STATUTORY INSTRUMENTS

1975 No. 1514

PACIFIC ISLANDS

The New Hebrides Order 1975

Made - - - -	*17th September* 1975
Laid before Parliament	*24th September* 1975
Coming into Operation	*In accordance with the provisions of section* 1(3).

At the Court at Balmoral, the 17th day of September 1975

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act 1890(**a**), sections 17 and 20 of the Fugitive Offenders Act 1967(**b**), section 56 of the Administration of Justice Act 1956(**c**), section 12 of the Colonial Courts of Admiralty Act 1890(**d**), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement.

1.—(1) This Order may be cited as the New Hebrides Order 1975.

(2) This Order shall be construed as one with the New Hebrides Orders 1922 to 1973(**e**), and those Orders and this Order may be cited together as the New Hebrides Orders 1922 to 1975.

(3) This Order shall be published in the New Hebrides in the British Service Gazette and shall come into operation on the date of such publication or on the 16th October 1975, whichever is the later.

Interpretation.

2. In this Order—

" the amended Order " means the provisions contained in Schedule 1 to the New Hebrides Order 1973 as amended by this Order ;

" the appointed day " means the day this Order comes into operation in accordance with section 1(3) ;

" the Court of Appeal " means such court in any part of Her Majesty's dominions as may be prescribed by the High Commissioner, by notice published in the British Service Gazette, in pursuance of instructions given to him by Her Majesty through a Secretary of State:

Provided that, until any other such court is so prescribed by the High Commissioner, it means the Court of Appeal established for Fiji by the Constitution of Fiji set out in the Schedule to the Fiji

(a) 1890 c. 37. (b) 1967 c. 68. (c) 1956 c. 46. (d) 1890 c. 27.
(e) S.R. & O. 1922/717, 1923/356, S.I. 1961/1831, 1963/1324, 1970/950, 1973/1758 (Rev. VIII pp. 719, 757: 1922, p. 324; 1923, p. 337 1961 III p. 3456; 1963 II, p. 2297, 1970 II, p. 2940; 1973 III, p. 5380).

Independence Order 1970(**a**) or by any law modifying or replacing that Constitution ;

" the former High Court " means the High Court of the Western Pacific as reconstituted by the Western Pacific (Courts) Order in Council 1961(**b**) ;

" the High Court " means the High Court of the New Hebrides established by the amended Order ;

" the Order of 1893 " means the Pacific Order in Council 1893(**c**) as from time to time amended ;

" the Order of 1961 " means the Western Pacific (Courts) Order in Council 1961 as from time to time amended.

Amendment of Schedule 1 to New Hebrides Order 1973.

3. Schedule 1 to the New Hebrides Order 1973 is amended by inserting therein immediately after section 12 the following new sections—

"Establishment of High Court.

12A.—(1) There shall be a High Court for the New Hebrides which shall be a superior court of record with such jurisdiction and powers as may be prescribed by this Order or by any law for the time being in force in the New Hebrides.

(2) There shall be such number of judges of the High Court as may be prescribed by the High Commissioner by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

Appointment of judges of High Court.

12B.—(1) The judges of the High Court shall be appointed by the High Commissioner by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(2) A person shall not be qualified for appointment as a judge of the High Court unless—

(*a*) he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court ; or

(*b*) he is qualified to practise as an advocate in such a court and he has been qualified for not less than five years to practise as an advocate or solicitor in such a court.

(3) In computing, for the purposes of subsection (2) of this section, the period during which any person has been qualified to practise as an advocate or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

(4) It shall be lawful for a suitably qualified person to be appointed (regardless of his age) as a judge of the High Court for such term as may be specified in the instrument of appointment and the provisions of this Order shall have effect

(**a**) 1970 III, p. 6630. (**b**) S.I. 1961/1506 (1961 II, p. 3066).
(**c**) Rev. VIII, p. 597: 1893, p. 312.

in relation to any person so appointed as if he would attain the age of sixty-two years on the day on which the specified term expires.

Acting judges and Commissioners of the High Court.

12C.—(1) If the office of a judge is vacant or if a person holding the office of a judge is for any reason unable to perform the functions of his office, the High Commissioner may by instrument under the public seal appoint a person qualified for appointment as a judge of the High Court to act as a judge.

(2) Any person appointed under the provisions of this section to act as a judge shall, unless he earlier resigns his acting office or is removed therefrom under section 12D of this Order, continue so to act until the end of the period for which he was appointed or, if he was not appointed for a specified period, until his appointment is revoked by the High Commissioner.

(3) Whenever he is satisfied that no judge is available to attend to the business of the High Court, the Resident Commissioner, upon the recommendation of a judge, may by instrument under the public seal appoint some person to perform—

(*a*) all or any of the functions of a judge, either generally or in respect of any particular case or class of cases; or

(*b*) such functions of a judge as it shall appear to that person require to be performed without delay,

subject to such limitations and conditions, if any, as may be specified in such instrument.

(4) Any person appointed under the provisions of subsection (3) of this section shall be styled a Commissioner of the High Court; all things done by him in accordance with the terms of his appointment shall have the same validity and effect as if they had been done by a judge; in respect thereof he shall have the same powers and enjoy the same immunities as if he had been a judge; and, notwithstanding that the period of his appointment has expired or his appointment has been revoked, he may sit as a Commissioner of the High Court for the purpose of giving judgment or otherwise in relation to any proceedings commenced before him whilst his appointment was subsisting.

Tenure of office of judges.

12D.—(1) Subject to the provisions of this section, a judge shall hold office until he attains the age of sixty-two years:

Provided that the High Commissioner may permit a judge who has attained the age of sixty-two years to remain in office for such specified period not exceeding three years as may have been agreed between the judge and the High Commissioner.

(2) Nothing done by a judge shall be invalid by reason only that he has attained the age at which he is required by or under this section to vacate his office.

(3) A judge may at any time resign his office by writing under his hand addressed to the High Commissioner.

(4) A judge may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with the provisions of subsection (5) of this section.

(5) A judge shall be removed from office by the High Commissioner by instrument under the public seal if the question of the removal of that judge from office has, at the request of the High Commissioner made in pursuance of subsection (6) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under any enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(6) If the High Commissioner considers that the question of removing a judge from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(*a*) the High Commissioner shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the High Commissioner from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court ;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the High Commissioner and recommend to the High Commissioner whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee ; and

(*c*) if the tribunal so recommends, the High Commissioner shall request that the question should be referred accordingly.

(7) The provisions of sections 8 to 14 (inclusive) of the Commissions of Enquiry Regulation(**a**) as in force immediately before the appointed day shall, subject to the provisions of this section, apply as nearly as may be in relation to tribunals appointed under subsection (6) of this section or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Regulation.

(8) The remuneration of any member of or of the Secretary to a tribunal appointed under subsection (6) of this section and all the expenses of any inquiry held by such a tribunal shall be deemed to be expenses of the High Court.

(**a**) British Laws of the New Hebrides, Cap. 15.

(9) If the question of removing a judge from office has been referred to a tribunal under subsection (6) of this section, the High Commissioner may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the High Commissioner and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the High Commissioner that he should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee ; or

(*b*) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(10) The provisions of subsection (1) of this section shall not apply to a person who is a judge by virtue only of an acting appointment.

Judge may sit after appointment has terminated.

12E. A judge of the High Court whose appointment has terminated otherwise than by reason of his removal from office may sit as a judge for the purpose of giving judgment or otherwise in relation to any proceedings commenced before him while his appointment was subsisting.

Remuneration of judges.

12F.—(1) There shall be paid to the judges of the High Court such salaries or fees and such allowances as may be prescribed by the High Commissioner by order and those salaries, fees and allowances shall be a charge on the revenues and other funds of the British Service of the New Hebrides.

(2) The salaries or fees and the allowances payable to a judge of the High Court and his terms of office shall not be altered to his disadvantage after his appointment and where a judge is entitled to exercise an option in relation to his salaries or fees, allowances, or terms of office, the option as exercised by him shall be deemed for the purposes of this subsection to be to his advantage.

Seal of High Court.

12G. The High Court shall have, and use as occasion requires, a seal bearing on it the words " The High Court of the New Hebrides " and such device as a Secretary of State shall approve.

Officers of High Court.

12H. There shall be such registrars and other officers of the High Court as the Resident Commissioner, subject to any law in force in the New Hebrides, may appoint, and every such registrar or other officer shall discharge such duties as may be prescribed by law or by rules of court or as a judge may direct:

Provided that a judge may, subject to any directions given by the Resident Commissioner, appoint a person temporarily to discharge, in relation to any case or matter, the duties of a registrar or other officer of the High Court, and such person shall discharge such duties accordingly.

(2) Any appointment made under the provisions of subsection (1) of this section may, at any time, be revoked by the Resident Commissioner.

Rules of court.

12I. There shall be a Rules Committee, consisting of a judge and the Attorney-General (who shall constitute a quorum) and such other persons, not exceeding two in number, as the Resident Commissioner may appoint, which may make rules of court regulating the practice and procedure of the High Court, the admission of legal practitioners to practise as barristers and solicitors or in either of these capacities, prescribing the fees to be paid in respect of any proceeding and generally for making provision for the proper and effectual exercise of the jurisdiction of the High Court, including the procedure for the making and hearing of appeals to the High Court from subordinate courts and, with the concurrence of the President of the Court of Appeal, for the making of appeals from the High Court in accordance with the provisions of this Order:

Provided that rules prescribing or affecting the amount of any fees or the recovery thereof shall not come into operation unless approved, either before or after being made, by the Resident Commissioner.

Appeals from subordinate courts to High Court.

12J. The High Court shall have jurisdiction to hear and determine such appeals from the judgments (including reserved questions of law and cases stated) of any other courts established by Her Majesty for the New Hebrides and for that purpose to exercise such powers and authorities as may be prescribed by or under any law for the time being in force in the New Hebrides ; and subject to the provisions of any such law for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, the High Court shall have the power, authority and jurisdiction vested in the court from which the appeal is brought.

Appeals from the High Court to Court of Appeal.

12K.—(1) Subject to any provision contained in any law which applies to the cause or matter concerned, an appeal shall lie, in accordance with rules of court made under section 12I of this Order, from a judgment of the High Court, whether in the exercise of original or appellate jurisdiction, in any civil or criminal cause or matter, to the Court of Appeal, and, subject to the provisions of any such law for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction under this section, the Court of Appeal shall have the power, authority and jurisdiction vested in the High Court.

(2) In the exercise of appellate jurisdiction under this section, the process of the Court of Appeal shall run and any judgment of the Court shall have full force and effect in the New Hebrides, and may be executed and enforced in like manner as if it were an original judgment of the court from which the appeal is brought.

Appeals to Her Majesty in Council.

12L.—(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases:—

(*a*) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of 1000 Australian dollars or upwards or where the appeal involves, directly or indirectly, a claim to or question respecting property or a right of the value of 1000 Australian dollars or upwards;

(*b*) final decisions in proceedings for dissolution or nullity of marriage; and

(*c*) in such other cases as may be prescribed by any regulation made under section 10 of this Order.

(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court in the following cases:—

(*a*) final or interlocutory decisions in any civil proceedings where in the opinion of the Court the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council; and

(*b*) in such other cases as may be prescribed by any regulation made under section 10 of this Order.

(3) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal to Her Majesty in Council from the decision of any court in any civil or criminal matter."

Amendment of s. 2 of New Hebrides Order 1973.

4. Section 2(1) of the New Hebrides Order 1973 is amended, in the definition of "public office", by substituting for the words "Judge of the High Court of the Western Pacific" the words "judge of the High Court".

Amendment of s. 6 of Schedule 1 to the same Order.

5. Section 6 of Schedule 1 to the New Hebrides Order 1973 is amended in subsections (2)(*b*) and (4) thereof by substituting for the words "Assistant Resident Commissioner" the words "Chief Secretary".

Deletion of s. 13(2) of same Schedule.

6. Section 13 of Schedule 1 to the New Hebrides Order 1973 is amended by deleting subsection (2) thereof.

Adaptation of existing laws.

7.—(1) Any existing law (including any rule of court) shall have effect on and after the appointed day as if references to the former High Court or to a judge or officer thereof were references to the High Court or to a judge or officer of the High Court, as the case may require, and as if references to the Assistant Resident Commissioner were references to the Chief Secretary.

(2) For the purposes of the preceding subsection, "existing law" means any law in force in the New Hebrides immediately before the appointed day and not revoked by this Order, but does not include any Act of the Parliament of the United Kingdom.

Rules of court.

8. Until such time as it is otherwise provided under section 12I of the amended Order, the rules of court of the former High Court in force in the New Hebrides immediately before the appointed day shall continue in force on and after that day as the rules of court of the High Court but shall be construed subject to such modifications, adaptations, qualifications and exceptions as may be necessary to bring those rules into conformity with the amended Order.

Pending judicial proceedings.

9.—(1) Any proceedings originating in the New Hebrides and pending immediately before the appointed day in the former High Court may be continued and concluded on or after that day in the High Court.

(2) An appeal shall lie to the Court of Appeal on and after the appointed day from any judgment of the former High Court given before the appointed day in any proceedings originating in the New Hebrides as if it were a judgment of the High Court.

(3) Any judgment of the former High Court that was given but not satisfied before the appointed day in any proceedings originating in the New Hebrides may be enforced on or after that day as if it were a judgment of the High Court.

Stamp of High Court.

10. Until such time as a seal for the High Court is provided and approved in accordance with section 12G of the amended Order, a stamp bearing the words " The High Court of the New Hebrides " and countersigned by a judge or registrar of the High Court may be used instead of such seal.

Jurisdiction etc. of High Court and judges.

11.—(1) Until such time as other provision is made under the amended Order or otherwise—

(*a*) the High Court and all judges thereof shall have the like jurisdiction as the former High Court and the judges thereof would have had in and in relation to the New Hebrides as if this Order had not been made, and shall exercise that jurisdiction as if subsections (1) and (3) of section 15 of the Order of 1961 were still in force and as if references in those subsections to the Order of 1961, to the former High Court and to a territory were references to this Order, to the High Court and to the New Hebrides respectively ;

(*b*) the judges and all officers of the High Court shall have and enjoy the same immunities from legal proceedings as the judges and corresponding officers of the former High Court would have had if this Order had not been made.

(2) In this section, " jurisdiction " includes powers, authorities and other functions.

Admiralty jurisdiction.

12.—(1) The Colonial Courts of Admiralty Act 1890 shall apply to the High Court for the exercise of jurisdiction and within the New Hebrides the High Court shall be a Court of Admiralty and may exercise Admiralty jurisdiction in all matters arising upon the high seas or elsewhere or otherwise relating to ships and shipping.

(2) The following enactments of the Colonial Courts of Admiralty Act 1890, that is to say, subsections 2 to 4 of section 2, sections 5 and 6 and subsection 3 of section 16 shall, in relation to the New Hebrides, apply to the High Court as if in the said sections the High Court were mentioned in lieu of a Colonial Court of Admiralty and the New Hebrides were referred to in lieu of a British possession.

(3) As from the appointed day the Admiralty Jurisdiction (New Hebrides) Order 1965(a) shall have effect as if the references therein to the former High Court were references to the High Court.

Application of Colonial Prisoners Removal Act 1884.

13. The Colonial Prisoners Removal Act 1884(b) shall apply to the New Hebrides to the extent of Her Majesty's jurisdiction as if it were a British possession and part of Her Majesty's dominions, and references to the Governor of a British possession shall be construed as references to the Resident Commissioner.

Application of certain other enactments.

14. For the avoidance of doubt it is hereby declared that the following enactments, that is to say—

The Admiralty Offences (Colonial) Act 1849(c),

The Admiralty Offences (Colonial) Act 1860(d),

The Evidence Act 1851(e) (sections 7 and 11),

The Foreign Tribunals Evidence Act 1856(f),

The Evidence by Commission Act 1859(g),

The British Law Ascertainment Act 1859(h),

The Foreign Law Ascertainment Act 1861(i),

The Evidence by Commission Act 1885(j),

The Merchant Shipping Act 1894(k) (section 686),

shall extend and apply to the High Court and to the New Hebrides to the extent of Her Majesty's jurisdiction, and references to the Governor of a Colony, to a Supreme Court or a judge of a Court of a Colony or to a Superior Court in a Colony shall be construed as references to the Resident Commissioner, the High Court or a judge, as the case may be.

Revocations.

15.—(1) With effect from the appointed day, the Order of 1893 and the Order of 1961 are revoked in so far as they have effect as part of the law of the New Hebrides.

(2) Nothing in this section shall, as respects the New Hebrides, affect the continued application on and after the appointed day of so much of section 25 of the Fugitive Offenders Act 1881(l) as immediately before that day applied thereto.

N. E. Leigh

(a) S.I. 1965/596 (1965 I, p. 1893) (b) 1884 c.31. (c) 1849 c.96. (d) 1860 c.122. (e) 1851 c.99. (f) 1856 c.1131. (g) 1859 c.20. (h) 1859 c.63. (i) 1861 c.11. (j) 1885 c.74. (k) 1894 c.60. (l) 1881 c.69.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order establishes a new High Court of the New Hebrides to replace the High Court of the Western Pacific as a superior court for Her Majesty's jurisdiction in the territory, and makes provision accordingly with respect to the jurisdiction of the Court and the law of the territory. The Order also changes the name of the office of Assistant Resident Commissioner to that of Chief Secretary.

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