND WHEREAS it is further provided by sub-section (1.) of that section that such functions are to be carried out to the extent and in the manner provided by arrangements approved by the said Minister and applicable to each office of Minister of the House of Assembly:

NOW THEREFORE I, WILLIAM LAWRENCE MORRISON, the said Minister, pursuant to sub-section (1.) of section 25 of the said Act

- (1) APPROVE the following arrangements applicable to each office of Minister of the House of Assembly.
- (a) Consistent with any lawful agreement or obligation entered into in respect of Papua New Guinea by the Administration of Papua New Guinea or by the Government of Australia, and consistent with the responsibility of the Australian Government for the defence and international relations of Papua New Guinea, a Minister of the House of Assembly shall exercise full authority and accept full responsibility in relation to the matters specified for the designation applicable to him in the Annex A attached to the Determination dated 30 April 1973 made pursuant to section 24 of the *Papua New Guinea Act 1949-1972* other than aspects which are concerned with public service matters, except those matters set forth in the Annex attached to this approval;
- (b) In respect of those matters set forth in the attached Annex, a Minister of the House of Assembly shall be responsible within the framework of broad policy agreed upon by the Government of Papua New Guinea and the Government of Australia for day to day decisions regarding policy and for administrative actions including the formulation of draft estimates of the department, statutory office, body or authority, or part thereof, as may be determined, other than aspects which are concerned with public service matters;

and

- (2) REVOKE all prior approved arrangements made pursuant to section 25 of the said Act.

Dated this 30th day of April 1973

W.L. MORRISON  
Minister of State for External Territories

ANNEX

Ministers of the House of Assembly will be responsible for day-to-day decisions within the framework of broad policy agreed upon by the Government of Papua New Guinea and the Government of Australia in the following matters for which full authority and responsibility remain with Australia:

Fisheries matters in waters adjacent to Papua New Guinea  
Improvement programme  
Major projects including allocation of resources and issuing of special mining leases or onshore petroleum leases  
Offshore petroleum leases  
Offshore mineral leases  
International trade and commodity policy including international marketing aspects of commodity boards  
Higher education  
Broadcasting programme policy, and television  
External publicity  
Electoral policy  
Insurance  
World Bank, United Nations loans and loans from international sources  
Registered land  
International frequency allocation  
Overseas broadcasting  
Tariff matters  
Trade Promotion  
International Maritime Law  
Development Bank  
Investment Corporation  
Investment policy  
Superannuation and retirement benefits  
Security aspects of migration policy  
Security and international aspects of volunteers policy  
Intelligence and security aspects of District Administration and other agencies

## Part VII

### The delegation of executive power

The transfers of power that have been described so far were all concerned with executive power in the political sense; they did not affect the location of political power in the legal sense.<sup>1</sup> The various determinations and approved arrangements transferred political power. That is, they conferred on ministerial office-holders in Papua New Guinea (and through them the AEC) the power to decide government policy concerning the application and alteration of the laws: they did not confer any legal power to take action under the laws. Most of the legal powers were vested in the Administrator or other public officials (mostly the permanent heads of departments). In fact, section 25(2) of the Papua New Guinea Act specifically prohibited the conferment of 'any powers, functions or duties in relation to the Government of the Territory' (i.e., any legal powers) on any ministerial office-holder 'in his capacity as the holder of such an office'. There has been no official explanation of why this subsection was inserted into the Act in 1968, or why it was not removed as the process of transferring final authority (in the political sense) to Papua New Guinea ministers got under way.

The existence of this provision created an anomalous situation when the transfer of political power began. From August 1970 final policy-making powers in various areas were conferred on ministerial office-holders, but the legal powers were still vested in the Administrator and other officials. For example, the approved arrangements of 21 August 1970 conferred on the Ministerial Member for Education final power in respect of a number of areas of government responsibility in the field of education (see Document 17), and in respect of many of these areas the relevant law was the *Education (Papua and New Guinea) Ordinance* 1970 (No.48 of 1970). This Ordinance, however, did

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<sup>1</sup> On the distinction between the political and legal senses of the concept of executive power, see pp.6-7.

not confer any legal power on the ministerial member; for instance, the arrangements gave the member final power in respect of 'mission education operations including grants-in-aid', but section 116 of the Ordinance conferred the power to make the grants-in-aid on the Administrator. After 21 August 1970 therefore, the executive power to make policy respecting grants-in-aid was vested in the ministerial member but the executive power to take the legal steps necessary to make a lawful grant-in-aid was vested in the Administrator. The *Education (Papua and New Guinea) Ordinance* 1970 was introduced as a Bill in the House of Assembly on 2 June 1970,<sup>1</sup> and in the light of the 4 March 1970 approved arrangements it might have been expected that it would confer legal powers on the Ministerial Member for Education. But section 25(2) of the Papua New Guinea Act prevented this. A similar situation existed in respect of all the other fields of government responsibility over which the ministerial office-holders had the final policy-making power.

The situation could have been largely resolved by the adoption of a convention that in relation to the fields of ministerial responsibility the Administrator and other authorities should exercise their legal powers only with the concurrence of the ministerial office-holders. In his speech of 4 March 1970 explaining the approved arrangements of that date, Mr Barnes indicated that such a practice should be adopted (Document 9), and undoubtedly it has been adopted in relation to many powers. There are, however, at least two difficulties with such an approach. First, there are legal limits<sup>2</sup> as to how far an authority vested with statutory functions may bind itself to act with the concurrence of some other body; secondly, the ministerial office-holders would still appear to be dependent on the Administrator and other authorities. For whatever reason, it was considered that steps should be taken to vest the ministerial office-holders with legal powers in their fields of responsibility.

A possible step in this process would have been the repeal of section 25(2) of the Papua New Guinea Act, although this would have been of assistance only in respect of Ordinances made after the date of the repeal: prior Ordinances would have been unaffected. Nevertheless, the repeal of section 25(2) would have simplified matters in respect of future Ordinance; certainly it will soon become necessary to directly

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<sup>1</sup> H.A.D., vol.II, no.10, p.2680, 2 June 1970.

<sup>2</sup> See De Smith (1968:292-3).

vest legal powers in the ministers. There has been no official explanation of why section 25(2) has not been repealed but one consequence of its retention may be noted. Section 25(2) has required the adoption of the technique of delegation in order to vest legal powers in the ministers, and one important feature of a delegation is that it may be revoked by simple administrative act of the Administrator (see below). In contrast, an Ordinance which vested legal power in a minister could only be revoked either by an Australian Act or by an Ordinance of the House of Assembly. The retention of section 25(2) has therefore required the adoption of a technique for the transfer of legal powers to the ministers which allows to the Australian government, acting through the Administrator, a close control over the exercise of those powers.

As indicated, the vesting of legal powers in the ministerial office-holders has been accomplished by the delegation of powers to them by the Administrator. Such delegation is expressly permitted by section 25(2), which provides that 'this sub-section does not operate so as to prevent the delegation to the holder of a ministerial office of powers or functions under an Ordinance'. Certain types of legal powers could have been delegated without a statutory authorisation (De Smith 1968:281-92) but it has been felt necessary to provide a statutory basis for the delegation of powers to ministerial office-holders. Section 17(1) of the Papua New Guinea Act (which has been part of the Act since 1949) is a possible basis for the delegation of power from the Administrator to ministerial office-holders. It provides that:

The Administrator may appoint a person, or any persons jointly or severally, to be the deputy or deputies of the Administrator within Papua New Guinea, or a part of Papua New Guinea, and in that capacity to exercise during the pleasure of the Administrator such powers and functions of the Administrator as he assigns to the deputy or deputies.

In the past this provision has been frequently used as a means of delegating powers vested in the Administrator to officials in the public service. There is no reason why it could not have been used in respect of ministerial office-holders but it has never been so used; nor was section 17 used to delegate powers to the under-secretaries. The problem of delegation has been approached by the enactment of Ordinances specifically designed to permit delegation to the ministerial office-holders.

The first of these was the *Administrator's Powers (Delegation) Ordinance* 1970 (No.16 of 1970), enacted in March 1970. The approved arrangements of 4 March 1970 (Document 10) provided that 'powers may be delegated to ministerial members according to law', and the Ordinance was directly related to this provision. It provided (section 3(1)) quite simply that the Administrator 'may delegate to the holder of a ministerial office or any other person all or any of his powers and functions', subject to certain limitations similar to those contained in section 10 of the *Administrative Arrangements (Vesting of Powers) Ordinance* 1971-1972 (Document 37). Such delegations were revocable, in writing, at will by the Administrator, and the delegation of a power did not prevent the exercise of the power by the Administrator (section 3(3)). The Bill for this Ordinance was passed by the House of Assembly without a division, but most speakers to it expressed the view that only minor powers should be delegated to ministerial office-holders. Perhaps because of this, and perhaps also because most of the ministerial members were not anxious to acquire final responsibility in any more areas, very few delegations were made under this Ordinance; nevertheless, it is somewhat surprising that more use was not made of it after the 21 August 1970 approved arrangements.

The major defect in the 1970 Ordinance was that the Administrator was limited to delegating powers or functions which were vested in him, and there was no means whereby ministerial office-holders could be vested with powers conferred by Ordinance on officials in the public service. The major object of the *Administrative Arrangements (Vesting of Powers) Ordinance* 1971 (No.28 of 1971) was therefore to remedy this defect.<sup>1</sup> The Second Reading Speech of the then Secretary for Law, Mr L. Curtis (Document 38), explained satisfactorily the object of the Ordinance, and there is little need for elaboration here. Section 9 of the Ordinance permitted the delegation by the Administrator of his functions to ministerial office-holders; section 8 permitted the Administrator to vest in himself 'all or any of the powers and functions conferred by or under any Ordinance upon any officer of Papua New Guinea'; a power thus

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<sup>1</sup> This Ordinance as enacted has not been reproduced in this collection; rather, the 1971 Ordinance as amended by the *Administrative Arrangements (Vesting of Powers) (Amendment) Ordinance* 1972 (No.42 of 1972) has been included (Document 37). The references to both of these Ordinances are to the provisions of the Ordinance after the 1972 amendments.

vested in the Administrator may then be delegated to a ministerial office-holder under section 9. The Administrator may revoke a delegation and may exercise the power notwithstanding the delegation. Section 10 provided that certain powers may not be delegated.

The 1971 Ordinance was amended in 1972, and the object of the amending Ordinance was adequately explained in the note of the mover of the Bill (Document 39). The most important amendment was the insertion of sub-section (3) of section 8. It could be argued that the phrase 'officer of Papua New Guinea' in section 8(1) refers only to officers of the public service, and the public service excludes statutory bodies such as the Royal Papua and New Guinea Constabulary and the Housing Commission. Section 8(3) made it clear that sections 8(1) and (2) apply in respect of powers vested in the officers of such bodies.

The manner in which the Administrator used his powers under the *Administrative Arrangements (Vesting of Powers) Ordinance 1971-1972* is illustrated by an extract from the Papua New Guinea Government Gazette of 10 August 1972 (Document 40). On 20 June 1972 a large number of powers were delegated to the ministers, although prior to this date the Administrator and the other authorities had as a matter of convention only exercised their powers on the advice of the minister concerned. The delegation of the powers indicated in the First Schedule involved the use of sections 8 and 9 of the Ordinance. By section 8 a power vested in an officer (for example, the Secretary for Labour) is vested in the Administrator, and by section 9 this power is then delegated to the Minister for Labour. The delegation of the powers specified in the Second Schedule involved the use of section 9 only as these are powers which by Ordinance are vested in the Administrator.

37. *Administrative Arrangements (Vesting of Powers) Ordinance 1971-1972*<sup>1</sup>

AN ORDINANCE

Amended by                      To provide for the vesting of certain statutory powers in the Administrator and for the delegation of certain powers and functions of  
No.42 of 1972                      s.8

<sup>1</sup> This Ordinance is comprised of the *Administrative Arrangements (Vesting of Powers) Ordinance 1971* (No.28 of 1971) as amended by the *Administrative Arrangements (Vesting of Powers) (Amendment) Ordinance 1972* (No.42 of 1972).



the Administrator to Ministers and other persons, and for other purposes....

## 6. Definitions

In this Ordinance -

Definition  
"function" ins.  
by No.42 of  
1972, s.3(1)

"Commonwealth Act" means an Act of the Parliament of the Commonwealth apply [sic] of its own force in Papua New Guinea;

"function" includes duty and responsibility;

"Imperial Act" means an Act of Parliament of the United Kingdom applying of its own force in Papua New Guinea.

## 8. Re-vesting of powers, etc., of officers

(1) The Administrator may, by virtue of this section, by order published in the Gazette vest in himself all or any of the powers and functions conferred by or under any Ordinance upon any officer of Papua New Guinea.

(2) Where a power or function is vested in the Administrator under subsection (1) of this section, that vesting takes effect -

(a) to deprive the officer concerned of that power or function; and

(b) if the power is a power of delegation, to revoke any delegation given under it.

Subsection (3)  
ins. by No.42  
of 1972, s.4

(3) In this section, 'officer of Papua New Guinea' includes any person who holds an office that -

(a) is constituted by or under an Ordinance; and

(b) is for the time being specified by the Administrator, by notice in the Gazette, for the purpose of this definition.

PART III - DELEGATION OF POWERS OF THE ADMINISTRATOR

Amended by  
No.42 of 1972,  
s.8

9. Delegation

(1) The Administrator may, by instrument in writing under his hand, delegate to a Minister or any other person all or any of his powers or functions (but not including any power or functions specified in section 10 of this Ordinance).

(2) A delegation under subsection (1) of this section may be given to two or more persons jointly or severally.

(3) A power or function may be delegated under this section notwithstanding that the law which confers the power or function makes different provision for delegation.

10. Excepted powers

The powers and functions which may be delegated under section 9 of this Ordinance do not include -

(a) the power conferred by section 8 of this Ordinance;

(b) the power of delegation conferred by section 9 of this Ordinance;

(c) any power or function under any Commonwealth Act or Imperial Act.

Subparagraph (d)  
repealed by No.42  
of 1972, s.5

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(e) the power to make regulations or any other power which may by law be exercised by the Administrator only after he has received the advice of the Administrator's Executive Council;

(f) any function of the Administrator in making recommendations or reports to or otherwise advising the Minister;

(g) the power to make appointments under subsection (5) of section 32 of the *Ordinance Interpretation Ordinance* 1949-1969;

(h) the powers and functions conferred by section 32 of the *Parliamentary Powers and Privileges Ordinance* 1964-1971; or

(i) any power or function to be exercised jointly with the Public Service Board.

Section 10A 10A. Approval of certain instruments of delegation  
ins. by  
No.42 of 1972,  
s.6

(1) Where, under section of this Ordinance, the Administrator delegates any power to bring an Ordinance or any other law of Papua New Guinea into operation, or to suspend the operation, or to extend or terminate the period of operation, of any Ordinance or other law, the instrument by which he delegates that power shall -

- (a) be notified in the Gazette;
- (b) be laid before the House of Assembly within fifteen days of the House after the date of the making of the instrument; and
- (c) take effect from the date of the passing of a resolution of the House approving the instrument.

(2) Notice of the passing of a resolution of the House under subsection (1) of this section shall be published in the Gazette.

Amended by  
No.42 of  
1972, s.8

11. Delegation of certain powers of delegation

Where the Administrator delegates any power or function under section 9 of this Ordinance to any Minister or other person, he may, in the same or another instrument of delegation, also delegate to that person the power to further delegate, by instrument in writing under his hand, the power or function to any person or to a person or a member of a class of persons, specified in the instrument.

#### PART IV - DELEGATIONS GENERALLY

Amended by  
No.42 of  
1972, s.8

12. Definition for purposes of Part IV

In this Part, unless the contrary intention appears -

"delegate", in relation to a power or function delegated to a Minister or

other person under section 9 of this Ordinance, includes a person to whom that power or function is sub-delegated by virtue of a delegation under section II of this Ordinance;

"delegation under this Ordinance" includes a sub-delegation given by virtue of a delegation under section II of this Ordinance;

"delegator", in relation to a power or function delegated to a Minister or other person under section 9 of this Ordinance, includes that person sub-delegating that power or function under section II of this Ordinance.

### 13. Exercise of delegated powers and functions

(1) An instrument of delegation under this Ordinance may provide that the delegated powers and functions may be exercised and performed by the delegate in relation to such matters or classes of matters, to such part of Papua New Guinea and to such extent, in such manner and subject to such conditions and limitations (if any) as are specified in the instrument.

(2) Where an instrument of delegation under this Ordinance does not specify a part of Papua New Guinea in relation to which the delegated powers and functions may be exercised and performed, they may be exercised and performed in relation to the whole of Papua New Guinea.

### 14. Effect of delegation

A delegation under this Ordinance is revocable by the delegator in writing at will, and subject in the case of a sub-delegation by virtue of a delegation under section II of this Ordinance to the terms of the delegation, no delegation under this Ordinance prevents the exercise or performance of a power or function by the delegator.

Section 15 15. Consequential references

ins. by  
No.42 of 1972,  
s.7

Where any power or function is delegated under this Ordinance, any reference in any law of Papua New Guinea to the delegator shall, in relation to the exercise or performance of the delegated power or function by the delegate, be read as including, as appropriate, a reference to the delegate.

38. Extracts from the speech to the House of Assembly by the Secretary for Law, Mr L. Curtis, moving the second reading of the *Administrative Arrangements (Vesting of Powers) Bill* 1971, 18 March 1971<sup>1</sup>

Mr CURTIS (Secretary for Law) - Mr Deputy Speaker, I move -  
That the Bill be now read a second time.

Mr Deputy Speaker, this Bill is a machinery measure only, to give effect to the constitutional arrangements under the Papua and New Guinea Act under which ministerial office-holders have authority and responsibility for a wide range of functions of government in the Territory....

[Mr Curtis then outlined the basic provisions of the then current determination and approved arrangements.]

Now we come, Mr Deputy Speaker, to the practical working out of these arrangements and it is this practical working out of the arrangements with which my Bill is concerned - not with conferring power but with the practical working out of the power already conferred. Many of the matters over which ministerial office-holders have responsibility - either final responsibility or day-to-day responsibility - are regulated by Ordinance in the Territory. The Ordinances confer statutory powers on the Administrator or on heads of departments, or on other officers.

Let me give an example...from my own department. The Corrective Institutions Ordinance provides for a Controller of

<sup>1</sup> House of Assembly Debates, Second House, Thirteenth Meeting of the First Session, vol.II, no.13, pp.4086-9, 18 March 1971.

Corrective Institutions and says that he is responsible for administering corrective institutions under the authority of the Administrator. As it were, that leaves the Administrator to supervise the corrective institutions service, with certain day-to-day powers being vested by the Ordinance directly in the Controller. The Administrator also has certain other powers in that Ordinance. For example he has the power to open or to close a corrective institution. So that the Assistant Ministerial Member for Corrective Institutions [Mr Singiliong] himself can exercise the powers given by the Minister under the Papua and New Guinea Act, it is necessary for that statutory power under our Ordinance to be vested in him. Until it is so vested in him, the Administrator himself has to sign the actual document. But I want to try to make one point clear on this, Mr Deputy Speaker. Even though the power to sign the actual document vests in the Administrator under these approved arrangements, the Administrator must act upon Mr Singiliong's advice. If the Administrator disagrees with Mr Singiliong's advice, the Administrator must take it to the AEC and he is then required to act on the advice of the AEC. While the statutory power remains with the Administrator, Mr Singiliong cannot sign the document, but in effect he has the power to say what documents shall be signed. The purpose of the Bill I bring in, Mr Deputy Speaker, is to enable, in a case like that, Mr Singiliong to be given the power to sign the document himself. And so over the whole range of functions for which ministerial office-holders have some responsibility, so that they can effectively exercise in practice these powers and responsibilities, we have to enable them to perform the statutory functions themselves.

Now, Mr Deputy Speaker, we cannot by Ordinance directly confer on the ministerial office-holder these statutory functions. The Papua and New Guinea Act expressly forbids the passing of an Ordinance which confers powers, functions or duties on a ministerial office-holder. We cannot, for example, in this Chamber, Mr Deputy Speaker, validly make an Ordinance which directly confers on a ministerial holder the power to sign an instrument of some kind. What we can do is to empower the Administrator - in whose hands many of these powers already are - to delegate his power to the ministerial office-holder. This may seem a fine distinction, Mr Deputy Speaker, but it happens to be an all important distinction in law, between conferring the power directly and empowering the Administrator to delegate it.

Last year the House passed the Administrator's Powers (Delegation) Ordinance which authorised the Administrator to

delegate his powers and functions to ministerial office-holders except certain powers and functions which ought to be exercised by the Administrator himself. Some of those which were expressly reserved for the Administrator were important ones: for example the power to bring legislation into effect. Any power which he has to exercise on advice from the AEC would not be constitutionally appropriate, vested in anyone lower than himself. These are the types of powers which, for example, in the Commonwealth are vested in the Governor-General and would never be delegated.

A number of delegations have already been given. For example in the education legislation last year the Ministerial Member for Education was delegated almost the whole of the Administrator's powers under the Education Ordinance except, if I remember rightly, the power to bring the Ordinance into effect, the power to make regulations and I think perhaps one or two other powers which are of considerable importance.

I am currently engaged in preparing a large number of other delegations to enable ministerial office-holders to exercise statutory powers and functions. But there is a problem which was not dealt with by the Ordinance which the House passed last year. What we have to do, Mr Deputy Speaker, is to get into the hands of the ministerial office-holders the power to perform the statutory functions now vested in heads of departments and other officers. Most of the legislation in the Territory was drafted at a time when we did not have ministerial office-holders and when heads of departments exercised the kinds of powers usually vested in ministers in other countries. For example, Mr Deputy Speaker, most of the statutory functions under the Land Ordinance are vested in the Director of Lands, Surveys and Mines. He must, of course, exercise them in accordance with government policy, but it is the Director of Lands, Surveys and Mines himself who has the power to put his name on the bottom of the document and if the Director's name is not on the bottom of the document it is not a valid document.

With final responsibility being given in a number of matters to the Assistant Ministerial Member for Lands and Surveys, the Director of Lands, Surveys and Mines would, in respect of any one of those matters, have to exercise his power to sign the document in accordance with instructions from his Assistant Ministerial Member. What we have to do, Sir, is to get into the hands of the Assistant Ministerial Member himself the right to sign the document. That is the important thing - the right to sign the document. Now it would not be proper to do what we did last year with the Administrator and empower

the departmental heads to delegate their powers to their ministerial office-holders. Delegation must come downwards, not upwards. Power and authority travels down; it does not flow up in the government structure.

As I have said, it would be simpler to have conferred these powers directly to ministerial office-holders by legislation, but the Papua and New Guinea Act prohibits doing this. Consequently we have to adopt what would seem to be a roundabout way of achieving the same result. What the Bill proposes is that the Administrator be given power to vest in himself powers and functions now conferred by Ordinance on departmental heads. He will do this by notice in the 'Gazette'. To take the example from the Land Ordinance, if this Bill is passed by the House, the Administrator would then have power to transfer to himself powers now vested in the Director of Lands, Surveys and Mines. Now, having taken power from the director's hands, he may then delegate them down to the ministerial office-holders. The result would be the same as if the power to sign the documents were directly transferred by Ordinance and it has preserved the principle that authority must be delegated downwards. Now while we could have prepared a separate Bill to achieve this it has been much more convenient, Mr Deputy Speaker, to draft a Bill which would repeal last year's Ordinance and put everything into one coherent document.

To summarise, Mr Deputy Speaker, the Bill now before the House does not, of itself, transfer power from the Commonwealth Government to ministerial office-holders. That has already been done. Our Bill is a machinery measure to empower the Administrator to do two things. Firstly it divests departmental heads and other officers of certain statutory functions and vests them in himself. Secondly it empowers him then to delegate his powers and functions to the ministerial office-holders. The only exceptions to this power of delegation are the ones the House made last year. These are important functions like bringing Ordinances into effect, making regulations and so on.

I mention one further point of detail in the Bill, Mr Deputy Speaker. There will be occasions when the ministerial office-holder will need to allow his departmental head or some other senior officer to exercise powers and functions delegated to him. For example there may be powers and functions which have to be exercised in an emergency or at a time when the ministerial office-holder is not available. In such a case the departmental head or other officer could be expected to exercise these powers and functions in accordance with the policy laid down by the ministerial office-holder because the



minister is in control. We therefore have a provision in the Bill - clause II - which will enable the ministerial office-holder to further delegate to his departmental head or senior officers, some of the powers or functions delegated to him by the Administrator. For example it might be necessary for the Director of Education to be able to exercise, during a time when the Ministerial Member for Education is not available, some of the powers and functions which the Ministerial Member now has. If this Bill is passed the Ministerial Member will be able to hand down some of his powers and functions. It will not stop his exercising them himself. But it will enable his department to carry on at a time when he is not immediately available to sign the documents. Again this emphasises the principles that power flows down and that the ministerial office-holder is in charge of his department....

39. Mover's<sup>1</sup> note to the *Administrative Arrangements (Vesting of Powers) (Amendment) Bill 1972, 23 May 1972*<sup>2</sup>

As the long title states, the purpose of the present Bill is to overcome certain practical difficulties that have been experienced in the exercise of vesting statutory powers and functions in ministers.

Firstly, the Principal Ordinance refers to 'powers and functions'. It is at least arguable that 'function' does not include 'duty' or 'responsibility', and the fact that it does is made clear by clause 3, which, for safety's sake, is back-dated to the date of commencement of the Principal Ordinance.

Secondly, the powers that can be transferred to the Administrator under section 8 are only powers of 'officers of Papua New Guinea'. It seems clear that the powers of certain statutory office-holders (though not all of them) should be able to be transferred, and this is covered by clause 4.

Thirdly, paragraph (d) of section 10 prohibits the delegation by the Administrator of -

any power to bring an Ordinance or any other law of Papua New Guinea into operation, or to suspend or

<sup>1</sup> Mr W. Kearney (Secretary for Law) moved that the Bill be adopted by the House of Assembly.

<sup>2</sup> House of Assembly, typescript, 23 May 1972.

otherwise affect the operation, or to extend or terminate the period of operation of, any Ordinance or other law.

The purpose of this provision was clear enough, but in practice it extends to cover a considerable number of relatively minor powers that should fairly obviously be capable of delegation. The only practicable way out seems to be to omit the paragraph and rely on the Administrator's discretion: this is done by clause 5.

Fourthly, problems have been found in certain delegations because they are involved with other references to the would-be delegator and the references themselves cannot be altered. Clause 6 is a machinery amendment to get over this problem.

Fifthly, clause 7 and the Schedule brings up to date references to 'holders of ministerial offices'.

[The Bill was amended at the Committee stage by the insertion of clause 5A, and the Bill, as amended, was passed by the House (House of Assembly Debates, vol.III, no.4, p.329, 26 June 1972). Clause 3 of the Bill became section 3 of the 1972 amending ordinance, clause 4 became section 4, clause 5 became section 5, clause 5A became section 6, clause 6 became section 7 and clause 7 became section 8. The marginal notes to the *Administrative Arrangements (Vesting of Powers) Ordinance* 1971-1972 (Document 37) indicate the amendments made to the original 1971 Ordinance by these sections.]

40. Extract from the Papua New Guinea Government Gazette concerning the delegation of powers under the *Administrative Arrangements (Vesting of Powers) Ordinance* 1971-1972, 10 August 1972<sup>1</sup>

*Administrative Arrangements (Vesting of Powers) Ordinance* 1971<sup>2</sup>

POWERS OF MINISTER FOR LABOUR

I, LESLIE WILSON JOHNSON, Administrator by virtue of the powers conferred by the *Administrative Arrangements (Vesting of*

<sup>1</sup> Papua New Guinea Government Gazette, no.67, 10 August 1972.

<sup>2</sup> The reference should have been to the *Administrative Arrangements (Vesting of Powers) Ordinance* 1971-1972, as by 10 August 1972 the 1972 amending Ordinance had come into effect (eds).

*Powers) Ordinance* 1971 and all other powers me enabling, hereby -

- (a) vest in myself the powers and functions conferred by the provisions specified in the First Schedule to this notice; and
- (b) delegate to the Minister of the House of Assembly for Labour all my powers and functions under the provisions specified in the First and Second Schedules to this notice,

and I further delegate to that Minister the power to further delegate all or any of those powers and functions to -

- (c) any officer of Papua New Guinea;
- (d) the person occupying any office established by order under an Ordinance; or
- (e) any officer or employee of a body, authority or instrumentality (corporate or unincorporate) established by or under an Ordinance.

A reference in this notice to a power or function under any provision shall be read as including a reference to any power or function under any provision that is consequential on or is necessary or convenient to be exercised or performed for the purpose of the exercise or performance of the first-mentioned power or function.

#### SCHEDULES

##### FIRST SCHEDULE

Provision	Brief description of powers assumed
1. <i>Native Employment Ordinance</i> 1958-1971	
(a) Section 10	Power of Secretary for Labour to appoint Employment Officers and Inspectors
(b) Section 20(2)	Determination of maximum number of employees to be employed in a category of employment
(c) Section 20(3), in so far as it relates to approval of employment	Approval of employment of persons in excess of determined number
(d) Section 23(2), (5)	Exemption of an employee or proposed employee from the provisions of Section 23(1)(e)

- (e) Section 69(1) Power to order the employer to cease employing a casual worker
- (f) Section 92(2)(c) Power to declare an area to be an area in which mosquito nets need not be provided
- (g) Section 161(1), in so far as it empowers the Secretary for Labour to authorise an officer Power of entry, inspection etc.
2. *Native Employment Regulations* 1960
- Regulation 21(4) Approval of alternative issues of clothing or articles

## SECOND SCHEDULE

Provision	Brief description of delegated powers
1. <i>Industrial Safety, Health and Welfare Ordinance</i> 1961-1970	
(a) Section 5(1)	Declaration of factories
(b) Section 5(2)	Description of SAA codes
(c) Section 7(1)	Directions to Secretary as to administration of the Ordinance
(d) Section 8(1)	Appointment of Industrial Safety Officers
(e) Section 12	Receipt of Annual Reports for presentation to the House of Assembly
(f) Section 18(13)	Orders directing that different branches or departments of work in a factory are deemed to be different factories

## Part VIII

### Conclusion: progress to self-government

While the process of the transfer of power will continue until independence, the determination and the approved arrangements of 30 April 1973 may be regarded as the concluding stage of a constitutional epoch which began in 1968. During this period the Australian government committed itself to the transfer of power, a procedure for this transfer was evolved, and a particular kind of relationship between the executive and the legislature in Papua New Guinea was developed. In this conclusion we consider firstly some of the legal steps that remain to be taken before self-government and independence, briefly review the 1968 to April 1973 period and consider likely future constitutional developments.

### Progress to self-government and independence

The rate of progress towards self-government and independence has been a major issue in Papua New Guinea politics since before 1968, and in the past two years it has been at the centre of debate in the House of Assembly. The House vote approving Mr Somare's motion concerning the timetable for self-government is therefore of considerable historical importance (Document 41). The motion is also significant in the transfer of power process as it provides a definition of self-government: after self-government the Australian government will retain 'final powers only in the matters of defence and external matters'. However, Mr Somare qualified this in the speech which followed his motion for amendment of the original motion by saying that the Australian government would retain 'the right to resume control of internal security in an emergency situation' up to independence. In addition, by April 1973 it had become apparent that there might be other areas of government which for administrative reasons might not be transferred until after self-government occurred on

1 December 1973.<sup>1</sup> For instance, the general matter of electoral policy will be considered by the Constitutional Planning Committee,<sup>2</sup> and if its recommendations are not finalised by December, this matter may remain as an area of Commonwealth responsibility.

Mr Somare's motion did not refer to a date for independence, and the government has not sought to raise this issue in the House. However, in December 1972 and January 1973 the matter was raised in public debate by statements of Australian politicians. The interchange of views resulted in a joint government statement on the subject, and illustrated the role of the Australian government in the transfer of power process.

The issue of an independence date was first raised by the new Australian Prime Minister, Mr G. Whitlam, when he remarked at a press conference in early December 1972 that he thought that Papua New Guinea 'could be independent by 1975'.<sup>3</sup> This prompted Mr Somare to say that, 'the date must be our decision only.... It has to develop as a normal process reached by our agreement in the House of Assembly',<sup>4</sup> and that he hoped that this matter could be discussed between himself and Mr Whitlam in mid-January 1973.

Then the Minister for External Territories, Mr W.L. Morrison, stated at the end of a visit to Papua New Guinea (during which he had had discussions with Mr Somare), that he thought Papua New Guinea would be independent 'in the course of 1974', and

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<sup>1</sup> See 'Joint communique issued by the Minister for External Territories and the Chief Minister of Papua New Guinea', Papua New Guinea Press Release B, no.1047, 30 April 1973.

<sup>2</sup> The primary function of the Constitutional Planning Committee is to 'make recommendations for a constitution for full internal self-government in a united Papua New Guinea with a view to eventual independence'. The Committee was appointed following a House of Assembly vote approving of the government's intentions in this regard. It is not, however, a committee of the House, and appointments to it are made by the Administrator, acting on the advice of the Chief Minister. The Committee's final report will be tabled in the House and the Chief Minister has undertaken that the government will accept the decision of the House on the report (H.A.D., vol.III, no.3, p.280, 23 June 1972).

<sup>3</sup> The Herald (Melbourne), 7 December 1972.

<sup>4</sup> The Herald (Melbourne), 7 December 1972.

that Mr Somare's views were 'very much in harmony' with his own.<sup>1</sup> Mr Somare responded that the date 'would have to be set by the people of Papua New Guinea' and that 'if necessary, independence can be delayed'.<sup>2</sup>

This conflict of views led to a joint statement by Mr Whitlam and Mr Somare following discussions held in Canberra on 17 January 1973. This statement reads in part that:

The Prime Minister said that Australia, for her part, would work towards independence in 1974, but that the timing for independence would be subject to consultation with the Papua New Guinea government and to endorsement by the Papua New Guinea House of Assembly as representing the wishes of the people.<sup>3</sup>

This statement may be taken as the 'official' position of both governments, and it is significant that the timing for independence is conceded to be subject to endorsement by the House of Assembly. In other statements the Australian government has given the impression that its desire to divest itself of the colonial role was of equal significance. The joint statement in effect gives the House of Assembly a veto on an independence timetable.

It remains to consider briefly the legal steps which must be taken before 1 December 1973, the date for self-government. The determination and the approved arrangements will be amended as more powers are transferred, and it can be expected that all proposals for the transfer of powers will be the subject both of discussions between the Australian and the Papua New Guinea governments and of approval by the House of Assembly. However, the determination and the approved arrangements will disappear after 1 December 1973, for at this date major amendments to the Papua New Guinea Act will probably come into force. Most provisions of the current sections 24 and 25 will be repealed, thus removing the legal basis for the determination and the approved arrangements, and the reservation to the Australian government of executive power in the fields of defence and external affairs will be expressed in the Act itself. Section 55<sup>4</sup> will be amended so that only the Ordinances

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<sup>1</sup> Sydney Morning Herald, 10 January 1973.

<sup>2</sup> Papua New Guinea Press Release B, no.0086, 10 January 1973.

<sup>3</sup> Papua New Guinea Press Release B, no.0148, 17 January 1973.

<sup>4</sup> See appendix.

relating to these matters will be reserved for the Governor-General's assent.

However, the determination and approved arrangements as they exist immediately prior to 1 December 1973 (that is, the instruments of 30 April 1973 as amended) will remain of significance. Primarily this will be historical for a knowledge of the 1968-73 period will be essential for comprehending the system operating between self-government and independence. These instruments will also be of importance in providing models for the distribution of executive power among the ministers in the Papua New Guinea government.

The transfer of power has also given rise to many other legal changes, although it is outside the scope of this collection of documents to deal comprehensively with these problems. Some of the most difficult legal problems have arisen or will arise because not all of the executive functions transferred from Australia to Papua New Guinea may be encompassed within a ministry. A clear case concerns the functions of the Auditor-General of the Commonwealth of Australia. This officer is appointed by the Governor-General, holds office during good behaviour until the age of sixty-five, and is removable only by the Commonwealth Parliament. He is completely independent of the Cabinet, and no minister in the Australian government may influence or control the performance of his functions.<sup>1</sup> His primary function is to supervise and report to Parliament on the expenditure of public moneys by the executive branch of government, and as of May 1973 his functions include supervision of Papua New Guinea government authorities. However, this jurisdiction in respect of Papua New Guinea will be withdrawn before December 1973, and as it is likely that the Papua New Guinea government will wish to create a similar position, legal problems will arise as to the nature of the office, the scope of its powers and the relationship of the office to the ministry. It is possible that this matter will be provided for in the Constitution. Other cases are less clear. At present, the Public Service Board, a body created by an Ordinance of Papua New Guinea,<sup>2</sup> is, by virtue of section 30 of the Papua New Guinea Act, subordinate to the Minister for External Territories, and its power to appoint and dismiss public servants derives from the

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<sup>1</sup> See *Audit Act* 1901-1969, sections 3-8 (Commonwealth of Australia).

<sup>2</sup> *Public Service (Papua and New Guinea) Ordinance* 1963-1971.



Minister's power under that Act. The transfer of the Minister's powers to the Papua New Guinea government will raise the question of whether the Public Service Board is to be subordinate to a Papua New Guinea minister or whether it should be free from ministerial control in a manner similar to the Auditor-General.

As these two examples show, a crucial issue is the degree to which bodies which are formally independent of the ministries should be subject to ministerial control. This question arises where a statutory authority is created, and it is particularly difficult to resolve in cases where the authority is engaged in some kind of commercial activity. It is often argued that such bodies cannot function effectively unless they are relatively free from political control.<sup>1</sup> This problem will, for instance, arise with the proposed national airline. The question of independence will also arise in the case of the proposed broadcasting authority, although for different reasons.

To date, such legal and policy problems do not appear to have been given much attention, and the determinations and approved arrangements may have complicated the issue in that they seem to have assumed that statutory bodies should be subject to policy control by ministers. In the future, developments may take a different course and the problem should be given careful consideration.

### The transfer of power, 1968-73

In the past two years the Australian government has become conscious of its record regarding the transfer of power, and an analysis of the two themes emerging from the statements of Australian politicians provides an opportunity to review the 1968-73 period. The two themes are claims firstly, that the Australian government has not sought to impose the Westminster form of government on Papua New Guinea,<sup>2</sup> and, secondly, that there has been a 'well thought out and responsible transfer of power'.<sup>3</sup>

Concerning the form of the present system of government in Papua New Guinea, it is clear that the essential elements of

<sup>1</sup> See generally, Friedmann and Garner (1970).

<sup>2</sup> Minister for External Territories, Mr A.S. Peacock, Post-Courier, 10 April 1972.

<sup>3</sup> Minister for External Territories, Mr W.L. Morrison, Papua New Guinea Press Release B, no.0669, 14 March 1973.

the Westminster model have been incorporated.<sup>1</sup> There is also enough public evidence to permit the conclusion that the Australian government (including its officers in the Papua New Guinea public service) has been at least partly responsible for this development.

It is true, of course, that the constitutional development committees of the Legislative Council and of the House of Assembly recommended the changes which established the basis for the present ministerial system. However, the proposals for an under-secretaries scheme made by the Legislative Council committee were very general and did not commit the country to a ministerial system.<sup>2</sup> The report of the committee of the 1964-68 House of Assembly (Document 1) did take the development much further, but even after these recommendations were implemented, there was still room for flexibility. But it is important to note the protest of one MHA, Mr B. Holloway, in August 1966 that the committee had not considered alternatives to the Westminster model.<sup>3</sup> Dr Gunther<sup>4</sup> may be making a similar point, but he does not specify the 'exacting problems' the Australian government is alleged to have excluded from the committee's consideration. To the extent that Mr Holloway's claim is true, the Australian government (which was represented on the committee by the official members) can be held to have promoted the adoption of the Westminster model by allowing the case for the alternatives to go by default. The ministers of the 1964-68 House were not given executive power until the approved arrangements of 21 August 1970, and this step must be regarded as a further stage in the development of the ministerial system. The decision to take this step was essentially that of the Australian government, and the committee of the 1968-72 House was hardly involved.<sup>5</sup>

It is clear, then, that Australia played a major role in the adoption of Westminster-type structures of government in

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<sup>1</sup> There is however, no parallel to the Ministerial Nominations Committee in the British or Australian systems.

<sup>2</sup> This committee's report is contained in Legislative Council Debates, vol.VI, no.6, pp.610-14, 15 October 1962. Dr J.T. Gunther, then the Assistant Administrator (Services), was the chairman of the committee and has asserted (1970:426) that the Australian government did not influence the committee's work.

<sup>3</sup> H.A.D., vol.I, no.10, p.1610, 31 August 1966.

<sup>4</sup> See p.19.

<sup>5</sup> See p.95.

Papua New Guinea. But did it 'impose the Westminster system'? When the process is examined in detail, the question itself does not seem very helpful. In the first place, the idea of choosing a system of government from a range of possibilities does not seem to bear much relation to the realities of the policy-making process. Policy-making is generally incremental rather than revolutionary: it proceeds in small steps, with each step consolidating previous ones and perhaps closing off one or more alternatives. A decision to take a particular course of action can be said to have been taken when the possibility of taking alternative courses has been effectively blocked - but in many respects this 'decision' is more an analytical construct of the student looking back than the actual choice made by the policy-makers at the time.

One needs to know, then, the actual policy-making situation in the Australian government and its administration in Papua New Guinea in the period under review. Without access to the records and the evidence of the participants, only the broad outlines may be stated confidently, but it is clear that the primary aim of the Australian government was to relinquish formal authority over the country to a group of Papua New Guinean leaders. Where could it look for such leaders? What could be the basis of their authority? We may rule out the possibilities that were deemed inappropriate or unacceptable, such as the relinquishment of power to a traditional ruler, or to the military. In practical terms, Australia was looking for a Westernised, civilian elite. But the range of organisational bases for such leaders was particularly small, even by the standards of the Third World. There were no large ethnic groups whose leaders could be drawn into the national scene. The political parties were almost nonexistent at the beginning of this period, and still only weakly institutionalised at the end of it. Large-scale business and industry was mainly in expatriate hands and could not provide a national power base comparable to that which exchange cycles like the moka of the Western Highlands<sup>1</sup> offered at the local level. Perhaps most important of all, the ingrained Australian attachment to an ideal of a non-political public service (which is a feature of Westminster systems, but not unique to them) largely excluded the possibility of drawing directly on the largest reservoir of the Westernised, civilian elite. (The problems involved in relating this ideal to the real work of the bureaucracy, particularly in the Papua New Guinea situation, are beyond the scope of these notes; it is sufficient here to

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<sup>1</sup> See A.J. Strathern (1971).

note that it precluded the direct relinquishment of power to the bureaucracy.)

Seen in this light, the tendency of the Australian government to look to the House of Assembly as the organisational base for its successors appears less a conscious design to cast the political structure of the new state in its own image, than a pragmatic response to a situation where organisational power outside the colonial administrative structure was highly fragmented (largely, it must be said, the consequence of the nature of Australian rule). And to say this is not to deny that there was a natural tendency among Australian policy-makers, operating in a parliamentary system themselves, to assume that the regime to which they would relinquish power would also be a parliamentary one. But there is another factor to be considered. While the Australian withdrawal was in progress, there would have to be a group of successors-designate, taking over power in stages (planned or unplanned, rapidly or slowly). If they were not to be based in parliament, the only practical alternative was for them to be based around the Administrator, as their ultimate base of power would be their acceptability to the Administration and the Australian government. This creates problems of recruitment (what sort of leaders would be willing to play this sort of role, particularly in the later part of colonial rule) and continuity (how do the leaders chosen generate independent power bases that will enable them to survive the departure of the last Australian Administrator, or if they cannot do this, where will their successors come from?). These problems are not insuperable but they are real and they do reinforce the tendency for the Australians to look to the parliament for their successors.

A satisfactory answer to the 'imposition' question, then, would require a much more searching inquiry than the matter has been given in the public debate. It would require a consideration of the extent to which, at critical decision-making points, Australia excluded from consideration options which could have led to alternative patterns of development, or structured the decision-making situation in such a way that their adoption was unlikely, or opposed subsequent moves away from the Westminster pattern. It would need to consider not only the Australian role, but also the role of the various individuals and political processes within Papua New Guinea. And it would need to consider changes in the constellation of political forces over time. The few scraps of evidence that have been adduced so far do not point in a clear direction. Dr Gunther's allegation of Australian interference in the

work of the select committees<sup>1</sup> can be set against Mr Johnson's opposition to the formal recognition of the post of Leader of the Opposition.<sup>2</sup> Mr Holloway's complaint that the Select Committee had not considered alternatives to the Westminster system implies certain values and predispositions among the Papua New Guineans who constituted a majority on the committee as well as among its official members. The situation is far from being as clear-cut as either Mr Peacock or his critics would like to believe.

The present system may or may not survive. It has the advantage over other systems that it has been operative for three years, and that it has not been manifestly unworkable. Ultimately a system appropriate to the circumstances in Papua New Guinea will evolve, but in the short term at least the present system will survive and it is unlikely that the Constitutional Planning Committee will make any proposals for radical change.

The claim that the transfer of power has been 'well thought out and responsible' can be analysed in two ways. Firstly, an analysis may be made of the transfer of power programme itself, and on this basis the claim cannot be sustained. From the introduction of the under-secretaries scheme in 1963 until July 1970, the emphasis was on gradualism and on the need to wait upon the House of Assembly and its Select Committee on Constitutional Development for the initiative for change (see Document 9). In the light of this emphasis, it is obvious that the statements of Mr Gorton (Document 14) and Mr Barnes (Document 15) on 6 July 1970 mark a major change in Australian government policy, and it is only since this time that much attention has been paid to a programme for the transfer of power. The determination of the current Australian government to prepare for independence in 1974 has also upset the timetable; the previous government seems to have worked on the assumption that 1975 would be the date for independence.

However, such an analysis of the transfer of power process deals with the matter only superficially. Irrespective of whether the time-table has been planned, there is the more fundamental question as to whether there has been adequate preparation for the consequences of the transfer of power. The major consequence, of course, is that political power now resides with Papua New Guinea politicians, and the issue of whether there has been preparation for this may be reduced to two general questions: has there been adequate preparation of

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<sup>1</sup> See p.19.

<sup>2</sup> See p.126.

the institutions through which this power will be exercised, and has the preparation taken into account other aspects of the political culture which will be affected by the change?

It is difficult to provide an answer to the first of these questions as the ministerial system has been fully functioning for only a short time. The formal record is not impressive. The first stage in the development of the system was the under-secretaries scheme; this is generally regarded as having been a failure.<sup>1</sup> The second stage was the ministerial members scheme as it operated from 1968 to August 1970; these ministers were without power and were denied involvement in the business of government.<sup>2</sup> The third stage may be regarded as the ministerial scheme as it operated from August 1970 until April 1972; during this period the ministers did have final policy powers, but it does not seem that any real advance was made so far as local participation in government was concerned.<sup>3</sup> The fourth stage began with the formation of Mr Somare's ministry whose members have been eager to participate in government and have pressed for the transfer of more power. There has therefore been less than three years of effective preparation for the ministerial system, and it remains to be seen whether the system will work according to the conventions of the Westminster model. It is already possible to discern departures in the practice of government since April 1972. For instance, it is fairly common for AEC ministers to state their views on important policy questions in advance of an AEC discussion of the matter. This practice undermines the principle of collective responsibility in cases where the AEC decision differs from that of the minister.

It cannot be said therefore that the ministerial system and its conventions have been firmly implanted into the Papua New Guinea political system. This does not necessarily mean that the system will break down: its immaturity may enable change to come about more quickly, for it is likely that some principles of the Westminster system will be unsuitable to Papua New Guinea. The principle of collective responsibility will become redundant if the House of Assembly ceases to divide along 'government' and 'opposition' lines, and it is possible that this will happen once the issue of progress to independence disappears. The point is that there has not

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<sup>1</sup> See p.14.

<sup>2</sup> See Wolfers (1971:134-6). Cf., however, Document 11.

<sup>3</sup> See Wolfers (1971:134-6). See, too, pp.70-1.

been a thorough preparation for the ministerial system and that there has been no preparation for any other kind of system.

It is also not possible at this time to confidently answer the question as to whether the preparation for the ministerial system took sufficiently into account other aspects of the political culture of Papua New Guinea. The concept of preparation for a ministerial system has been perceptively analysed by Schaffer (1965), and much of what he said applies to Papua New Guinea. Schaffer criticised the assumption that adequate preparation for the transfer of power could consist of a planned series of changes to the legislature and the executive, culminating in the ministerial system. Such a theory, he argued, was 'concerned with political and administrative features rather than with modernizing, social or cultural ones'; in particular, 'the operative values were bureaucratic' (Schaffer 1965:48, 56). In the Papua New Guinea context, this criticism should be modified to reflect the emphasis placed by the Australian government on economic development as a prerequisite for political change. This emphasis was accompanied by an assumption that no serious political and social problems would be thrown up by this development (Parker 1971a). The point which emerges from these criticisms is that preparation for the ministerial system has neglected many of the social and political problems associated with the move to self-government and independence.

There are, for instance, a whole host of questions that may be asked about the public service. Localisation itself has been tardy, a product of the neglect of higher education until the early 1960s. Apart from this, there are questions as to whether the Australian model of the public service (upon which the Papua New Guinea service has been based) is appropriate, both in terms of its structure and its values (Wolfers 1971:145-51; Schaffer 1965:58-60; Schaffer 1970). One particular problem is whether local public servants will be prepared to accept (a la Westminster) a role of subordination to the ministers. The public service of Papua New Guinea has always been directly involved in making political decisions, and local officers will by independence have had very little experience of a system in which they are expected to defer to the politicians. It may be that this model of a 'depoliticized public service' is inappropriate (Schaffer 1965:66) but there has been no attempt to prepare for any alternative.

There is finally the more general question as to whether the Westminster ministerial system is suited to the political situation in Papua New Guinea. Very little has been done to

prepare politicians, public servants or the general public for the type of situation in which the ministerial system can best flourish. Political education has been perfunctory and often misconceived (Parker 1971a:207-13), and in some respects the attempts of the Australian government to influence the nature of political change worked contrary to the attempts to implant the ministerial system. As indicated above the rationale for the convention of collective responsibility is the 'government' and 'opposition' division in the House of Assembly. However, as late as mid-1967 the then Minister for Territories expressed the view that 'at this stage of its development the Territory would be better off without parties'.<sup>1</sup> This statement was made after the Select Committee of the 1964-68 House of Assembly had recommended the introduction of a ministerial system,<sup>2</sup> and reflects a failure to relate the precepts of that system to the political situation. More fundamentally, the Australian government, acting through the local Administration, did little between 1964 and 1972 to encourage decision-making in the House and in the ministry. Wolfers (1971:131) comments that in the decade prior to mid-1970

the net effect of [Australian] policy and practice was to foster a dependence upon Australian leadership and skills among Papua New Guinea's aspiring politicians, rather than the encouragement of a will to power and, as Max Weber put it, that 'exclusive sense of personal responsibility' for his own decisions which is the mark of the true politician.<sup>3</sup>

There is reason then to question whether there has been sufficient groundwork for the successful operation of the Westminster ministerial system. There is, indeed, reason to question the extent to which any colonial administration can, by conscious application of policy, 'prepare' a subject people for a particular set of political relationships. It can be expected, therefore, that legislative-executive relationships in Papua New Guinea will change as the political system evolves. The quality of the future political system is problematic. There are questions concerning the survival of political parties, in what form and with what bases of support. Political divisions within the country have yet to crystallise: at

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<sup>1</sup> Quoted in Parker and Wolfers (1971:30).

<sup>2</sup> See p.17, and Document 1.

<sup>3</sup> See, too, Parker (1971b:348-56).



present it is not clear whether regional, ideological, or other factors will be dominant. The elites in the public service, the defence forces and the business world have yet to express their interests. Another important question is whether political power will remain relatively dispersed or whether a strong leader will emerge.

The manner in which these questions are answered will determine whether the current relationship between the legislature and the executive (or any other feature of the constitution) will require modification. There is no reason to assume that there must be radical change, for a new political balance can be accommodated within an old constitutional framework. Nevertheless, it can be expected that there will be some constitutional change in Papua New Guinea even after the self-government constitution of mid-1974,<sup>1</sup> but whatever change there is will proceed from the foundations laid between 1968 and 1973.

41. Statements in the House of Assembly by the Chief Minister, Mr M. Somare, MHA, on self-government timetable, 27 June 1972 and 5 September 1972<sup>2</sup>

#### SELF-GOVERNMENT TIMETABLE

Mr MICHAEL SOMARE (East Sepik - Chief Minister) - I ask leave of the House to make a statement.

Leave granted.

Mr MICHAEL SOMARE - I wish to refer to the important question of the timetable for self-government. On what date should our country achieve internal self-government? My government realises that this is an important issue and that the people themselves must be consulted. For this reason, Sir, we have no intention of rushing our decision. In August I will be having talks in Port Moresby with the Minister for External Territories and the question of the date for self-government

<sup>1</sup> See 'Agreement on two-stage self-government', Papua New Guinea News Release A, no.1280, 22 May 1973.

<sup>2</sup> House of Assembly Debates, Third House, Second Meeting of the First Session, vol.III, no.4, p.386, 27 June 1972; vol.III, no.6, pp.586-7, 5 September 1972.

will be discussed then. It is my intention to invite the Leader of the Opposition to participate in those talks. Meanwhile I ask all members of this House to consult with their electorates because when the House reconvenes in September it is my intention to seek approval of a date for self-government. Whatever the date this House approves will be given to the Constitutional Planning Committee as its target date. The target date is essential to enable detailed plans to be drawn up and implemented.

Sir, the view of my government is that self-government should not occur before 1 December 1973, but that it should come as soon as possible after that date. I emphasise that is the view of the National Coalition Government - but we will respect the decision of this House when it sits in September this year.

Sir, I present the following paper:

Self-government timetable - Ministerial Statement,  
27 June 1972.

Sir, I move -

That the House take note of the Paper.

Debate adjourned.

...

Mr MICHAEL SOMARE (East Sepik - Chief Minister) - I move -

That the following amendment be made:

That the following words be added to the motion: 'and -

- (a) requests that constitutional changes necessary for full internal self-government be brought into effect on 1 December 1973, or as soon as possible thereafter;
- (b) interprets full internal self-government for Papua New Guinea as leaving with the Commonwealth of Australia final powers only in the matters of defence and external affairs, which it should exercise in the fullest consultation with the government of Papua New Guinea'.

I have moved an amendment to the motion. I previously tabled a Paper and asked the House to take note of it after we had debated it. This motion is put forward so that the House can debate it and then approve or reject it.

I would like to say that the motion requests that full self-government be brought into force by 1 December 1973 or

as soon as possible thereafter. If it does not come into force on the day stated, then it might be in January 1974 or 1975. It also provides that at full internal self-government for Papua New Guinea, some powers should remain with the Commonwealth of Australia. These powers relate to defence, etc. The Honourable Mr Matiabe Yuwi should listen carefully. Open your ears and hear. It states that defence and external affairs should remain with the Australian government whose functions it should exercise in conjunction with the fullest consultation with the government of Papua New Guinea. In addition to the final powers mentioned in my motion, the Commonwealth has preserved, up to the time of independence, the right to resume control of internal security in an emergency situation, should it consider it necessary. However my government's understanding of self-government is that it would include power over internal security. Nonetheless I wish to place on record my recognition of the Australian government's right to revoke this power.<sup>1</sup>

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<sup>1</sup> The House approved of the amendment to the motion by a vote of 51 to 37, and of the motion as amended by a vote of 52 to 34: see H.A.D., vol.III, no.7, pp.707-9, 19 September 1972 (eds).

Appendix

The use of the legislative veto in relation to Ordinances  
passed by the House of Assembly

The provisions of the *Papua New Guinea Act 1949-1972*

53. - An Ordinance passed by the House of Assembly does not have any force or effect unless or until assent has been given to the Ordinance, or to a part of the Ordinance, in accordance with this Division, and any part of an Ordinance assent to which is withheld under section fifty-six of this Act does not have any force or effect.

54. - (1) Every Ordinance passed by the House of Assembly shall be presented to the Administrator for assent.

(2) Subject to the next succeeding subsection, the Administrator shall thereupon declare, according to his discretion but subject to this act -

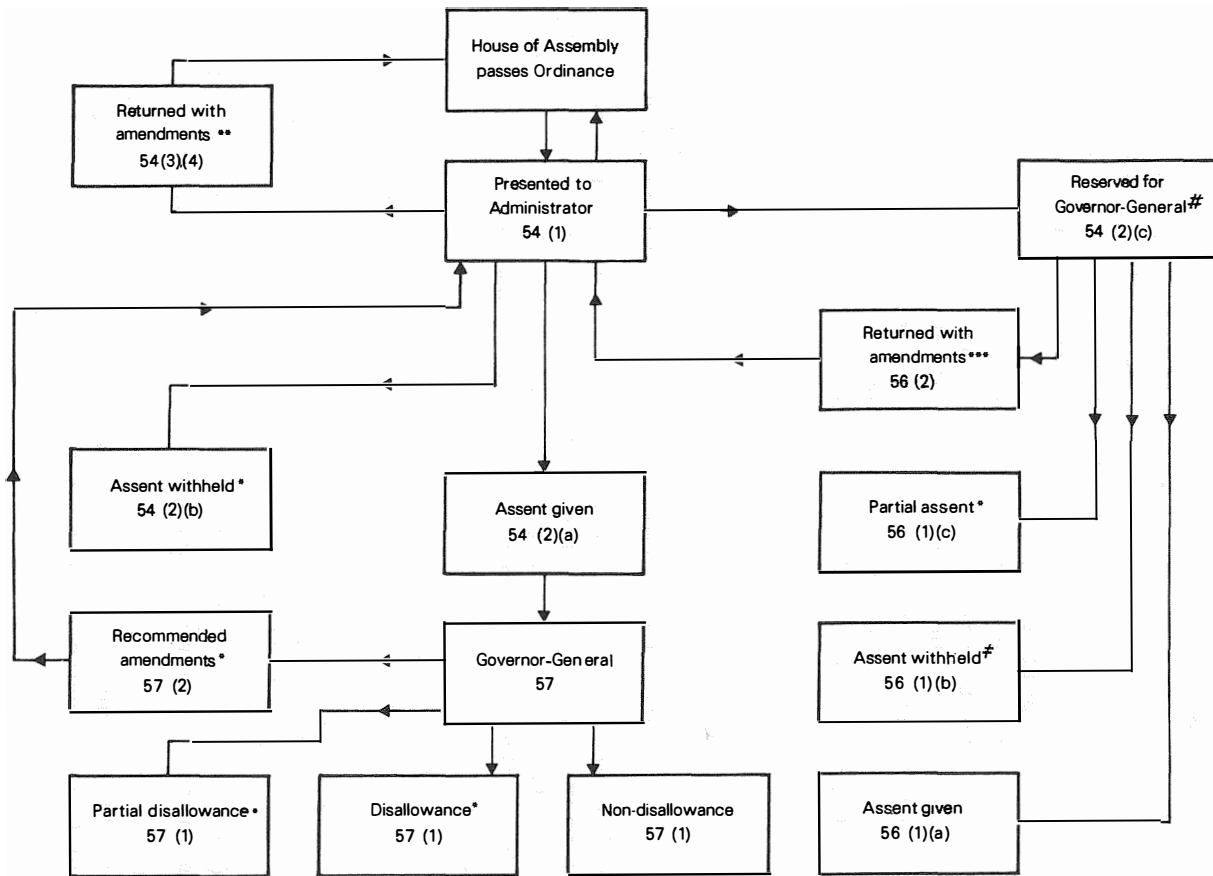
- (a) that he assents to the Ordinance;
- (b) that he withholds assent; or
- (c) that he reserves the Ordinance for the Governor-General's pleasure.

(3) The Administrator may return the Ordinance to the House of Assembly with amendments that he recommends.

(4) The House of Assembly shall consider the amendments recommended by the Administrator and the Ordinance, with or without amendments, shall be again presented to the Administrator for assent.

55. - The Administrator shall reserve for the Governor-General's pleasure any Ordinance -

- (a) that relates to divorce;
- (b) that relates to the granting or disposal of lands of the Crown or of the Administration;
- (c) whereby a grant of money or of an interest in land is made to the Administrator;
- (d) that may not, in the opinion of the Administrator, be fully in accordance with the treaty



\* Never used.  
 \*\* Used once  
 \*\*\* Used five times.

# Used twice  
 #203 Ordinances reserved between 1964 and December 1970.

- obligations of the Commonwealth or with the obligations of the Commonwealth under the Trusteeship Agreement;
- (e) that relates to naval, military or air forces
- (f) that relates to the sale of, or other disposition of or dealing with, land;
- (g) that relates to the employment of persons;
- (h) that relates to arms, ammunition, explosives, intoxicating liquor or opium;
- (i) that relates to immigration, emigration or deportation;
- (j) that relates to the Public Service;
- (ja) that removes any matter or class of matters from the jurisdiction of the Supreme Court;
- (jb) that makes provision affecting the practice or procedure of the Supreme Court;
- (jc) that establishes, or provides for the establishment of, a court; or
- (k) that contains a provision having substantially the same effect as a provision in an Ordinance, or in a part of an Ordinance, to which the Governor-General has withheld his assent or which the Governor-General has disallowed.

56. - (1) Where the Administrator reserves an Ordinance for the Governor-General's pleasure, the Governor-General shall, subject to this section, within six months after the day on which the Ordinance was presented to the Administrator for assent, declare -

- (a) that he assents to the Ordinance;
- (b) that he withholds assent to the Ordinance;
- or
- (c) that he withholds assent to part of the Ordinance and assents to the remainder of the Ordinance.

(2) The Governor-General may return the Ordinance to the Administrator with amendments that he recommends.

(3) The House of Assembly shall consider the amendments recommended by the Governor-General and the Ordinance, with or without amendments, shall be again presented to the Administrator, who shall reserve it for the Governor-General's pleasure.

(4) As soon as practicable after the Governor-General has made a declaration in respect of an Ordinance in accordance with subsection (1) of this section, the Administrator shall publish in the Government Gazette a notification of the declaration.

(5) The assent of the Governor-General to an Ordinance is of no effect until notification of the Governor-General's declaration in respect of the Ordinance or to part of an Ordinance is published by the Administrator in the Government Gazette.

57. - (1) Subject to this section, the Governor-General may, within six months after the Administrator's assent to an Ordinance, disallow the Ordinance or part of the Ordinance.

(2) The Governor-General may, within six months after the Administrator's assent to an Ordinance, recommend to the Administrator any amendments of the laws of Papua New Guinea that the Governor-General considers to be desirable arising out of his consideration of the Ordinance.

(3) Where the Governor-General so recommends any amendments of the laws of Papua New Guinea the time within which the Governor-General may disallow the Ordinance, or a part of the Ordinance, is extended until the expiration of six months after the date of the Governor-General's recommendation.

(4) Upon publication of notice of the disallowance of an Ordinance, or part of an Ordinance, in the Government Gazette, the disallowance has, subject to the next succeeding subsection, the same effect as a repeal of the Ordinance or part of the Ordinance.

(5) If a provision of a disallowed Ordinance, or a provision of a disallowed part of an Ordinance, amended or repealed a law in force immediately before the commencement of that provision, the disallowance revives the previous law from the date of publication of the notice of disallowance as if the disallowed provision had not been made.

57A.- (1) The Minister shall cause each Ordinance assented to by the Governor-General or the Administrator, or from which the Governor-General or the Administrator has withheld assent, to be laid before each House of the Parliament as soon as possible, but in any case within fifteen sitting days of that House, after the date of assent, or after the date on which assent was withheld, as the case may be.

(1A) The last preceding subsection extends to an Ordinance to part only of which the Governor-General has assented and, in the case of such an Ordinance, there shall be indicated on the Ordinance, as laid before each House of Parliament, the part of the Ordinance to which assent has been withheld.

(2) Where the Administrator withholds assent to an Ordinance, or the Governor-General withholds assent to an

Ordinance or a part of an Ordinance or disallows an Ordinance or part of an Ordinance, the Minister shall cause a statement of the reasons for withholding assent, or for disallowance, as the case may be, to be laid before each House of Parliament as soon as possible, but in any case within fifteen sitting days of that House, after the date on which assent was withheld or the Ordinance was disallowed, as the case may be.

The use of the veto provisions<sup>1</sup>

(a) Ordinances refused assent by the Administrator (s.54(2)(b)): nil.

(b) Ordinance returned to House with amendments recommended by the Administrator (s.54(3)):

*Crocodile Trade Protection Ordinance* 1965. The amendments recommended were adopted by the House (H.A.D., vol.I, no.8, p.1363, 9 March 1966).

(c) Ordinances disallowed in whole or part by the Governor-General within six months of the Administrator's assent (s.57(1)): nil.

(d) Recommendations by the Governor-General to the laws of Papua New Guinea made within six months of the Administrator's assent to an Ordinance (s.57(2)): nil.

(e) Ordinances reserved by the Administrator for the assent of the Governor-General (ss.54(2)(c), 55): 203.<sup>2</sup>

(f) Reserved Ordinances refused assent by the Governor-General (s.56(1)(b)):

*Papua and New Guinea Public Service Ordinance* 1965

*Parliamentary Commission of Enquiry Ordinance* 1967.

(g) Reserved Ordinances refused partial assent by the Governor-General (s.56(1)(c)): nil.

(h) Reserved Ordinances returned to the Administrator with amendments recommended by the Governor-General (ss.56(2), (3)):<sup>3</sup>

<sup>1</sup> The information presented here has been derived largely from material to be found in the Hansard of the House of Representatives. See: Commonwealth of Australia, Parliamentary Debates (Hansard), House of Representatives, 27th Parliament, Second Session, First Period, vol.66, pp.612-16, 18 March 1970, and vol.67, p.1877, 7 May 1970; Parliamentary Debates (Hansard), House of Representatives, no.4, pp.961-6, 16 March 1971. Reference was also made to the House of Assembly Debates.

<sup>2</sup> This figure covers only Ordinances reserved in the period from 1964 to 4 December 1970.

<sup>3</sup> The procedure to be followed by the House when amendments are recommended to it is briefly explained at H.A.D., vol.II, no.1, p.132, 13 June 1968.



*Parliamentary Powers and Privileges Ordinance* 1964.<sup>1</sup>

*Royal Papua and New Guinea Constabulary Ordinance* 1965. The House considered the amendments recommended and adopted them (H.A.D., vol.I, no.8, p.1250, 4 March 1966, and p.1362, 9 March 1966).

*Mining (Papua) (No.2) Ordinance* 1966

*Mining (New Guinea) (No.2) Ordinance* 1966. The House considered the amendments recommended to both of these Ordinances and adopted them (H.A.D., vol.I, no.12, pp.2100-1, 1 March 1967, and pp.2296-7, 9 March 1967).

*Public Service (Papua and New Guinea) Ordinance (No.2)* 1967.

The House considered the amendments recommended and adopted them (H.A.D., vol.II, no.1, pp.132-3, 13 June 1968, and pp.171-4, 14 June 1968).

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<sup>1</sup> The information concerning this Ordinance is derived from Lynch (n.d.:73-4). See H.A.D., vol.I, no.5, p.617, 17 May 1965, for the communication from the Governor-General to the Administrator. The procedural steps taken in consequence of this reference back were irregular as the House did not, as required by section 56(3), consider the amendments proposed. Instead the House passed the *Parliamentary Powers and Privileges Ordinance* 1965, which amended the 1964 Ordinance to achieve the same result as would have been achieved by the acceptance by the House of the Governor-General's recommendations (H.A.D., vol.I, no.5, p.688, 20 May 1965).

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Abstract

New Guinea Research Bulletin  
No.51, 1973

Constitutional development in  
Papua New Guinea, 1968-73: the  
transfer of executive power.

In the period 1968 to June 1973 the Australian government committed itself to the transfer of executive power to the government of Papua New Guinea; a procedure and technique for this transfer of power evolved; and a particular kind of relationship, influenced by the Westminster model, developed between the legislative and the executive branches of government in Papua New Guinea. The legal techniques associated with the transfer of power must be understood with reference to the provisions of the Papua New Guinea Act.



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