Labour and the law in Papua New Guinea

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In industrial countries the employment relationship is among the most important relationships known to the law. This is true of communist states as it is of western pluralist industrial societies. For three quarters of a century labour in Papua New Guinea has been organised and regulated according to western legal concepts adapted to serve the twin needs of European enterprise and protection of the local population. With independence, the new country has inherited an institutional framework for the conduct of labour relations which has grown out of this process. This monograph examines the evolution of that framework from the beginnings of European settlement to the present day. It also attempts to look at least a little way into the future.
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Chapter 1

Background

A view from Port Moresby

The Port Moresby regional office of the Department of Labour is situated at Hohola, about 8 kilometres from the centre of the new nation's administrative capital. Outside that office on any working day a number of men, sometimes a hundred or more, will sit patiently on the dusty ground in the scant shade of the natural scrub. They are there in the hope of obtaining casual work. Some are successful. Employers, usually expatriates, use the office as a point for the engagement of typically small groups for such employment. The same offices also house a body established by legislation in 1971, the Bureau of Industrial Organizations, which is formally charged under that legislation with fostering the development of trade unions in the country. But few, if any, of the Papua New Guineans waiting outside the regional office will belong to an organisation which could be described as a trade union in the sense in which that expression is understood in Australia or in other Western countries. Nor will a number of them belong to the Port Moresby area itself. Some may have come from the highlands of New Guinea or other parts of the country and found their way to the capital via an 'agreement' to work for a fixed period on one of the plantations near Port Moresby. And in this group, a few at least will have broken their agreement by leaving before the expiration of the agreed time. The country's largest rubber plantation, Itikinumu, is located near Sogeri on a plateau above Port Moresby. Not far from Sogeri a memorial marks the beginning of the wartime Kokoda Trail. The war imposed severe strains by increasing the demand for labour which European enterprise has always made on village economies. The workers in Itikinumu and nearby plantations live in quarters, receive rations, rates of pay, and entitlement to be repatriated to their homes at the end of the agreement period, have rights and are subject to obligations determined under labour legislation which dates from the earliest days of Australian rule. Even in Port Moresby
itself groups of workers in industries such as building and
construction live and work under similar conditions determi-
ned by the same legislation. Through part of its history
this legislation was punitive in character; it imposed a
penal sanction for various acts which otherwise attracted
only a civil remedy or no remedy at all. The management of
Itikitinumu plantation and that of others near Port Moresby
are troubled by a high labour turnover. Workers under
'agreement' are bound to a two-year term but many leave
before their agreement has run its course. Such people were
once described as 'deserters' and this expression is still
occasionally used in private conversation. For those who
complete their agreed terms and for those who do not the
Port Moresby area exercises a strong attraction. Other large
urban areas act as focal points in the same way. Village
men will travel long distances over difficult terrain to
reach such places. There are two inducements. The first is
the pull of the town against the traditional ways of village
life. The second is the chance to earn some money, more
than can be earned by plantation labour under the agreement
system. Urban wages are higher than the rural wage. The
squatter settlements around the outskirts of Port Moresby
owe something to the social problems stemming from this
influx of people. Those problems are not, however, as great
as they might be in a social structure different from that
which exists in Papua New Guinea. A complex of inter-personal
relationships, of tribal and village associations, ensures
that those in employment and with accommodation take a part
in caring for newcomers.

For the labour lawyer, as for other observers, Port Moresby
presents further contrasts. The numerically strongest, most
viable and industrially effective trade union in the country,
the Public Service Association, which has its central office
in Port Moresby, was until recently conducted by two Australi-
an professional employees under the presidency of an Australi-
an officer of the Public Service. The Association has
successfully organised the majority of public servants, both
local and expatriate. But it does more than that. As will
be seen later, minimum wage legislation recently enacted
provides for the establishment of Wages Boards for a number
of areas. Cases before the Port Moresby Board for the
fixation of a minimum wage for unskilled workers in that
city have been prepared and argued by officials of the Public
Service Association on behalf of those workers. The Associ-
ation, in short, has adopted a protective stance in relation
to such workers which is more than a response to furthering the interests of its own members by pushing up wage rates generally. The central office of the Department of Labour is also located in Port Moresby. That Department is responsible for the administration of the legislation which embraces the agreement system of labour. Recently, however, it also assumed responsibility for a new range of labour and trade union legislation based to some extent on the Australian pattern. Senior positions in the Department have been filled by Australian officers. Latterly, great emphasis has been given to the 'localisation' program in the Public Service.

A number of factors have contributed to the shaping of the country's labour laws and their administration. They inform any understanding of the present and assessment of likely future developments. Before turning to an examination of the development of labour law in Papua New Guinea, however, it is necessary to make a number of general observations.

The first concerns the role of the law in labour relations. Though it is concerned with controlling the use of power in society, the law itself does not, at least to any great extent, create that power. Nowhere is this better put than by Professor Otto Kahn-Freund, who was a member of the British Royal Commission on Trade Unions and Employers' Associations which reported in 1968. In his 1972 Hamlyn Lectures, Kahn-Freund said:

Law is a technique for the regulation of social power. This is true of labour law, as it is of other aspects of any legal system. Power - the capacity effectively to direct the behaviour of others - is unevenly distributed in all societies. There can be no society without a sub-ordination of some of its members to others, without command and obedience, without rule makers and decision makers. The power to make policy, to make rules and to make decisions, and to ensure that these are obeyed, is a social power. It rests on many foundations, on wealth, on personal prestige, on tradition, sometimes on physical force, often on sheer inertia. It is sometimes supported and sometimes restrained, and sometimes even created by the law, but the law is not the principal source of social power. Labour law is chiefly concerned with this elementary phenomenon of social power. And - this is important - it is concerned with social power irrespective of the share which the law itself has had in establishing it. (Kahn-Freund, 1972:4)
Those observations are as true of the development of law, including labour law, in Papua New Guinea as they are of the like development in Australia or, for that matter, of the law in any other society.

Secondly, there is now a wealth of published and unpublished material dealing with virtually every aspect of Papua New Guinea; the history of its people, geographical and geological features, colonial rule, ethnic, economic and social structure, political development, the labour market, trade relations, the legal system and the administration of justice and so on. The purpose of this book is not to add another analysis of some one or other feature of the country's labour laws, such as the administration of the 'native employment laws'. Rather it is to attempt to draw together some general perspective of those laws in the broad context of the country's development.

Thirdly, there are significant differences between European and Papua New Guinean attitudes to work and reward which rest in turn on differences between the economic and social systems concerned.

If Western concepts of work and reward derive from a largely secular socio-economic system organised on the basis of economic specialisation and class structure, and reflect the values of the Protestant Ethic, native concepts of work and reward derive from an entirely different system. The socio-economic system is seen as merely one facet of a highly integrated cosmic order in which what we classify as the super-natural and natural, far from being clearly distinguished, are almost completely fused. It represents an aggregate of virtually classless or egalitarian groups and reflects the values of the Social Ethic: 'a belief in the group as the source of creativity; a belief in "belongingness" as the ultimate need of the individual'. (Lawrence, 1964:28-9)

Traditional New Guinea societies are in virtually every respect markedly different from Australian or Western society. They are neither secular nor specialised but generalised. The super-natural and the natural are one entity. There is no division in such societies into specialised economic, religious or politico-legal functions; the economic system is changeless. Social structure depends on principles which Western society either dismisses or ignores - kinship, marriage and descent
Such cultural differences are, of course, also vitally important in relation to virtually every aspect of the law and of economic activity. They have profound effects in the case of commercial development and its associated institutional and legal framework. It has, for example, been estimated that many millions of dollars have been accumulated from cash cropping and should theoretically be available as investment capital to support development projects. Substantial amounts have also been accumulated by rural and urban wage earners. The simple hoarding of money is a feature of societies of this kind. 'However, the people are not motivated to mobilize this capital, and when if they are, the legal apparatus designed for a totally different economic and cultural framework stands in their way'. (Goldring, 1974:224)

Finally, changes are now occurring very rapidly in Papua New Guinea. Self-government came in 1973 and the final step of complete independence will amount to little more than giving a formal cloak to what has already taken place. Nevertheless, the government cannot devote the whole of its energies to problems of economic development, trade, social change and the localisation of the country's institutions. It is confronted with a number of divisive political issues of which the most overt, and perhaps dangerous, are the separatist movements in Papua and Bougainville. The nature of these movements owes a great deal to the course of Papua New Guinea's history and economic development.

**History and economy**

It has been said that 'the map of New Guinea is a result of nineteenth century European highmindedness, conceit and greed; Australian defence fears; and Indonesian ambition' (Nelson, 1972:11). Whilst the shaping of that map cannot be explored within the confines of this book, it can be said that the administration of Papua under Sir Hubert Murray was of a style quite different to that of successive administrations in New Guinea.

By the Thirties [of the present century] the white residents of the two Territories were keenly aware of their differences...The white planter community and the Returned Soldiers' League were far more influential in New Guinea than in Papua. 'I think', said Murray, 'that the difference is that we cultivate a policy of mateship or camaraderie
between European and Papuan, and they deliberately do not...'. (Nelson, 1972:23)

Those differences, which were strongly reflected in the administration of the native labour laws, have been at least partly responsible for the sense of an identity distinct from that of neighbouring people shared by many Papuans. In the result, 'it is one of the ironies of Papua New Guinea's history that as the Australian Government has become less conscious of the border between the two Territories and made wishful statements about their common destiny, Papuans and New Guineans have become more aware of a separate identity and a vague, irritating constitutional difference' (Nelson, 1972:28).

On Bougainville, the large-scale exploitation of mineral resources has exacerbated the political problems of the government associated with the secessionist movement on that island. There is, too, some possibility of a form of union between Bougainville and the British Solomons.

Confirmation that Conzinc Riotinto of Australia's Panguna mine will become one of the world's greatest producers of copper has intensified and complicated the arguments over Bougainville's future. The vast mining complex with its attendant dislocation of the traditional way of life, rapid urbanization and clashes between Bougainvilleans and black and white 'foreigners' can only add to the grievances likely to be expressed in a separatist movement. Unless mineral deposits in other parts of the Territory are quickly brought into production, Bougainville will dominate the Territory's exports in the next decade. Forecasts of substantial economic growth in the Territory are dependent on the realization of Bougainville's wealth. (Nelson, 1972:34)

But 'for many Bougainville leaders the question of their island's national identity is unsettled' (ibid.:35).

The government in Port Moresby faces other exceedingly awkward political problems stemming from territorial lines drawn by European settlement with little regard for the diversity of peoples and cultures found in Papua New Guinea. Among the questions left in the wake of those earlier decisions are the boundary between Papua and the Torres Strait Islands, the relation of West Irian and its people to Papua and the divisive line running down the spine of eastern New Guinea.
which separated Papua and New Guinea. Like many other areas which have been colonies Papua New Guinea has inherited 'awkward, perhaps intractable, borders' (Nelson, 1972:47). Against such a background there is 'not yet a national vision able to unite a people' (ibid.:50). Nor is there for some time yet much prospect of a national trade union movement emerging to add another political and economic dimension to the life of the country.

How appropriate, then, is the existing pattern of labour law? Those laws are a mixture of responses to the needs, however enlightened, of colonial administrations and the realisation which came in the early part of the last decade that independence could be delayed only a relatively short time. The starting point is therefore one of historical background. And here the observer is on somewhat surer ground. It is not, for example, necessary to preface the discussion with an observation which is now fairly commonly made: 'if Papua New Guinea holds together'.

The course of labour history and the basis of the current labour situation have to a great extent been determined by two factors common to many recently independent countries. Papua New Guinea has been administered by another country and, secondly, the economy is largely a non-market one based on subsistence agriculture. Both factors are reflected in a major statement on labour policy made in the Australian Parliament by the then Minister for Territories, the Honourable Paul Hasluck, in 1961. Early in his statement the Minister said:

To give a clearer picture of the situation in the Territory some statistics may be quoted briefly. The total indigenous workforce in paid employment is only 70,000 in a total population of 1,850,000 and a total male workforce of possibly 600,000. This total of 70,000 wage-earners has shown only minor increases in recent years...The big increases in gainful occupation of the people during the past seven or eight years have been in self-employment, chiefly on the land, producing cash crops. There are far more self-employed native workers with cash incomes than there are wage-earners and this pattern of occupation seems likely to continue. (Hasluck, 1961:11)

The Minister went on to say that although there had been a marked change in recent years in the number moving into urban
employment, of the 70,000 indigenous wage-earners, more than half were employed in primary production; the total of native urban workers in all grades of employment, including government employment of 14,000 was then only about 27,000.

I mention these figures in order that we may keep the situation in perspective. We need to test critically the exaggerations of those commentators who give a picture of very large numbers of people clamouring for industrial change. We also need to remember while we are dealing with some thousands of urban wage-earners, that there are also hundreds of thousands of self-employed little men-peasants, if you like, working their own land — and tens of thousands of unskilled and unsophisticated rural workers employed under agreement. I suggest that we will see the situation more clearly if we recognize the present measures as indicating the direction of changes which are just beginning and which will gather force in the next ten years. What we do now is less for today than for the decade ahead of us. (ibid.: 12)

The difficulties in the way of collecting accurate work-force data in Papua New Guinea are such that the Department of Labour, which relies to a large extent on returns furnished by employers, has not been able to achieve a complete coverage of employment in the country. To take one example, it is hard to enumerate mission workers with whom there is seldom a rigid employer/employee relationship, such persons being mostly employed on a part-time and/or piecework basis. The Department has more than once acknowledged its difficulties in this respect (Dept. of Labour, 1969a:32-5). Taking the figures cited by the Minister as a datum point, however, the position did not change substantially in the following decade. At the end of June 1970, the Department of Labour estimated that the indigenous work force totalled 128,585 of whom 45,343 were in urban employment. Of the urban component 18,110 were employed in the public sector and 27,233 in the private sector (Dept. of Labour, 1970:32-5). One year later, in the last official Departmental figures available, the total indigenous labour force was estimated to be 124,143, an apparent fall of some 4,000 odd on the figure a year earlier, of whom 49,865 were employed in urban areas (Dept. of Labour, 1974:36,38). A census was taken in June/July 1971 but final figures on the work-force estimates were not available at the time of writing. In an inter-industry study of Papua New
Guinea, Parker estimated that in 1970 the indigenous work-force totalled 170,630. The figure projected for 1978 is approximately 217,000 (Parker, 1973:78). Whatever the actual figures may be, it does seem that the size and distribution of the work-force has roughly maintained the pattern shown in the Minister's statement in 1961. Both in absolute and relative terms the numbers are small with urban employment growing rather more quickly than total employment.

Leaving aside demands made by a development such as the Panguna mine in Bougainville, the nature of the economy determines that the rate of growth in the work force, including its urban component, will not, at least in the short term, confront the government with another range of urgent problems. In an analysis of the main structural features of the economy written a few years after the Australian Minister's statement, Fisk observed,

The overall picture that emerges is that of a low income country in which virtually all of the population have as much food as they want, are housed adequately by their own traditional standards, and have ample leisure for feasting, ceremonial and other pastimes. It is an economy that is potentially viable and self-sufficient at a level of primitive affluence, but which is almost entirely dependent on external aid, and on the importation of foreign skills and capital, for any advance beyond that very primitive level. (Fisk, 1966:23-4)

Although Fisk characterised the distinction between a subsistence and a monetary sector as analytically useful in any discussion of the economy, he emphasised that in many ways this is an artificial line distinguishing between types of activity rather than between types of people. The spread of the monetary economy has been geographically so wide that there are relatively few people who never handle money at all.

Nevertheless, for most of the indigenous population the use of money is peripheral to ordinary life, the greater part of their economic activities being centred in the subsistence sector with a much smaller and less important part in the monetary sector (Fisk, 1966:24).

This straddling of the two economies by indigenous people is becoming increasingly common in Papua-New Guinea, even among the indigenous wage-earning labour force. In 1963, the indigenous wage-labour force was estimated at 81,000
and their dependants at about 178,000...It would be wrong, however, to assume that these 260,000 people are therefore removed from the subsistence sector into the monetary sector. This is by no means the case, and in fact hardly any of the dependants, and only some of the wage-earners themselves, obtain their basic food requirements through the market. These are still obtained in the main from subsistence gardens cultivated by dependants and relatives of the wage-earner, and the money income is used to purchase goods and services not available from subsistence production...The monetary sector of the economy of Papua-New Guinea therefore covers only a minor segment of the total economy of the country. (Fisk, 1966:24-5)

Fisk went on to say that of the total goods produced and consumed in the country nearly two-thirds were not exchanged for money and the number of people who were wholly or mainly dependent on a money income for basic essentials was probably less than 100,000 or 5 per cent of the population. Moreover, that small proportion was made up very largely of non-indigenous people with relatively high incomes and a high standard of living (ibid.:25).

For the great majority of the indigenous people a money income is not a means of livelihood, but rather a means of access to non-essential exotic goods and services not available in the tribal way of life. As such, a money income is very acceptable and highly desired, but it can be dispensed with at any time without undue hardship either to the wage-earner or to his family. (ibid.)

Since this was written, the number of indigenous wage and salary earners has probably increased at a somewhat faster rate than the overall growth in population. And the emphasis in the economic activity of the whole economy has been shifting rapidly from self-subsistent agriculture to the modern monetary sector. Certainly, there has been a dramatic rate of growth in National Product. But 'this very creditable achievement reflects in the main the rate of foreign aid and foreign investment now moving into the small Papua New Guinea basic economy, and it does not by any means imply that the incomes of the indigenous people of the Territories have increased by this amount, nor even in proportion' (Fisk and Tait, 1972:2). There have been forceful reminders that the present flow of aid and investment funds into the country goes largely to the creation of the infrastructure required for a modern
productive system and the productive units of that system in the shape of manufacturing industries etc.

Provided these installations can be properly used, they will produce income flows and employment opportunities for many years to come. Their effect on the structure of the economy is not measured by the income flows and employment deriving from the installation process. (Fisk and Tait, 1972:4)

In short, although the pace of change from a subsistence to a monetary economy has greatly increased in the last decade and there are now relatively few people who do not take some part in the monetary economy, for the majority of the people it is still true that that participation is, in the sense used by Fisk, peripheral to their lives. This is important for the developing labour law.

Labour policy

Until comparatively recently the Annual Reports on the administration of the then Territories reflected much the same broad picture of the indigenous work force and of labour relations in the context of the economy as that conveyed in the Minister's statement and by writers such as Fisk. It was a comfortable picture of a very small labour force in relation to the indigenous population, the majority of those workers not being entirely dependent on wages, of no trade unions or real labour problems and of a broad legislative code of employment, essentially paternalistic in nature, contained in the Native Labour Ordinances.

Very broadly, that code governed the recruitment and medical examination of workers with special provisions relating to workers from high altitudes, wage rates, hours of work, the employment of females, the duration and termination of employment, the repatriation of workers at the end of their period of service and conditions of employment generally including prescribed scales for the issue of food, clothing and other items of equipment or allowances in lieu of such issues, the provision of housing, nursing, ablation, cooking and latrine facilities for workers and their dependants and the provisions of medical treatment and suitable accommodation for the sick.
The chapter on labour in that section of the 1959–60 Reports concerned with social advancement may be taken as typical of this period and in reflecting the Administration's view of labour relations at the time gives point to the overall picture just described. Two major sections of this chapter, those dealing with labour policy and objectives generally and the settlement of labour disputes had been repeated in the Reports, with little variation, for a number of years. A third section, that concerned with trade unions, was different in a significant sense from the entries for the previous years. Whilst it continued to describe a situation in which there were no trade unions it recognised that the formation of welfare societies in some of the urban areas could lead to the emergence of unions. These three sections from the 1959–60 Report are set out below and, by way of contrast, the entry on trade unions from the previous year's Report, which had appeared unchanged for a substantial period, is included at the end.

Labour : General Situation. Most of the Territory's indigenous population are farmers who are concerned with subsistence agriculture and the requirements of village life and there are few economic or other pressures which make it necessary for them to enter wage employment. With few exceptions indigenous workers are not entirely dependent on wages for sustenance and the wages and other emoluments paid to workers are supplementary to other income or subsistence derived from village and tribal activities. Besides being a source of cash income employment provides one of the main points of contact between indigenous people and non-indigenous population.

Labour policy is designed to contribute to the general advancement of the people of the Territory by controlling the nature and rate of social change; educating them in new ways of living, in the use of tools and new technical methods, and in personal responsibility; by promoting good relations between all sections of the community, and by associating both indigenes and non-indigenes in developing the resources of the Territory to sustain a higher standard of living and improved services. It also seeks to protect the worker against unfair treatment, damage to his health or deterioration of his habits, and to ensure that both employer and worker honour their respective obligations. At present it is considered that policy will best be served by measures that maintain
village life and the attachment of the indigene to his land; at the same time emphasis is placed on education through employment subject to the safeguards mentioned.

There is a large variation in standards of skill and employment experience, and in technical and social education, among the people of the Territory. The administration of labour legislation is required to be sufficiently flexible to take account of these variations and also to meet the changing circumstances of the Territory's rapidly developing economy. (Papua Annual Report, 1959-60:72; New Guinea Annual Report, 1959-60:100)

Trade Unions. At present there are no trade unions, although some urban workers are beginning to meet together to further their social and economic welfare.

Although there could be a growth of workers' organizations in the urban areas, such a development is unlikely at this stage among rural workers, who, besides being widely dispersed, are generally illiterate.

For the time being it will be necessary for the Administration to retain responsibility for the conditions of employment and general welfare of workers. (Papua Annual Report, 1959-60:76; New Guinea Annual Report, 1959-60:105)

Settlement of Labour Disputes. Workers are encouraged to report complaints that may lead to a stoppage or dispute to the nearest government station before stoppages occur.

Most disputes that arise are of a minor nature and are settled by labour inspectors acting as conciliators. On rare occasions the institution of civil proceedings before a district court is required. It has not been necessary to provide for any special legislation for the settlement of disputes. (New Guinea Annual Report, 1959-60:105)

Trade Unions. There are no trade unions. At the present stage of their development it would be very difficult for the indigenous workers to form proper trade unions. The great majority of workers are illiterates who would not be able to hold responsible positions in a trade union, and who, as members, would have difficulty in assimilating
the aims and ideals of trade unionism.

For the time being it is considered that the best protection for the indigenous worker is for the Administration to retain full responsibility for the conditions of his employment and welfare generally. (New Guinea Annual Report, 1957–58:95)

In short, the official view of the Australian government at that time (1959) was that union organisation was neither necessary nor desired by Papuans and New Guineans themselves. The Annual Reports two years later mark a significant change. The entry concerned with trade unions in the 1960–61 Reports records the first step towards the emergence of trade unions, outside of the public sector, with the formation of workers' associations, one in New Guinea and two in Papua, and their entering into negotiations with employers' representatives (Papua Annual Report, 1960–61:99). Major changes in labour laws, which were foreshadowed in the statement in the House of Representatives on 15 August 1961 by the then Minister for Territories, have followed. In a very real sense that period was a watershed in labour relations in the Territory. Following on the enactment of the first major post-war legislation relating to labour, the Native Employment Ordinance of 1946, there was a gradual evolution and development of the legislative code of employment applicable to indigenous labour. Although that code has been refined further since 1960, the other changes since then place the last fifteen years in a different category. In spite of the obvious continuities it is convenient, therefore, to begin with a brief survey of the labour situation in the Territory in the years before 1960.
Chapter 2

The indenture system

Origins

The Papua Annual Report for 1946-47 observed that

It is noteworthy that there has been an almost constant upward trend in the numbers of natives offering themselves as non-indentured workers and it is apparent that the workers of the Territory are becoming accustomed to this form of service. Of the total number of natives employed throughout Papua at the end of the year under review, approximately 5,000 were employed as non-indentured workers. Before the war the number of non-indentured workers did not exceed 3,000. (Papua Annual Report, 1946-47:21)

At 30 June 1947 the total number of indigenous workers in the Territory of Papua was 10,256 (ibid.) but this figure included Administration employees. The majority of indigenous workers in private employment were therefore employed under indentures. The New Guinea Report for the same year does not contain detailed figures but the Reports for the following year, 1947-48, disclose that there was a total of 25,992 indigenous workers in both Territories in private employment at 30 June 1948. Of this number, 13,378 were employed under indentures (New Guinea Annual Report, 1947-48: Appendix X). In 1950 the Native Labour Ordinance was amended to replace the indenture system by a system of labour under agreement. Indenture contracts in force immediately before the commencement of the 1950 Ordinance were continued but as the maximum length of such contracts was twelve months the last of the contracts expired on 31 December 1951. The effect of this change may be seen in the employment figures at 30 June 1951. At that time there were 38,765 indigenous workers in private employment comprising 9,192 indentured workers, 11,001 agreement workers and 18,572 casual workers (Papua Annual Report, 1950-51:27; New Guinea Annual Report 1950-51:52). The expression 'casual worker' will recur
constantly in any discussion of labour relations in the Territory and is in fact something of a misnomer, the word casual not being used in its ordinary connotation. Casual workers are simply ordinary wage earners in contradistinction to agreement workers who may only be employed for fixed periods. Casual workers are in fact often employed for long periods. The distinction will be discussed in more detail later.

The indenture system and its successor the agreement system of labour runs right through the history of Australian control of Papua New Guinea. Both are explicable if viewed against the background of the Territory's economy, the spread of European enterprise and Australian policy in relation to the indigenous population. Writing in 1958 West put the issues involved in broad terms:

The two Australian territories of Papua and New Guinea which comprise the eastern half of the island of New Guinea, like other tropical colonies which support European enterprise while precluding much European settlement, have always had to consider, either immediately or prospectively, the problem of an adequate supply of indigenous labour. Both the Government and private enterprise depend upon the willingness of a sufficient number of indigenous inhabitants to work for Europeans. Australian policy for reasons which go deep into Australian history, has excluded the possibility of obtaining labour from the densely populated regions of Asia, and under international agreement it has excluded forced or compulsory labour except for certain essential public works. It has also insisted that the indigenous social structure be preserved so far as possible and that village life must be the basis of political, economic and social advancement; and the Government's labour policy has therefore striven to avoid that wholesale removal or depletion of indigenous groups which has led to 'urbanisation' or 'detribalisation' in so much of Southern Africa. Working from these principles, the Australian Government has tried to cope with the facts of geography and economics in its possessions. (West, 1958:89-90)

Both the indenture and the agreement systems, then, have essentially been responses to a shortage of indigenous labour, predominantly in the rural sector, committed to wage employment which, given the character of the economy, the distribution
of population and the desire of the 'Administration' to control the nature and rate of social change, has been a more or less constant characteristic of the labour situation. Both gave the Administration a means of controlling the recruitment and employment of indigenous workers.

The attitudes of employers, particularly employers of rural labour (and primary production with agriculture predominant has always been the most important part of the economy; in 1970-71, for example, agricultural products made up approximately 86 per cent of the total volume of exports (Papua New Guinea Annual Report, 1971-72:59)) have also been important in maintaining both these labour systems for both gave the employer a greater degree of control over workers than is the case with ordinary wage employment. It may be noted at this point that the increasing proportion of so-called casual workers in the indigenous labour force, particularly in recent years, is indicative of a growing acceptance of the constraints of wage employment - staying in a job and keeping regular hours - as a way of life. At 31 March 1967 there were, excluding apprentices, 69,892 indigenous workers employed in the private sector. Of this number, 23,442 were employed as agreement workers and 46,450 as casual workers. Primary production accounted for 22,947 or nearly 98 per cent of the agreement workers and 18,615 or 40 per cent of casual workers (Department of Labour, 1968:27). A little over a year later it was estimated that there were, again excluding apprentices, 87,033 indigenous workers employed in the private sector. Of this number 21,895 were employed as agreement workers and 65,138 as casual workers. Primary production accounted for 21,504 or 98 per cent of the agreement workers and 26,400 or near 41 per cent of the casual workers (Department of Labour, 1969:25).

The Territory of New Guinea first came under Australian civilian control in 1921 as a Class 'C' Mandate under the League of Nations. From 1946 the Territory was administered as a Trust Territory under the United Nations. The former British crown colony of Papua was formally transferred to Australian control with the proclamation of the Papua Act in 1906. Joint administration of both Territories began in 1946.

Early in their history the principal avenue of development was plantation agriculture and that development 'led fairly quickly to a work-force problem' (Territory of Papua and New
Guinea, 1970:22). At the beginning of Australian rule in Papua in 1906 'there was a dual policy: of development, which meant the encouragement of European enterprise; and of protection, which meant that Papuans working for Europeans to assist development must be shielded from cruelty, ill-treatment, and injustice' (West, 1966:4). At that time it was thought that there was no shortage of labour in an absolute sense to support a policy of development; indeed, it was generally assumed that, overall, there was sufficient labour to meet the needs of the Territory. In 1906 the Royal Commission which sat to recommend a policy for the Territory commented:

Your Commissioners recognise that, owing to its tropical climate, it would be idle to ask white men to attempt its development if an ample and suitable unskilled labour supply was non-existent. Fortunately, this problem has not to be faced here the question of importing coloured labour need never arise, owing to the plentiful local supply, and mines and plantations can consequently be worked under natural conditions in no way antagonistic to the policy of the Australian Commonwealth. (Parliament of the Commonwealth of Australia, 1907:148)

The Royal Commissioners recommended a vigorous policy of white development of the resources of the Territory. Although it had some bad patches, Papua could become a significant possession of the British Empire.

They believed, as did most Australians with any interest in Papua, that it was a potentially rich and profitable possession whose resources could and should be unlocked, and that incidentally in this process of development the Papuans would benefit because they would have models of European industry to imitate and by working for Europeans they would acquire both skills and habits of industry without which they would suffer the fate of other aboriginal races and die out. (West, 1966:4)

In his account of the historical background of the Territories, West continued that by 1921 these assumptions and the optimism surrounding the dual policy had changed. This was due in part to Papuan experience. World War I had gravely injured the Territory's trade and in any event it had become clear that the Territory's resources, whatever they might be, could not be developed quickly or easily. The Admini-
stratification began to lay more stress on native policy. As European development would be slow, native development was necessary to the prosperity of the Territory. The other reason for the change he attributes to external factors; the Government of the League of Nations laid stress on the duties of countries administering colonies to native peoples. Consciousness of native interests assumed a more positive form (West, 1966:4-5).

Granted the assumptions and beliefs men had about colonial rule (for it is idle to blame them for being of their own time and place), these different stresses in the dual policy had different consequences in practice. While development by European capital and skill seemed the chief need, both to make the Territories self-sufficient and to yield a profit to those who risked their money and their lives there, the crucial issues of government were land and labour policy, together with ancillary needs like communications - roads and bridges, ports and wharves - which they implied. (ibid.:5)

In the case of New Guinea, land policy did not at first assume the importance it had in Papua. Plantations, chiefly of copra, which had been established under the German regime were expropriated and taken up on generous terms by Australian settlers as freehold. It was not until the discovery and control of the Highlands that land policy became a problem of the order it had earlier assumed in Papua. And the gold discoveries contributed to making labour policy rather than land the major aspect of development. In Papua on the other hand, land policy was the first major concern of the Australian Administration. In 1906 Europeans held some 2,000 acres in leasehold and 18,000 acres of freehold land had been taken up by Europeans during the 18 years of British rule. Freehold was abolished by the Papua Act in the light of Australian experience with land speculation but the Land Ordinance of 1906 made provision for leaseholds on very generous terms. After some fluctuation the amount of land held privately by Europeans levelled off at a quarter of a million acres by 1914 (West, 1966:6).

Only one serious obstacle appeared. Land was available, but where was the labour to work it? If, for instance, the Ceylon figure of three boys per acre was appropriate, from the beginning of development a serious labour shortage existed, granted that the government had a duty to protect
the natives... Even if the figure needed to work the land in cultivation could be reduced from that deemed necessary in Ceylon, there was still an apparent shortage... Estimating the total population at something like 200,000, the Papuan government thought that 10 per cent of this number was the outside limit of available manpower if Papuans were to be saved from turning into a landless proletariat. Yet faced with this threat of a labour shortage, the government was still optimistic; it thought that numbers would prove adequate for the degree of settlement which had occurred and it ascribed any particular shortages to the shortcomings of individual employers and the resulting unwillingness of Papuans to engage for particular individuals. But it was the labour question, nevertheless, which produced the belief that Papua could not be developed in a single generation, that development would not be quick but gradual. And it was the labour question, too, which caused the Papuan government to attempt to bring the whole of the colony under control and to stress the native administration aspect of its policy. (ibid.:7-8)

Provision was made for leasehold land in New Guinea after the Australian acquisition of the Territory, but freehold continued to be the major form of landholding up to 1939 when the amount of land actually planted was equal to the total amount of settlement in Papua. Although land policy was not a pressing problem in New Guinea, therefore, the extent of European development made New Guinea's labour problem correspondingly greater than that of Papua (ibid.:8).

Labour shortage

It was said earlier that it had been generally assumed that there would be no shortage of labour in an overall sense to support a policy of development; but this optimism did not last, particularly in the case of New Guinea. The labour supply problem was the product of a number of factors. One was the 'primitive affluence' of the traditional economy, that 'vast, stagnant but surprisingly affluent subsistence sector' (Fisk, 1966:23). Another was a lack of diversification of the economies of the Territories, both being heavily dependent on copra, a tropical commodity easy to produce and not requiring a skilled labour force, the consequence being a circle of low wage and low productivity per worker. There was also the desire of the Administration
to minimise the effects of development on traditional native life and the imbalance which soon developed between the geographical distribution of population and of primary industry which consisted of plantation agriculture and some mining.

The distribution of plantation agriculture in Papua and New Guinea was determined, broadly, by the following constraints:

(1) In the early stages of development, on the extent of exploration and administrative control.

(2) The location and availability of suitable land.

(3) Means of marketing produce.

(4) The availability of labour.

The first three factors have been the most important in determining the spread of plantation agriculture in Papua and New Guinea. The exploration of the country was undertaken at first by sea, and coastal settlements were well established before administrative control was extended inland. The land policy of the Papuan administration made land for European settlers available on favourable terms; in the case of New Guinea established plantations were expropriated and taken up by Australian settlers on no less favourable terms. Thus, coastal and adjacent areas were acquired and their products marketed through coastal shipping. Initially, at least, the availability of labour would not have been a significant factor in some areas as plantation land was generally also suitable for subsistence gardening and might support a population from which labour could be secured. Nevertheless, the availability of local labour was the least important of these factors; indeed 'imported' labour was often preferred to local labour. Natives from local villages were, at best, an unreliable source of regular labour whereas workers imported from other areas did promise employers a more reliable labour source and one over which, by its very nature, they could exert a greater degree of control. Plantations were, in fact, established quite early in some sparsely populated areas such as Manus and other off-shore islands and the labour force imported from elsewhere. The selection of such areas did offer some advantages – most importantly, freedom from interference and distraction by a local population.
As development proceeded in selected areas a growing imbalance became evident between the distribution pattern for population and plantation agriculture which enjoined a movement of workers on an increasing scale. Tables 1 and 2 illustrate the mobility problems posed by different distributions for population and plantation employment and the compensating labour flows which result. The tables were compiled by the Department of labour from data in the Annual Reports for the Territories - New Guinea 1933-34, 1950-51, Papua 1932-33, 1933-34 and 1950-51. Unfortunately, labour flow figures for Papua in 1933-34 (Table 1) were not provided; what is shown is the imbalance for that year between the number of adult males and plantation acreage in particular districts. The first two columns show the percentage of total Territory plantation acreage and enumerated male population for each District. No conceptual confusion arises from the use of enumerated (i.e. counted or censused) rather than actual population. The latter were not completely covered by a census because they were not fully under administrative control and should not therefore be considered part of the potential labour supply.

It will be noticed, to take one example, that in 1934 (Table 1) the Sepik Division with 20 per cent of the enumerated male population and only 2 per cent of the Territory plantation acreage was a net exporter of labour whereas New Ireland with 11 per cent of the male population and 25 per cent of the Territory plantation acreage was a net importer of labour. Any imbalance between the proportions of Territory population and plantation acreage in a District gave rise to compensating labour movements. Where the proportion of Territory population exceeded that of plantation acreage a net outflow of labour would occur. A net inflow would result from the reverse case.

These general observations may be modified by the extent of self-employment for persons in their home district, the degree of involvement in the wage sector (or willingness to work) and the location of major urban centres which distort the hypothetical rural labour distributions. The Morobe district of New Guinea, it will be noted, did not conform to this pattern for either of the years in question. In 1934 with 22 per cent of the adult males of the Territory and only 2 per cent of plantation acreage this district was a net importer of 4,000 workers and in 1951 with 16 per cent of the Territory population and 2 per cent of the
plantation acreage the district was again a net importer of labour but not on such a large scale, some 1,500 workers coming into the district that year. The explanation lies in the fact that this district was the centre of gold mining in the Territory which by 1951 had become less important. By 1960, with the further decline of mining, the district was a net exporter of labour to the tune of some 300 workers; by 1968 this figure had risen to 3,772.

<table>
<thead>
<tr>
<th>Division</th>
<th>Adult males 1934*</th>
<th>Plantation acreage 1933**</th>
<th>Division</th>
<th>Adult males 1934*</th>
<th>Plantation acreage 1934**</th>
<th>Flow of workers 1934***</th>
</tr>
</thead>
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<tr>
<td>Central</td>
<td>25</td>
<td>34</td>
<td>Kieta</td>
<td>9</td>
<td>12</td>
<td>-509</td>
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<tr>
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<td>5</td>
<td>2</td>
<td>Madang</td>
<td>13</td>
<td>14</td>
<td>-1282</td>
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<tr>
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<td>1</td>
<td>Manus</td>
<td>3</td>
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<td>Morobe</td>
<td>22</td>
<td>2</td>
<td>+3910</td>
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<tr>
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<td>43</td>
<td>N. Britain</td>
<td>22</td>
<td>32</td>
<td>+2325</td>
</tr>
<tr>
<td>S. Eastern</td>
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<td>13</td>
<td>N. Ireland</td>
<td>11</td>
<td>28</td>
<td>+1776</td>
</tr>
<tr>
<td>N. Eastern</td>
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<td>1</td>
<td>Sepik</td>
<td>20</td>
<td>2</td>
<td>-6840</td>
</tr>
<tr>
<td>Northern</td>
<td>14</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
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<td>100</td>
<td>Total</td>
<td>100</td>
<td>100</td>
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</tr>
<tr>
<td>Actual number</td>
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<td>57,305</td>
<td>Actual number</td>
<td>153,331</td>
<td>215,333</td>
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</tbody>
</table>

Notes: See Table 2.

In newly contacted societies, unused to travel beyond clan or tribal lands, such adjustments pose very considerable problems. There is the problem of the lack of communication between employers and potential workers as well as the fact that long-distance movements are beyond the resources, both psychological and material, of potential workers. Yet New Guinea and Papua faced the same basic problems.

In the latter the plantations were concentrated into two districts, the Eastern and Central; in the former the bulk of European enterprise had taken place in the offshore islands of New Britain and New Ireland. This concentration of settlement ruled out an adequate local supply of labour
### Table 2

**Labour mobility - population and employment distributions,**

**Papua and New Guinea, 1951**

<table>
<thead>
<tr>
<th>District of employment</th>
<th>Male population*</th>
<th>Plantation acreage**</th>
<th>Flow of workers***</th>
<th>District of employment</th>
<th>Male population*</th>
<th>Plantation acreage**</th>
<th>Flow of workers***</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td></td>
<td></td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>Central</td>
<td>22</td>
<td>56</td>
<td>+8165</td>
<td>Bougainville</td>
<td>5</td>
<td>14</td>
<td>+1140</td>
</tr>
<tr>
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<td>-2154</td>
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<td>12</td>
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</tr>
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<td>Manus</td>
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<td>+501</td>
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<tr>
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<td>-1248</td>
<td>Morobe</td>
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<td>+1561</td>
</tr>
<tr>
<td>Milne Bay</td>
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<td>29</td>
<td>+1082</td>
<td>New Britain</td>
<td>10</td>
<td>39</td>
<td>+5472</td>
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<tr>
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<td>7</td>
<td>-385</td>
<td>New Ireland</td>
<td>5</td>
<td>26</td>
<td>+2353</td>
</tr>
<tr>
<td>Central Hlds</td>
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<td>-</td>
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<td>Sepik</td>
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<td>1</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Central Hlds</td>
<td>32</td>
<td>-</td>
<td>-2347</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
<td></td>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

| Actual number          | 74,296           | 59,517               |                   | Actual number          | 264,478          | 187,066              |                   |

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* Shows for each Territory the percentages of enumerated adult male population in each district. Adult males are not separately listed in the Papua Report in 1934. The figures given were calculated by subtracting the percentage figures for children (under 15 years) from total males.

** Shows for each Territory the percentage of total acreage under the principal plantation crops (copra, rubber and coffee) in each district.

*** Shows the relationship between contributions by the district to the Territory workforce and employment provided within the districts.

For - read outflow exceeds inflow.

For + read inflow exceeds outflow.

The New Guinea figures for 1934 list indentured workers only. Casual and agreement workers are combined in the 1951 figures.
and so a labour supply had to be found, engaged, transported to its place of work, regulated there, and returned to its place of origin under an elaborate labour code designed to protect both employers and employees. (West, 1966:9)

The principal concern of Australian labour policy, at least up until the point around 1960 previously characterised as a watershed, was the regulation of the 'contract' under which indigenous labour had been recruited, employed at places distant from home and finally repatriated, and the prescription of the conditions under which those workers lived whilst away from their homes. This labour code, for the greater part of Australian rule, took the form of an indenture system; some form of such a system being the characteristic way in which the movement of people to centres of employment has been made in many countries. It is explicable if looked at from the standpoint of the three participants, although one of them, the indigenous worker was, particularly in the early period of the system, largely ignorant of employment opportunities and the demands of wage employment. The Administration, for its part, was concerned to develop and extend revenue earning industries, Australia itself had its own development problems and was unwilling to make large annual sums available for the Territories. The success of development 'was judged in Australia primarily by the Territories reaching self-sufficiency' (West, 1966:9).

Dual policy

Reference has already been made to the dual policy at the outset of Australian rule: the encouragement of European enterprise and the protection of the indigenous population from the worst effects of that enterprise, the latter aspect of this policy changing in emphasis after World War I to a more positive attitude towards the protection of native interests. Given its desire to protect village life and to avoid the creation of a landless proletariat, Australian policy included a willingness to promote a reasonable flow of labour to meet the demands of the private sector, which meant predominantly plantation agriculture, but subject to the constraints implicit in that policy as a whole. The worker obtained security of employment for a fixed period, free transport with a group of kinsmen to his place of employment, worked under prescribed conditions of employment and rates of pay and was, at the end of his period of service,
repatatriated to his home district. For his part, the employer secured workers for a period of time sufficient to cover transport and recruitment costs, and was, in effect, given a very substantial control over his work force through the provisions of the code relating to penal sanctions leading to a fine or imprisonment for 'desertion' and certain other offences such as neglect of duty.

The system, in short, ensured a supply of labour on favourable terms for European enterprise and because it involved 'unmarried' labour on a rotational basis, labourers being discouraged from taking their women folk with them to their employment, avoided the social dislocation attending permanent movement. In Papua, although there were labour shortages from time to time, particularly in the early years, it was by and large successful in providing employers with their labour needs. In New Guinea the pressure from European enterprise was greater and this in turn generated pressures to open up new areas to administrative control thus providing additional sources from which labour could be recruited under indentures. By 1939 two-thirds of the labour force in Papua and virtually the whole of the labour force in New Guinea was employed under indentures. The system found expression in successive Native Labour Ordinances and Native Labour Regulations made under those Ordinances going back to that of Papua in 1907. Before the war the principal legislation was, in Papua the Native Labour Ordinance 1911-1933 which was consolidated in 1941, in New Guinea the Native Labour Ordinance 1935-1939.

The general effect of these Ordinances and the Regulations was the same: they established an elaborate code which controlled each stage of employment from the worker's first recruitment to his eventual repatriation to his home village at the end of his contract. A proper analysis of this code must necessarily descend into the minutiae of the legislation. Whilst interesting enough overall, the exploration of the code in this degree of detail is scarcely necessary to an understanding of the import of it as a whole. It is sufficient to observe, in the broadest terms, that it made provision for recruiting by licensed recruiters, who were subject to government supervision, the procedure by which they were to operate and the qualifications necessary to obtain a licence.

When a 'labourer' - the expression used in the Native Labour Ordinances to denote a worker engaged under indentures -
indicated his willingness to take employment, he was brought before a government officer to have his contract made up and attested. The official had to be satisfied that the labourer was prepared to accept employment voluntarily with the employer in question, there was no reason to expect ill-treatment and that the labourer would be repatriated to his home on completion of the contract. The form and length of the contract, the respective liabilities of both labourer and employer under it and penalties for its breach were prescribed. The actual conditions of employment were spelled out in minute detail: the accommodation to be provided by the employer, medical examination and care, wage rates and methods of payment, equipment including clothing, bedding and utensils to be issued, cooking, washing and sanitation facilities, ration scales, hours of work and holidays. Government officials were given power under the Ordinances to enforce all these aspects of the employment situation. It is not perhaps unfair to say that most of the provisions were such as one would expect to find in any well ordered encampment.

There were some differences in detail between Papua and New Guinea during this period. The differences were in relation to the length of the contract, the fixing of a minimum wage, hours of work and the re-engagement of the labourer on completion of his contract. In Papua the length of contracts was three years for agricultural labourers and eighteen months for miners and carriers. A labourer had to spend one year in his village before re-engagement although subsequently he might be employed for four years from the date of his last being in his village when not under contract. In New Guinea the period of engagement in the case of agricultural labourers was also three years but otherwise two years. And a labourer could immediately enter into another contract, although he had to be repatriated at the end of four and a half years for a period of three months and between subsequent contracts for one month for each completed year of the expired contract. The Papuan code did not fix a minimum wage but the average wage was not less than ten shillings Australian a month. Some skilled workers earned considerably more. There was originally a maximum wage of ten shillings a month prescribed but this was abolished in 1933. The minimum in New Guinea was fixed at five shillings a month but again skilled workers could earn more. In Papua the working week was fifty hours, in New Guinea fifty-five hours (West, 1958:93).
The complexity of detail in this labour legislation shows the importance which was attached to labour matters by both Australian administrations. The general similarity arose out of broadly similar conditions in the two territories, although the Papuan administration prided itself on a somewhat more liberal policy in circumstances of less pressure upon labour supplied. (ibid.:93)

During this pre-war period the value of the system itself or some aspect of it attracted occasional debate. One of the earliest issues concerned the method of recruiting indigenous labour; it was sometimes said that to allow this to be in private hands, even with the safeguards implied in a licence, opened the way to abuses. It was therefore asked whether the Administration should be wholly responsible for the recruitment of workers. Thus, as early as 1907, the Royal Commission on Papua addressed itself to this question.

Amongst the advantages accruing under a Government system of recruiting are the following:— Government officers would, we think, more readily obtain recruits. The natives would place greater reliance, and we think, properly so, upon receiving fair treatment from their employers if the Government were the go-between; the Government, by monopolising the right to recruit, and desiring to make no profit thereby, could afford to do so at a less cost to the employer, who would consequently be benefited; the Government would be in more constant touch with coastal native tribes; the decreased cost of recruits would enable the imposition of a fee for supervision and thus provide more effective supervision of native employees, for which the present fee is inadequate. The foregoing and other minor advantages seem to Your Commissioners to be apparent. The system recommended is one which could do away with the holders of recruiting licences, and substitute for them the Government. (Parliament of the Commonwealth of Australia, 1907:166)

The reasons given by the Royal Commission do of course provide some indication of the role which the government was expected to play in labour affairs and this attitude has only comparatively recently begun to change. The arguments of the Royal Commission on the question of recruitment were opposed on a number of grounds. Confusion would arise in the native mind as to whether the government
official was actually making an offer which could be rejected or was giving an order which had to be complied with. It was said that when villagers confused offers with orders in this way, the government official's authority would suffer. And if the offer was taken as an order this would be tantamount to a kind of forced labour. This aspect of the debate seemed to end in the fairly common view that as it was a primary duty of the government to stand as the protector of the natives in their relationship with European employers and as it was administratively if not legislatively impossible to overcome all abuses or irregularities in recruiting, the best that could be done was for the administration to uphold the principle that all labour should be voluntary.

Evaluation

On the wider issue of the value of the system itself, J.H.P. Murray, the Lieutenant-Governor of Papua, writing in 1925, likened it to a near relative to slavery but at the time he defended its retention in Papua. It did offer the native worker a safeguard against fraud or compulsion and it protected the employer by giving him a criminal remedy for breach of contract by his indentured labourers (West, 1966:7). Murray's own words in the Papua Annual Report for 1929-30 provide an insight into contemporary feelings about the system. 'Labourers', he wrote

can be employed now without indenture in certain cases, but it is a curious thing that both employers and employed often prefer the indenture system. The labourer argues that if he is 'signed on' under contract of service, there can be no doubt about the rate of wages, or the date on which they begin to be payable, or anything else - it is all provided in the contract or the regulations. And the employer is equally appreciative of the certainty ensured by the indenture system, and he cannot be well satisfied with a labour force which may leave him at a moment's notice...The great advantage that the employer has under our indenture system is that it gives him a criminal remedy for a civil wrong; for by our Ordinance a native labourer who, for instance, deserts or neglects his duty, may be punished with fine or imprisonment. These 'penal sanctions' which of course are not peculiar to Papuan labour legislation and which apply to employer as well as employed, put the employer in a position to exercise great control over his labour force; and they
have met with disapproval in many quarters, on the ground that, in case of a breach of contract, both parties should be left to their civil remedy. Theoretically it is impossible to justify the enforcement of a civil claim by criminal procedure, and the first and very natural feeling of anyone who has a regard for justice must be one of resentment against what he would regard as a gross abuse of the criminal law. But actual experience of the administration of a Territory such as Papua will induce him to modify this feeling very considerably and to realize that, if there is to be a contract at all, there must be a remedy for its breach, and that the civil remedy is useless where the defendant has no property of any value, except the few shillings that may be due to him for wages; he is not worth powder and shot and so may break his contract with impunity. And in fact it appears that he does break his contract with impunity in those countries where the penal sanctions are not in force...

Admittedly, it is illogical to enforce a civil contract by criminal process; but on the other hand, to bring up a primitive race like the Papuans in the belief that contracts may be broken with impunity, seems to be hardly consistent with the highest principles of administration. We realise that it is bad to be illogical; but we think that it would be very much worse to encourage our natives to break their contracts. (Papua Annual Report, 1929-30: 9-10)

Looking back from today's standpoint it is, of course, all too easy to be critical of the worst features of the system but as West has observed, given the assumptions and beliefs men had about colonial rule, 'it is idle to blame them for being of their own time and place' (West, 1966:5). Murray himself looked forward to the day when the system would be replaced and he attributed the preference of employers and workers for it to a mutual lack of confidence between the parties - to a lack of maturity in the labour market (Papua Annual Report, 1930-31:9-10).

The system of 'contract of service' more generally known as the 'indenture system' has not by any means been the unmixed evil which it is sometimes supposed to be, it has been a protection to both parties in the past, and will be in the future. But it is not a feature of
administration which one would like to make permanent;
and the day will come, though perhaps not for a long
time, when it may be safely abolished and free labour
take its place altogether. (ibid.)

The system was to survive for another twenty years.

West has observed that the success of such a system
depended upon the enforcement of its provisions, and the
actual machinery for enforcement in both territories was
weak. In Papua the administration of the code was the
responsibility of two officers attached to the Government
Secretary's department. These positions were later trans­
ferred to the Department of District Services and Native
Affairs. However, the majority of labour inspections in
both territories were in fact carried out by ordinary field
staff in the course of routine duties. In neither territory
was a special department created to oversee the complex code.
Both administrations seemed satisfied that the code was
generally observed but as West said serious abuses might
have gone officially undetected and unpunished. There were
fairly widespread abuses at the time of the gold strike in
New Guinea in 1927 (West, 1958:94). Nevertheless, 'It is
probable that there was a high degree of conformity to the
laws, but they were never perfectly observed; indeed their
very complexity tended to make complete observance difficult,
and may have promoted unwitting infringements' (ibid.).

The indenture system came to an end in 1951, thus justi­
ifying Murray's remarks made in 1931 that it would last for
a long time. It was replaced by a system of labour under
agreement but the change, as will be shown later, was, in
a sense, more apparent than real. Certainly, it was time
for an end to things like the penalties which could attach
to a worker for such offences as being absent from work or
for improperly performing his tasks.¹ The end of the system,
however, did not end the forces which had created it. The
agreement labour system is a response to much the same sorts
of pressures as were responsible for the indenture system;
broader, the need to move labour to agricultural enterprises
established on a relatively large scale and to achieve this
movement within the confines of the government's land and
labour policies.

¹Native Labour Ordinance 1946, (TPNG) ss.167(1), 113).
But to return to the indenture system. By what criteria are we to judge its degree of success? A crude measure would be the extent to which it met the labour needs of European employers, which meant, of course, essentially plantation labour, although gold mining created large labour demands at certain periods in New Guinea. On this score it was never entirely successful, with the deficiency more pronounced in the case of New Guinea than in Papua but the differences between the two Territories accounts for this disparity. However, the short-fall of the system judged in this way was, in a sense, a measure of its success in another, that of the Australian Government's policy for the development of the Territories.

The Australian government has always, but especially in its land and labour policies, tried to avoid the dislocation of indigenous societies. It has tried to prevent groups becoming landless and therefore dependent on wage labour for subsistence; it has tried to prevent the social disruption which occurs when too many adult males are away from their communities for extended periods of time. And on the whole the government has been successful in this aim. (West, 1972:11)

The indenture system, then, served these policies whilst, at the same time, it supported European enterprise. Under it village organisation survived and there were scarcely any of the problems which arise from detribalisation or the dislocation of the indigenous social structure. This success stemmed from a number of strands within the system and its operation in practice: upon the fact that labourers were encouraged to go to their places of employment as 'single' men, their families remaining in the villages; upon the length of the contract of service and compulsory repatriation for a period before a further contract could be entered into; upon the limits which were set of the percentage of the adult male population which might be recruited beyond which a village or an area was closed to recruiting. And the system did, to a certain extent, generate some spin-off which served wider purposes. The resources available to the two administrations were such that no great provision could be made for technical, industrial or agricultural training. These skills had to be acquired, so far as possible, through job experience for European enterprise. And the means to satisfy any desire for European goods could only be obtained in the same way. Neither administration could afford to provide
large amounts for medical programs to raise community health standards. The labourers employed under indenture did, however, receive adequate care under the strict health provisions of the code and generally speaking their health was better when they returned to their villages. There were, of course, some areas and some industries which had a higher death and sickness rate than others but the overall picture is one of improvement in this respect under the code (West, 1958:93-4).

This picture of a reasonable degree of success in meeting the standards set out in the labour legislation and its overall goals was at least partly offset by one nagging problem, that of 'desertions' by labourers employed under indenture. The expression 'deserter', which was used throughout the history of this code, is evocative of its penal provisions. If a labourer could be punished by fine or imprisonment for leaving his employer without authority it was easy to think of him as a 'deserter'. In terms of the code a deserter meant a labourer who, without reasonable cause, absented himself from his place of employment without the permission of his employer for any period exceeding four days (New Guinea Annual Report, 1939-40:36). The desertion rate was higher in New Guinea than in Papua. In June 1940 there were 1,507 deserters at large in New Guinea, 603 of them remaining unapprehended from the previous year (ibid.). No comparable figures for Papua for the same period are available but the percentage was always generally lower in Papua than in New Guinea. West has argued that actual ill-treatment was probably exceptional and that conditions of work and the character of individual employers probably accounted for most desertions. As the number of desertions, like the number of deaths, was unevenly distributed between industries and areas, he inferred that it was probably no indication of widespread dissatisfaction or failure to observe the labour laws. He did believe, however, that it was an indication of locally bad conditions. The lower desertion rate in Papua seemed to support this hypothesis. Papua conditions were probably better than those in New Guinea and this sprang from differences in the economic situation, in the demand for labour and perhaps even in a difference in tradition (West, 1958:93-4).

Whilst all this is undoubtedly true it is not necessarily the whole explanation. The problem has to some degree continued throughout the history of the later agreement
system and in spite of great improvements in the labour legis-
lation and in methods of enforcing it. In 1970–71 under
Section 49(1)(e) of the Native Labour Ordinance 1958–1970
six indigenous employees' agreements were terminated in Papua
on the grounds that the agreement workers in question had
been absent from work without leave or reasonable excuse —
had deserted, to use the old terminology; in New Guinea for
the same period the figure was 985 (Papua Annual Report,
terminated for this reason numbered 306 out of a total agree-
ment labour force of 16,628 (New Guinea Annual Report,
1968–69:290,299). In Papua the corresponding figures were
6 in an agreement labour force of 6,118 (Papua Annual Report,
1968–69:125,132). The proportion of contracts terminated
for this reason seem to be consistently lower in Papua than
in New Guinea under the agreement system. The great majority
of agreement workers in both territories are employed in
agriculture and the explanation for the lower rate in Papua
is not immediately obvious. Certainly it is consistent with
the same trend as was noticeable under the indenture system.
However, even the New Guinea figures represent a very much
smaller proportion of the number of agreement workers than
does the New Guinea total for 1940 as a percentage of the
indentured work force. Perhaps a more fundamental reason
for the relatively high desertion rate under the indenture
system lies in the nature of the economy. Traditionally,
the existence and extent of the subsistence sector meant
that there was no real need to accept wage employment and as
a consequence workers were reluctant to accept the constraints
inherent in that employment. The changing pattern evident
more recently under the agreement system may be due to the
spread of the monetary economy and a growing acceptance by
indigenous workers of those constraints which wage employment
implies.

The problem of the desertion rate under the indenture
system aside, however, what realistic judgment can be made
of the system in the context of its times? It was said
earlier that it is easy to be critical from today's stand-
point and men like Murray were conscious of its shortcomings
in his own time. It is harder to see what alternatives were
possible. West is prepared, on balance, to recognise that
some such response to the needs of the territories was
inevitable. He characterised the system as 'an attempt to
balance the necessities of European enterprise, without which
the advancement of the territories would be seriously impaired,
with the interests of the indigenous inhabitants whose welfare was officially regarded as paramount, and whose interests were held to be furthered by participation in the European economy because few other means of economic or social advancement were available' (West, 1958:95).

Some documentation is given in Tables 3, 4 and 5 of the indentured work force as a component of the total work force and secondly of the participation of districts both as users and as suppliers of labour in the indenture system. Table 3 documents the origin and place of employment of the indentured work force in New Guinea in 1934. No comparable figures are available for Papua for this period.

Table 3

<table>
<thead>
<tr>
<th>District of employment</th>
<th>District of birth</th>
<th>Kieta Madang Manus Morobe New Britain New Ireland Sepik Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kieta (Bougainville)</td>
<td>1996</td>
<td>2 2 1 16 10 67 2094</td>
</tr>
<tr>
<td>Madang</td>
<td>3 2735</td>
<td>2 69 27 7 629 3472</td>
</tr>
<tr>
<td>Manus</td>
<td>7 51 619</td>
<td>18 89 4 523 1311</td>
</tr>
<tr>
<td>Morobe</td>
<td>10 1019</td>
<td>26 5075 487 44 2742 9403</td>
</tr>
<tr>
<td>New Britain</td>
<td>496 462</td>
<td>87 655 4960 631 1516 8307</td>
</tr>
<tr>
<td>New Ireland</td>
<td>90 371</td>
<td>56 169 389 2813 1402 5290</td>
</tr>
<tr>
<td>Sepik</td>
<td>1 14 1</td>
<td>6 14 3 946 985</td>
</tr>
<tr>
<td>Totals</td>
<td>2603</td>
<td>4654 793 5493 5982 3512 7825 30862</td>
</tr>
</tbody>
</table>

Source: New Guinea Annual Report, 1933-34:34.

Although there was provision in the Ordinances of the period for the employment of casual or 'free' labour, such employment was the exception. Unfortunately, very little in the way of statistical material on casual employment at this time is available. In reply to a specific query from the Permanent Mandates Commission of the League of Nations, however, an estimate of the casual work force in New Guinea at June 1934 was made, and the results are shown in Table 4.
Table 4
Non-indentured labour in New Guinea, 1934
(estimate only)

<table>
<thead>
<tr>
<th>District</th>
<th>Non-indentured workers</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kieta</td>
<td>30</td>
<td>Mainly in plantations.</td>
</tr>
<tr>
<td>New Britain</td>
<td>1000</td>
<td>500–600 occasional stevedoring employment, 200–300 on plantations, and the remainder in domestic service.</td>
</tr>
<tr>
<td>New Ireland</td>
<td>706</td>
<td>414 on plantations and the remainder in domestic service and other duties.</td>
</tr>
<tr>
<td>Morobe</td>
<td>1200</td>
<td>Mining, plantation work, carrying and domestic service.</td>
</tr>
<tr>
<td>Manus</td>
<td>-</td>
<td>No details given.</td>
</tr>
<tr>
<td>Madang</td>
<td>-</td>
<td>No details given.</td>
</tr>
<tr>
<td>Sepik</td>
<td>-</td>
<td>No details given.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2936</strong></td>
<td></td>
</tr>
</tbody>
</table>


In Papua at the same period there were 2,564 free or casual workers and 9,994 indentured labourers (Papua Annual Report, 1935-35:9). No information as to the employment of the casual workers is available, although it is fair to assume that a considerable number were in domestic service. In both territories it is probable that the majority of casual workers would by virtue of their work be resident in their home districts. There are several points of interest in Tables 3 and 4:

(a) that 91% or 30,862 of the total enumerated and estimated work force were indentured workers;

(b) that 62% or 19,144 of the indentured work force were employed in their home districts;
(c) that if all casual workers are taken as being employed in their home districts then 35% of the total work force were employed outside their home districts.

The actual flow of indentured workers is best illustrated in Table 5. In it the total number employed in a district, regardless of origin, are compared with the total contribution the district made to the Territory work force. This comparison is highlighted by the use of net flow figures. It can be seen that for Kieta (Bougainville) and Manus total employment roughly matched total work force contribution while the Sepik and Madang districts made a contribution to the work force well in excess of their employment and supported New Britain, New Ireland and Morobe districts as net importers of labour.

Table 5

<table>
<thead>
<tr>
<th>District</th>
<th>Contribution to Territory work force (No. %)</th>
<th>Employment in district (No. %)</th>
<th>Net flow into (+) or out of (-) district</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kieta</td>
<td>2603 (8)</td>
<td>2094 (7)</td>
<td>-509</td>
</tr>
<tr>
<td>Manus</td>
<td>793 (3)</td>
<td>1311 (4)</td>
<td>+518</td>
</tr>
<tr>
<td>Sepik</td>
<td>7825 (25)</td>
<td>985 (3)</td>
<td>-6840</td>
</tr>
<tr>
<td>Madang</td>
<td>4654 (15)</td>
<td>3472 (11)</td>
<td>-1182</td>
</tr>
<tr>
<td>Morobe</td>
<td>5493 (18)</td>
<td>9403 (30)</td>
<td>+3910</td>
</tr>
<tr>
<td>New Britain</td>
<td>5982 (19)</td>
<td>8307 (28)</td>
<td>+2325</td>
</tr>
<tr>
<td>New Ireland</td>
<td>3512 (12)</td>
<td>5290 (17)</td>
<td>+1778</td>
</tr>
<tr>
<td>Total</td>
<td>30862 100</td>
<td>30862 100</td>
<td></td>
</tr>
</tbody>
</table>

Source: Calculated by Department of Labour, Port Moresby from information in the New Guinea Annual Report, 1933-34.

Australian colonial administration in Papua New Guinea in relation to labour matters was portrayed above as essentially benevolent and paternalistic. Whilst it served the needs of European enterprise, on a human level it was neither brutal nor particularly oppressive. And it was also suggested that colonial administrators should be judged in a realistic
light as men of their time and place. Different views of this aspect of colonial rule have of course been taken. There is, too, the question of the impact of that rule beyond the mundane day-to-day administration of the labour laws: issues of human dignity, the use and abuse of police power, of punitive expeditions mounted to subdue or to punish, interpersonal relationships between Papua New Guineans and Europeans, educational opportunities or the lack of them, whether self-government could ever be attained and so on. Certainly, 'the fears and ambitions of a small white community living among a people they did not understand forced the passing of regulations which were discriminatory and segregationist' (Nelson, 1972:70). Nelson has given an account of the one short-lived challenge to colonial order - the peaceful strike by indentured labourers and native police in Rabaul in 1929. Under the Native Labour laws it was a penal offence to both break an indenture and to neglect duties under that indenture. Such offences were usually punished by the imposition of small fines, occasionally in the case of 'desertion' by short gaol sentences. But under the general criminal law then, as now, a criminal conspiracy is constituted when men combine together to commit acts unlawful under the criminal law. Breaking indentures and neglecting duties attracted penal provisions. The ring-leaders of the strike were indicted for criminal conspiracy and sentenced to three years in prison (Nelson, 1972:78). On one issue, that of public health, there is general agreement about the merits of colonial administration.

In the case of the indenture labour system, for example, it was simply a matter of common sense to ensure that workers were maintained in sound health. But whatever might be said of Australian rule, the war which commenced in 1939 was responsible for another phase of labour administration in Papua New Guinea.
Chapter 3

Wartime labour developments

There is not a great deal that can usefully be said about the wartime labour situation in the two Territories. The conflict was desperate on both sides and in this setting necessity was as often as not the principal criterion in relation to the utilisation of indigenous labour. Shortly before the outbreak of war in 1939 the supply of labour was reaching a critical stage of shortage in New Guinea and European employers were conscious that the time was quickly approaching when existing labour reserves would no longer be adequate. An administrative union with Papua was being talked about; employers in New Guinea hopefully seeing such a development as providing at least a partial solution to their labour problems. But whatever responses were proposed to meet this situation were abruptly cut short by the war (West, 1958:95). The war 'certainly affected Australian attitudes towards Papua and New Guinea and it profoundly affected the lives of many Niuginians' (Nelson, 1972:81).

The first post-war report for the Territory of Papua, that for the period 30 October 1945 to 30 June 1946, written by the Administrator Colonel J.K. Murray, who was appointed on 23 October 1945, contains an excellent account of the impact of the war on labour in the Territories and of the various measures which were taken to ensure that it was utilised to the maximum extent. The New Guinea Report for the period 1 July 1946 to 30 June 1947 (the first post-war report for that Territory) is also useful in this context. Civil administration in the Territories came to an end on 12 February 1942 when both Administrators were relieved from exercising the duties of their offices and the judges and civil services of the Territories were suspended by National Security Regulations until such time as the suspension should be removed by proclamation: that proclamation did not come until July 1945 when the Commonwealth Parliament passed the Papua New Guinea Provisional Administration Act to provide for the provisional administration of the Territory of Papua and that portion of the Territory of New Guinea no longer in enemy occupation. Control of the Territory of Papua and that portion of the Territory of New Guinea not then occupied

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by the Japanese was vested in the Military Commander, the resources and establishments of the two Administrations passed to the Army and all fit males of military age were drafted into the forces, while European males who were unfit or above military age and other Europeans were repatriated to Australia. A military unit known as the Australian New Guinea Administrative Unit (ANGAU) was formed and 'henceforth administered the Territories according to the Australian ideal as far as was commensurate with military needs, until replaced by the Provisional Administration' (Papua Annual Report, 1945-46:2). With the suspension of civil administration, the vesting of control in the Military Commander, the consequential repatriation of civilians other than a few missionaries and the formation of ANGAU, all European civil enterprise came to an end. Buildings, stores, plant and equipment were requisitioned for use by the forces. Services such as shipping, the operation of public utilities such as electricity and water supply passed to military control and use.

In brief the Territories became a vast military encampment and a series of bases from which to conduct operations; everything was drawn within the military plan and geared to the exigencies of campaign demands.

The native did not escape; were his lands or village required for military purposes they were acquired and the native moved to other locations. When his labour was needed it was obtained. (Papua Annual Report, 1945-46:3)

The National Security Regulations allowed labour to be impressed and fixed the contract period at not more than three years nor less than two but the labourer had to re-engage for a further period if required. Moreover, the limits which had been set on the number of adult males who could be recruited from particular districts had to be abandoned (West, 1958:95).

Initially, then, the war brought all economic activity in the two Territories to a standstill and indigenous labour was subject to the demands of the military situation. After some months, however, the production of rubber and copra from plantations in Papua was undertaken by the Army, using service personnel and indigenous labour. In 1943 these activities were taken over by the Australian New Guinea Production Control Board, a body which was controlled by the Australian Minister
for External Territories. The Chairman of this Board was a senior officer of ANGAU, the other members of the Board being civilians. Service personnel and indigenous labour continued to be employed in operating those plantations which were in production. The Board also operated a number of stores to provide goods for purchase by the indigenous population. Some time later, service personnel were replaced on a number of the plantations by the owners or their nominees who were permitted to return to the Territory as lessees of their properties from the Minister for External Territories. All land leases in the Territories had been suspended by the National Security Regulations from 12 February 1942. Where owners or their nominees did not return, the Board continued to work those plantations which had been returned to production. Indigenous labour was, of course, used in such enterprises. Some industry was, therefore, carried on in Papua practically throughout the war and extended to New Guinea as parts of the Territory were re-occupied. In this fashion, by the end of the war, a number of owners were back on their properties though working them under the control of the Board.

The Australian New Guinea Administrative Unit had responsibilities which extended its reach into most aspects of the life of the indigenous population. In the broadest sense it may be said that ANGAU acted as liaison and as a buffer between the forces and the indigenous population. But while such a general statement is true enough it scarcely conveys the breadth and intimacy of the activities of the Unit in relation to the indigenous population during the war. In the civil sphere its primary function was the government of that population and the maintenance of law and order. It obtained the labour required by the forces and supervised and directed the employment of that labour. Similarly, it was responsible for supplying the labour needs of the Australian New Guinea Production Control Board. It was charged, too, with the medical care and general welfare of the population and to these ends maintained a medical service throughout those portions of the Territories in which it operated. This involved the opening and running of hospitals at main and subsidiary centres. To the extent which the circumstances of the war allowed, it carried on a system of native administration based on that of the former civil governments; it maintained former stations and posts and established others where necessary; its patrols visited villages and in this way, working on a quota system per village, met its responsibilities for obtaining indigenous labour. As an army Unit
it was organised along military lines and had its own sections to handle such things as motor transport, supply and works. It also maintained a marine section to manage and service vessels which it used in district administration and coastal shipping. This latter section was important in meeting the needs of the plantations which were being worked for supplies, labour and the uplifting of produce such as copra and rubber.

The work of ANGAU was complemented by that of the Royal Papuan Constabulary which, while retaining its civil name, was virtually a military unit (Papua Annual Report, 1945-46: 4-5). 'These two units, through their organisation and the fact that in them key positions were filled by officers trained in colonial administration, were able to keep alive the traditions and concept of civil government in a war torn area. This was of material assistance in the restoration of civil administration and made the task less difficult than it would otherwise have been' (ibid.:5). These were undoubtedly vital achievements in the wartime situation in the Territories but the work of ANGAU had other far-reaching effects which extended its influence into peacetime.

The regime of ANGAU had permanent effects on the shape of New Guinea administration. It paved the way for the administrative union of the two territories of Papua and New Guinea, having itself been formed by merging, after only a few weeks, the two separate units at first set up in March 1942 to establish military administrations. It also confirmed, on a uniform pattern for the whole country, the system of integrated administration within relatively autonomous districts. (Parker, 1966:190-1)

Under pressures of the sort described above, the labour force in Papua reached an astonishing 28,000 by the end of 1944, a figure about double the highest previous total. In New Guinea at the same time the figure was 21,000 but part of the Territory was still under Japanese occupation (West, 1958:95-6). Moreover, the course of the war was such that New Guinea suffered to a greater extent than did Papua. These figures may be compared with those for the Territories at 30 June 1939, some two and a half years before the outbreak of war in the Pacific. In both Territories information is available only in relation to the numbers of indentured workers but this category did, of course, comprise practically the whole of the indigenous work force at that time. In Papua the figure was 9,836 (Papua Annual Report, 1938-39:14) and in New
Guinea 41,675 (New Guinea Annual Report, 1938-39:34). The New Guinea total included 2,190 indentured workers in Administration service; the Papuan figure does not include Administration servants. These are not separately shown in the Annual Report in question but the number would have been very small in relation to the indentured work force. What these work force figures for 1939 do show is the extent to which the labour supply was strained by 1944 in those areas of the Territories then under Australian control.

Some efforts were made in 1944 to return labourers to their villages and by August 1945 the work force in the two Territories had fallen to 34,000 (West, 1958:96). The first post-war Annual Report for the Territory of New Guinea provides some insight into the strains imposed upon and the losses suffered by the indigenous population and the effects which this had upon the supply of indigenous labour in the immediate post-war period. After detailing the extent of war damage and the task confronting the Administration in restoring civil administration the Report continued:

The next major difficulty is in regard to native labour. During the military administration of the Territory native labour was used to its maximum capacity for the purpose of the allied war effort and when civil administration was restored in the Territories many of the natives had been away from their homes for very lengthy periods...The war had caused serious loss to native life and property and it has been estimated that in some areas the native population has been reduced very considerably. The loss over the whole Territory is not yet known but reports indicate that there have been alarming decreases in certain areas with large populations. It will be realized that there is not an unlimited supply of native labour and that even under favourable conditions it will be difficult to supply fully the native labour requirements of the Territory. (New Guinea Annual Report, 1946-47:10)
Chapter 4

Labour in the post-war period

It was said earlier that the Papua New Guinea Provisional Administration Act was passed in July 1945 to provide for the provisional administration of Papua and that portion of the Territory of New Guinea no longer under Japanese occupation. By the end of October of that year a single Provisional Administration Public Service had been formed and it took over from ANGAU all of the Territories south of the Markham River. Colonel J.K. Murray had been appointed Administrator of Papua in the same month and in June 1946 the Provisional Administration assumed full control of both Territories with a single Administrator, Colonel Murray.

When the war ended a Labor government was in office in Australia and it foreshadowed a number of radical changes in Australian policy in relation to the Territories, including that in respect of indigenous labour. Perhaps the most significant change was the dropping of the pre-war principle that Australia's official effort should be limited to what the Territories could finance for themselves (Parker, 1966: 192-3). Mr E.J. Ward, who was Minister for External Territories in that government, addressed himself to this question when introducing the Provisional Administration Bill:

This Government is not satisfied that sufficient interest had been taken in the Territories prior to the Japanese invasion or that adequate funds had been provided for their development and the advancement of the native inhabitants. Apart from the debt of gratitude that the people of Australia owe to the natives of the Territory, the Government regards it as its bounden duty to further to the utmost the advancement of the natives, and considers that that can be achieved only by providing facilities for better health, better education and for a greater participation by the natives in the wealth of their country and eventually in its government. (Ward, 1945:4052)

Whatever labour was required during the war had been secured and 'the people had been informed that this course was a necessary war measure and that when hostilities ceased contracts would be terminated' (Papua Annual Report, 1945-46:6).
The Commonwealth Government, therefore, decided that all existing indentures would be cancelled from the date of the resumption of civil administration, i.e. in October 1945, and that the workers concerned would be paid off and repatriated to their villages. Those who wished to continue in employment were given the opportunity to do so under new contracts voluntarily entered into before the civil authority. But the strains and dislocation of indigenous life imposed by the war had been too great for anything but a token work force to offer for employment in this way. In fact, very few such fresh indentures were made. In the words of the Administrator of Papua at that time:

Generally speaking, natives do not show the same desire to work for Europeans as evinced before the war. In most cases this is due to the prolonged absence of the men from the villages and those men who were away now wish to settle down in their village, build new houses, and restore the gardens. A contributing factor to this marked disinclination to offer for work is the absence of trade stores at which natives may spend the money saved during the war years. (Papua Annual Report, 1945-46:13)

The Territories, in short, found themselves confronted with an unprecedented labour shortage at a time when demands were rapidly building up which would require a labour force greater than that which had hitherto been needed in peacetime.

The civil administrations needed labour in their task of restoring an administrative organisation for the Territories and providing essential services. The private sector had a strong and growing demand for labour to extend plantations and to make good the huge backlog of work in clearing and re-planting war damaged plantations. Moreover, when the unified administration for the Territories took over in June 1946 it was in the context of the new policy towards Papua-New Guinea announced by the Australian Government; that the Territory would be financed by grants rather than relying largely on inadequate internal revenues for development. The public sector demand, therefore, was a growing and continuing one and was not simply based on the administrative needs of the immediate post-war situation. But by February 1946 the labour force had fallen to a meagre 4,100 (West, 1958:96). At the same time effect was being given to the more liberal policies announced by the Australian Government in July 1945. The statement by the then Minister for External Territories
referred to above emphasised the advancement of the indigenous population through the provision of greatly improved facilities for health, education and eventual political participation as a cornerstone of policy. The first Report to the General Assembly of the United Nations on the Administration of the Territory of New Guinea (1 July 1945 to 30 June 1946) took up and elaborated the same theme. In broad terms,

the cardinal points of the Government's policy are the fullest possible development of the Territory and the social, economic and political advancement of its inhabitants both native and non-native. Non-native expansion must, however, be governed by the well-being of the indigenous inhabitants of the Territory as a whole and as in the past the basis for the economy of the area will be native and European industry working side by side but with the limit of non-native expansion determined by the welfare of the natives generally. (New Guinea Annual Report, 1946-47:10)

The obvious similarities between this position and the dual policy of development and protection adopted at the outset of Australian rule in Papua might have prompted the question whether Australian policy had really undergone any significant change. But there was an implicit difference which was reflected in the Minister's remarks. This time development and the protection and advancement of the indigenous population was not to depend on the inadequate internal resources generated within the Territory, the goal of self-sufficiency was no longer to be the limiting factor. There were two major reasons for this change in outlook. The Minister referred to one of them, namely, that Australia felt it owed a debt of gratitude to the people of the Territory arising out of the experiences of the war. This was a genuine expression of Australian feeling but such sentiments, however deeply felt at the time, do not always sustain long-term commitments. The other and more fundamental reason stemmed from a revolution in thought, which Australia shared, in respect of colonial administrations. At the end of the war the colonial era entered upon its closing stages and the Australian Government recognised the changes which this necessarily entailed in relation to the Territories of Papua and New Guinea.
Native Labour Ordinance 1946

These new initiatives produced an immediate impact on labour policy. It will be recalled that all existing indentures had been cancelled on the resumption of civil administration in October 1945, workers being given the opportunity to enter into new contracts if they wished. The next step was the phasing out of the indenture system itself. This and other measures were given effect in a major revision of the elaborate labour Code, the Native Labour Ordinance 1946. Conditions under which labourers (indentured workers) could be employed were revised towards the objective of abolishing the indenture system within a period of five years. Consistently with long-term Australian attitudes the government believed that the labour shortage problem should not be solved at the expense of too rapid social change and it sought to strike some balance between the longer contracts desired by employers so as to reduce overhead recruiting costs and the danger of disrupting village life. To these ends, the period of indenture was reduced to twelve months with a period of three months in the village before a further indenture could be entered into—formerly it was possible for workers to be absent from their villages for up to four years in Papua and seven years in New Guinea. Professional recruiters were replaced by the regular salaried agents of employers or an association of employers, and henceforth such agents and an employer himself were to be the only persons entitled to recruit (s.14). As in the past, there were provisions relating to the medical examination of workers, the purpose being to determine fitness for the type of work in question. Thus, before a labourer could commence work, the recruiter was obliged to present him for medical examination with the prescribed form of contract filled in but not executed (s.42).

The Code, as usual, was comprehensive and there were consequential provisions relating to the costs of medical treatment of workers found to be unfit on examination, their repatriation to their homes and responsibility for the costs involved (s.43). Once the contract was executed, which had to be at the first opportunity after recruitment and at the District Labour Office nearest to the place of recruitment (s.46), the employer assumed a continuing responsibility for the medical care of his indentured worker(s), his wife and children and was obliged to take all reasonable precautionary measures to safeguard their health. And, in general, the

1Native Labour Ordinance 1946, Sections 39,40(1).
employer was required to meet the cost of hospital or medical treatment of the worker and his dependants (s.64). There were a number of other provisions relating to the health of workers, the most important being a number of powers vested in District Labour Officers, medical officers and medical assistants. A worker could be ordered to enter an Administration native hospital for examination or treatment and to remain there until discharged. A worker refusing such an order or refusing examination or treatment committed an offence and on conviction could be fined an amount not exceeding the total of his wages for three months (s.65). The same officials could order the destruction of any building in which workers had been or were employed or housed if in their opinion the building constituted a hazard to health. This power extended to declaring any premises or place a prohibited area if the official in question was of the view that it would be prejudicial to the health of native workers to remain there (s.67).

The 1946 Ordinance prescribed new ration and diet scales to be provided by employers for workers and their dependants residing with them at the place of employment. Issues of clothing and other equipment, such as utensils, free of charge for workers and their accompanying dependants continued to be prescribed as did the standard of housing and facilities to be provided by employers. In the case of a recruited worker being accompanied by his wife the employer was obliged to provide separate married accommodation to prescribed standards (ss.47,48,54,56; see also New Guinea Annual Report, 1946–47:12). Hours of work were reduced from 50 in Papua and 55 in New Guinea to 44 hours per week throughout the Territory and the minimum native wage was raised from five shillings per month in New Guinea and ten shillings per month in Papua to a minimum throughout both Territories of fifteen shillings per month (Ordinance 22.50,58). The practice of paying the major part of the monthly wage in the form of deferred wages on termination of the employment was continued. Deferred wages accounted for two-thirds of the monthly wage although a District Labour Officer could authorise a lower proportion (s.58). And provision was made for a worker to receive an advance against his deferred wages at his request. However, such an advance could only be made with the concurrence and in the presence of a District Labour Officer (s.62).

The principle of paying the major part of wages in the form of deferred wages at the end of the period of employment was also part of the pre-war labour Code and is characteristic
of the general protective nature of the legislation. A worker should have something tangible to show for his absence thus helping to justify it in the eyes of his own community which itself would benefit from those savings. Nelson referred to this aspect of the Code in drawing a picture of the indentured labourer returning to his home with his deferred pay, goods and savings.

At the end of his contract a man was bigger, and healthier, and he possessed a box of goods and a little cash to pay his taxes. In the village he had added to his prestige and his cloth, axes, knives, kerosene lamp and tin whistles helped change village life. He distributed his goods widely to clansmen and friends to meet debts and create obligations in others who might be called upon for aid in the future. (Nelson, 1972:75)

Although there is no direct evidence, another reason for the practice may perhaps have been a desire by the Administration to further the spread of the monetary economy.

It was, however, also important in a much broader context. The Code was not simply designed to protect indigenous workers and the traditional social structure. It did those things within a framework of promoting a flow of labour to meet the needs of European enterprise, and community attitudes are important in relation to a willingness to offer for work in a situation where there is no pressing economic incentive to do so. Hence the 'safeguard' where a worker sought an advance of his deferred wages. Indeed, the complex provisions of the Code contained in the various Native Labour Ordinances over the years of Australian rule have been a reflection of the fact that the country has never had an adequate committed wage labour force. Change has been gathering momentum and the Code has been amended in recent years in ways thought to encourage a growing acceptance of wage employment. Moreover, the new legislation which began to take shape in 1962 looked towards the growth and encouragement of trade unions and the establishment of an industrial relations framework designed to serve an emerging urban wage labour force. The appropriateness of that legislation is another question. It should not, however, be assumed that the end of the Code is yet in sight. It continues to fulfil its traditional purpose of providing the greater part of the labour needs of rural industry. It is necessary, then, to complete the outline of the 1946 Ordinance and to trace some of the major subsequent
changes in its provisions.

It gave the Administration wide powers over the recruitment and placement of indigenous workers. Each District Officer was required to determine the maximum number which in his view could be recruited from the district without danger of depopulation. Having done so he could then declare, from time to time, the maximum number of workers to be recruited from a particular village, group of villages or area (s.11). Notwithstanding such a declaration by a District Labour Officer, the Director of the Department of Native Labour had an over-riding power to prohibit by means of a notice published in the Gazette, and either absolutely or conditionally, the recruiting of natives whose homes were in the area specified in the notice or recruiting at any place or area specified. Control over the size of the labour force was exercised beyond the stage of recruitment and involved judgments relating to the labour needs of particular industries and even of individual employers. Thus, the Administrator was empowered to determine and declare the maximum number of workers (both indentured and casual) who might be employed in any industry and the Director of the Department of Native Labour could determine the maximum number of such workers who might be employed by an employer.

These measures were attributable to two inter-related reasons: Australian policy continued to be concerned with the preservation of the indigenous social structure and, more pragmatically, as was noted earlier, labour at that time was in critically short supply. Within the limitations imposed by the broad policy objective, the Administration wished to optimise its deployment. That is why these provisions were made to apply to both indentured and non-indentured labour. Both reasons find expression in the first Report to the General Assembly of the United Nations on the Administration of the Territory of New Guinea. In the words of that Report they were 'designed to preserve the native economy and to make the best use for the benefit of the Territory as a whole of the natives who are available for employment' (New Guinea Annual Report, 1945-46:96). The same combination of policy reasons are discernible in a related section of the Ordinance which prohibited the employment of any native except in accordance with the Ordinance (s.36).

A separate part of the 1946 Code (Part IX of the Ordinance) made specific provision for the employment of non-indentured
workers. A native, provided he was at least 16 years of age, could be employed in this way subject to certain geographical restrictions, namely, at any place within his home district or not more than 25 miles from his home. For employment elsewhere in the Territory the approval of the Director of the Department of Native Labour or of an officer authorised in writing by the Director on his behalf was necessary. Moreover, the Director could, in his discretion, attach conditions to such an approval (s.90). The provisions relating to the employment of non-indentured workers also provided a means whereby an indentured labourer could be re-employed on the termination of his contract at the end of the one-year period of indenture. It will be recalled that an indentured labourer could not enter into a fresh contract until he had remained at home for a period of at least three months. However, the Director or an officer authorised by the Director, might permit, again subject to any conditions imposed, the employment of such a worker under that part of the Ordinance relating to non-indentured workers in the service of the Administration. Some of the terminology used in the Ordinance at that time was rather curious; a worker employed under these provisions was known as an 'employee' whereas a worker employed under indenture was still termed a 'labourer' (s.5). At all events, the wages of 'employees' were not to be less than the minimum for 'labourers' although there was no corresponding provision concerning the deferment of a proportion of an employees wages (ss.58,93).

The housing arrangements, ration scales and articles to be issued free of charge by an employer were the same for an employee and his wife and children (if accompanying him) as in the case of a labourer and his dependants (ss.94,95). The Administration was given the means to exercise as tight a control over the development of the non-indentured work force as it had in respect of indentured labourers. The provisions relating to the maximum number of workers who could be employed in any industry or by any employer were discussed earlier and it was noted that those controls applied equally to 'employees', i.e. non-indentured workers employed under that Part of the Ordinance relating to such workers. There were other constraints specifically relating to 'employees'. Employers were obliged to keep an 'Employees Register' in a prescribed form and returns had to be furnished half-yearly to the appropriate District Labour Officer (s.96). In turn, a District Labour Officer was empowered, for any reason he considered sufficient, by a notice in writing to an employer stating his reasons, to
order that employer to cease employing any 'employee' specified in the notice. Where any employment was terminated in this way it was provided that the Administration should meet the cost of returning the worker to his home (s.98). The structure of the Ordinance is interesting in that there was a broadly parallel provision in relation to indentured 'labourers'. Here the Director or appropriate District Labour Officer might order that the labourer concerned should not again be recruited either at all or for a specified period. Neither labourer or employer was entitled to compensation for the termination of the contract and the employer was under the same obligation with regard to returning the labourer to his home and paying accrued wages at the date of termination as if the contract had come to an end in the ordinary way, i.e. at the end of the indenture period provided in the Ordinance (ss.79,80).

The 1946 Code, as did the pre-war one, also contained provisions with respect to two other matters lying at the centre of the legislative scheme. The Code itself was the authoritative wage-fixing machinery. It directly prescribed the rate of wages for both indentured and non-indentured or casual labour, the mode of payment and, in the case of indentured labourers, for the deferral of a proportion of the wages earned (ss.58,93). Secondly, it continued to specify a number of offences of a penal nature for both employers and workers. Thus, there were a series of offences obviously related to the conduct of trade stores by employers. An employer could not use undue influence to induce labourer or employee to spend his wages in the purchase of goods from any person; charge them more than the prescribed price (a price for articles could be prescribed in the Regulations made under the Ordinance) or, where there was no prescribed price, the ruling local price for such articles; sell to labourer or employee goods worth ten shillings or more without at the time of sale handing over an invoice showing details of the transaction and an employer who sold any commodity to labourer or employee except for cash was guilty of an offence (ss.103,104). On the workers' side it was an offence to fail or refuse to commence work under the contract at the time stipulated, to be absent from the place of employment without leave or reasonable excuse, to perform work carelessly or improperly and to damage the property of the employer through the use of fire (ss.106,107,108,113). It was, too, an offence to entice or induce a labourer to absent himself or to harbour him if he was absent without leave and
to cause 'disaffection' among labourers or employees (ss.112, 114).

The administration of the Code was placed in the hands of a special Department of Native Labour, established in 1945, and which in June 1949 had a headquarters staff of six, with district labour officers and inspectors at district centres and in the field, aided by other field officers (West, 1958: 96–7). As with the pre-war Codes, although there was probably substantial overall compliance with its provisions, it was certainly the case that many infractions by employers went unpunished. Given the nature of the system, that was inevitable. For example, how punctilious could one expect some employers to be in observing the requirement of the Code that when selling goods of a certain value to a native worker, he should hand over an invoice containing precise details of the transaction.

Native Labour Ordinance 1950

Labour by agreement, penal provisions, administrative machinery. Further amendments came in 1950 and 1953. The Native Labour Ordinance of that year, which came into operation at the beginning of 1951, substituted a scheme of 'labour by agreement', with no penal offences for breach of agreement, for the former system of labour under contracts of indenture, the last of which expired at the end of March 1951. Thereafter, the distinction between the two categories of workers contemplated by the Code was between 'agreement workers', those whose engagements were for a fixed term (the allowable agreement period) and the so-called 'casual workers', those who were really employees in the ordinary sense. Casual workers had begun to make up an increasing proportion of the labour force. The length of contract for the agreement worker was fixed at two years with the possibility of re-engagement for an additional year. The remedy for a breach by either party lay in the institution of civil proceedings before a District Court. The separate Department of Native Labour was abolished. Its functions were divided between the Department of District Services and Native Affairs, which was made responsible for the employment provisions of the Ordinance, and the Government Secretary's Department, which was the body responsible for the inspection of labour conditions and the investigation of complaints. After a short period, these functions were also transferred to the Department of District Services and Native Affairs. West
has said of the 1946 and 1950 Ordinances that 'the post-war labour code thus preserved the elaborate regulations of pre-war days, made significant improvements, and established a more adequate supervisory machinery for their enforcement' (West, 1958:97).

Further changes in the structure of the employment provisions of the Code and its associated administrative machinery have been made since those amendments. A major factor underlying these changes has again been that acute shortage of labour which has for so long largely determined economic policy and the shape of the country's labour laws.

The Highlands labour scheme. In the post-war period, 'Australian policy still ruled out imported or compulsory labour, still refused to contemplate the wholesale transformation of village life, so that employers' eyes began to turn to the one great untapped source of labour in the Territory' (West, 1958:98). That source was the fertile grass valleys of the central highlands of the island, lying between heights of 4,000 and 7,000 feet above sea level and cut off from the coast by high mountain ranges. West has described the origins of the Highlands Labour Scheme, its early operation and legislative framework (ibid.:98-110). Ward (1971:81-107) has analysed some of the effects of that scheme on migration patterns in the country.

The Highlands were discovered in the 1930s but exploration was far from complete on the outbreak of war. In official eyes they were an 'uncontrolled area', non-official white entry was generally forbidden and the people of the Highlands had never been recruited for work. At the end of the war, parts of the Highlands were declared to be controlled and more reliable statistics began to show the extent of the labour reserves which they contained. These labour reserves at once attracted the interest of employers; 'indeed the highlands seemed the obvious and easy solution to their difficulties' (West, 1958:99). The Administration, however, adopted a most cautious attitude towards proposals for the extensive recruitment of highland labour. To the usual reason for such caution, that of restricting the impact of Europeans on newly contacted peoples so as to preserve the indigenous social structure, was added another, the fear that highlanders would run a grave health risk if taken to work in coastal areas. But progress was still heavily dependent on European enterprise and the Administration was forced to
consider the problem of highland labour (ibid.).

The Native Labour Ordinance enacted in 1946 contained in its provisions dealing with recruiting, sufficient teeth to enable the Administration to exercise a tight control over the use of highland labour. Most of these provisions were referred to earlier but it is useful to note again their general tenor in this context. Each District Officer was required to make a survey of the native population in his District to determine the maximum number of natives who could be recruited without danger of depopulation. This was a matter for the judgment of each District Officer and thus there could be some variation between Districts. Overall, however, the intent was clear enough. District Officers were empowered to make declarations as to recruiting limits for villages or groups of villages as well as for the District as a whole. Recruiting in excess of the figures determined by declaration either for the area or on a village basis was made an offence (Native Labour Ordinance 1946, s.11). Recruiters were required to hold a licence (s.13), the categories of persons who could recruit were spelled out (s.14) and it was expressly provided that certain natives could not be recruited. Such people included those not in good health, those who had not attained full physical development or were old or infirm, those under 16 years of age, those who during the previous twelve months had not resided at home and those already employed under a 'contract' or 'agreement' with the Administration (s.16). Notwithstanding those specific provisions, the Director could, by notice, prohibit for a specified term or until further notice, and either absolutely or subject to conditions, the recruiting of natives whose homes were in any area specified in the notice, at any place or within any area specified in the notice or in any area having an altitude of not less than 3,500 feet above sea level for employment in or removal to or through any area having an altitude less than that figure (s.22(1)). A person who knowingly recruited, engaged or removed any native in contravention of those provisions was guilty of an offence (s.22(2)).

In 1949, when applications began to come in from employers for permission to recruit highland labour for work in coastal areas, they were refused (West, 1958:99–100). Applications from employers in highland regions were, however, given more sympathetic treatment. The gold fields employers in the Highlands were allowed, under strict supervision as to numbers and medical precautions, to recruit limited numbers. Such
workers could not be taken to places with altitudes lower than 3,500 feet. This was treated in the nature of a pilot scheme (ibid.:100). Nevertheless, the pressure by employers to exploit the labour resources of the Highlands remained and was reinforced with the argument that the medical problems associated with the use of such labour in coastal regions were not as great as had been supposed. The Native Labour Ordinance enacted in 1950 responded to these pressures by widening the provisions for the more general recruitment of such labour under prescribed conditions as to medical examination on recruitment and on return to the Highlands and the medical precautions to be observed whilst absent from the Highlands. Recruiting could be undertaken only by administration officials, employers making their labour requirements known by way of application. And the usual controls applied to the length of the agreement. The detailed provisions of the scheme both in its inception and as it evolved have been described in detail by a number of writers (e.g. West, 1958: 89-112).

In 1969 the Department of Labour, which some years previously had taken over the administration of the whole of the employment Code, undertook a detailed analysis of the supply of labour through the Highlands labour scheme. The report which resulted from this study examined employment trends in the country, the recruitment, medical and repatriation provisions of the scheme, the socio-economic factors affecting the supply of highland labour, the attitudes of highland people to employment under the scheme and their attitudes on repatriation after completion of the agreement period. The Report makes sober reading. It documents the difficulties in the supply of labour, resting on social structure, economic organisation and attitudes to wage employment, which have been endemic in Papua New Guinea. The scheme itself has been a major factor in meeting the demand for labour. In 1969 it provided about 38 per cent of the labour requirement of the copra-cocoa industry and 70 per cent of the labour requirement of the rubber industry (Dept. of Labour, 1969b:5). Both industries were of prime importance in the economy of the country. In the year ended 31 March 1967, 95 per cent of agreement workers engaged through the scheme formed the labour component of export production, representing 15 per cent of the total value of exports at that time (ibid.:11). The scheme has also aided substantially the cash economy of the Highlands (ibid.:11-12). But like others before, it has not provided the final answer to the problem of a shortage of
labour. The Report observes that:

The Department of Labour has been aware for some time of the changing pattern of the Scheme, but the supply situation remained adequate until June 1968 when the first minor delays in meeting applications by employers for highland labour occurred. Since that time the situation has deteriorated slowly but surely. At Mount Hagen, outstanding orders for more than 300 recruits were held in November [1968] and could not be met on time, and in early February [1969] there were outstanding orders for 700 recruits. Recruits have not been coming forward at the usual rate.(ibid.:12)

The Report also sheds light on the pace of change in Papua New Guinea from the traditional labour under agreement, which itself was an extension of the earlier indenture system, to the casual, i.e. usual method of engagement and employment. As this change gathered way, the importance of the Highland scheme as a source of agreement labour for primary industry correspondingly increased. The proportion of total agreement labour supplied by the Highlands District rose from about one-fifth in 1960 to two-thirds in 1969 (ibid.:65). Ward (1971:81-107) has provided graphic documentation of the labour flows which have been a product of the constant search for new sources of labour supply.

The contract labour system and its successor, the agreement system, operating through the government-managed Highland Labour Scheme and through licensed recruiters in non-highland areas, have long been the principal channels through which villagers made their first step into the modern sector...A typical area will send out agreement migrants soon after the establishment of initial contact or control. After the first few groups return there is usually a decline in the number offering for agreement work and this may coincide with the increase in local sources of cash, usually from cash cropping. Agreement recruiting drops to a relatively low and stable level; recruits now tend to be older than previously and a higher proportion are married. Perhaps these are the less adventurous men, preferring security and lack of responsibility to higher wages and independence. Once financial resources in the area increase and the initial flush of cash crop establishment is passed, out-migration is renewed, generally involving larger numbers than ever
before, but now on a non-agreement, independent basis. (ibid.:84-5)

It will be necessary to return to the future prospects of the agreement system later on; for the moment, however, it is appropriate to return to the outline of the developing employment Code.

Amendments, 1952–61

A number of relatively minor amendments in the provisions of the Code as it stood in the 1950 Ordinance were made in the intervening years to 1958. In 1952 and 1953, for example, the legislation was amended 'so that, while maintaining the system of labour under agreement, the supervision over the engagement of labour and the conditions applying to the period of labour and the welfare of the worker were improved' (Hasluck, 1961:12). The next major revision came in 1958 with the enactment of new ordinances. The first, the Native Employment Board Ordinance, provided for the establishment of a Board to advise the Administrator on all employer-employee relationships, wages and conditions of employment. The Board consisted of two officers of the Administration, two representatives of employers and two representatives of employees. One of the Administration officers was Chairman. A major function of the Board was to be wage-fixing in relation to the employment Code. The Board was, however, short lived; the legislation creating it being repealed in 1962. Some further reference to the wage fixing function of the Board will be made later in a discussion of rural wage fixation experiments. The second piece of legislation passed in 1958 was more significant. In that year the Native Employment Ordinance came into effect and the existing Native Labour Ordinances were repealed. The renaming of the Ordinance did not, however, mark a complete break with the past but rather a carrying forward and further refinement of the provisions of the Code. A number of other amendments were made between 1960 and 1971 and it is proposed to deal with the Ordinance as a whole, incorporating those further changes.

In the major statement on labour policy made by the then Commonwealth Minister for Territories in 1961, which has been referred to earlier, it was said that one of the main effects

2Native Employment Board Ordinance (Repeal) Ordinance, 1962.
of the new Ordinance, apart from making further improvements in employment conditions, would be the recognition of 'a class of freely-engaged labour consisting of those indigenous workers who were fully capable of engaging themselves for employment and to a large extent protecting their own interests' (Hasluck, 1961:12). But the Minister also laid emphasis on the fact that a major function of the Code would continue to be as a vehicle for meeting labour requirements and the protection of those 'tens of thousands of unskilled and unsophisticated rural workers employed under agreement' (ibid.). The Administration would 'continue to control the recruitment of agreement labour so that village life and family life will not be endangered, and will continue to supervise employment so that nothing is done that is harmful to the welfare of the worker...' (ibid.:13). The Minister expressed the hope that the House would recognise 'that for some years to come there will be a body of labour, mostly rural labour, whose interests can best be served by the supervision of the Administration' (ibid.) The same Ministerial statement also marked a major change in the machinery responsible for the administration of the employment Code. Out of the experience with the Native Labour Board there was created in 1961 a Department of Labour, one of whose principal functions would be the administration of legislation relating to employment.

It is there to administer the law and to help promote employment and harmonious industrial relations. In respect of the unsophisticated agreement worker, it will exercise those protective and supervisory functions which were previously carried out by the Department of Native Affairs. In respect of the advanced worker, its purpose is not to think or act for him but to clear the way so that he can think and act for himself. (ibid.:14)
Chapter 5

The labour code

Employment and recruitment

It is specifically provided that the Code shall not apply to a number of categories of persons, the major ones being: those employed otherwise than under an employment contract\(^1\) (employment contract is defined to mean a contract creating the relationship of master and servant—presumably by reference to Australian law as to the employment relationship (s.5(1)); the holder of a current certificate of exemption—such certificates may be issued where it is deemed unnecessary to apply the provisions of the Ordinance to the employment of a particular person (s.7(1)) and where the employment does not bona fide extend beyond one day (s.7(1)). The administration of the Code lies in the hands of the Department of Labour which may appoint employment officers, inspectors, medical officers and medical assistants for the purpose of carrying its provisions into effect (s.9).

'Recruiters', now termed 'native employment agents', continue to find a place under the Code. Inspectors have a discretionary power to issue licences and to require applicants to furnish security in a prescribed form for the due observance of the provisions of the Code (s.15). Maximum fees chargeable by employment agents are prescribed (s.17) and licences may be revoked for a number of reasons including the improper performance of the functions of an agent (s.18). The preservation of village life and the social structure again finds expression as a policy objective of the Code—there may be a prohibition, for a specified time or indefinitely and either absolutely or subject to conditions or exceptions, on the employment of any native or natives from any village or area. Limits may be placed on the numbers to be employed in particular industries and in nominated categories of employment by individual employers in that industry (ss.19-20). Persons may by order be prohibited from employing or having charge of employees. Such an order may be in general terms applying to all employees and all

\(^{1}\)Native Employment Ordinance 1958-1971, s.7(1)
occupations or may be limited to employees from specified areas or employees in particular categories of employment. Before such an order is made, the person concerned must be given an opportunity to show why the proposed order should not be made (s.21). The Supreme Court or a District Court may at any time prohibit the employment or the continued employment of a 'native' where it appears necessary to do so in his interests. An order of this nature may be made for such period, in respect of such part or parts of the country and subject to such conditions as the Court in question deems fit and may be cancelled by the Court on like terms (s.22). Certain 'natives' cannot be employed at all. Apart from the usual blanket prohibition on employment otherwise than in accordance with the Code, a number of categories are spelled out in detail. They include persons unfit for the type of work proposed, those who have not attained full physical development where the work is heavy labour (and 'heavy labour' is separately defined to include such occupations as quarryman, diver, pearl fisher, miner and wharf labourer) and who is less than 16 years of age (s.23). Arrangements, contracts or agreements for the employment of 'natives' contrary to the provisions of the Ordinance are specifically rendered void and of no effect (s.24).

In addition to the licence provisions, other safeguards surround the process of engaging labour. A person when engaging or attempting to engage a native for employment must not knowingly be accompanied or assisted by a person to whom a licence has been refused or whose licence has been revoked or suspended, take with him or use in any manner for the purpose of engaging or attempting to engage a native for employment a native representative employed in government service or a person 'dressed in the manner of or in a manner similar to or representing himself to be a native representative' in government service or permit any person other than an authorised employment agent or the prospective employer to make an offer of employment (s.26). And a person when engaging or attempting to engage a native for employment must clearly inform the prospective worker of the terms and conditions of the employment being offered and must satisfy himself that the worker understands the terms and conditions being offered including a specified list of matters such as the name of the employer; the name or names of the plantation or plantations, ship or ships, mine or mines or other place or places at or on which he is to be employed or may be employed; the location of the place or places of employment;
the occupation in which he is to be employed; the nature of
the work involved in such occupation; the period of service
required of an agreement worker; the cash wage to be paid
and the manner of paying the cash wages including the arrange­
ments proposed in respect of deferred wages, if any (s.27).
Such provisions are, of course, another reflection of the
protective nature of the legislation. Oddly enough, a common
criticism of the common law of employment in Australia is
that the law does not impose a requirement that employers
should take adequate steps to acquaint employees with the
major terms and conditions of their employment. In the case
of industrial awards, on the other hand, there is a require­
ment that a copy of the relevant award shall be displayed in
a prominent position in the work-place. In England there is
legislation in the form of the Contracts of Employment Act
requiring employers to bring to the attention of employees
at the time of engagement the major terms of the employment
in question.

When a native has been engaged for employment further
action must be taken. In the case of a native engaged for
employment as an agreement worker, the person engaging him
must make all the necessary arrangements to have the agree­
ment drawn up, sanctioned and attested and take the person
concerned before the Employment Officer who is either nearest
to the place of engagement or nearest to that place along
the route to be travelled to the employment. In the case of
a native engaged as a casual worker he must arrange for his
transport to the place of employment. And the transport
arrangements for the worker and any accompanying dependants
must be such as an Employment Officer may deem reasonable
(s.28). The usual requirements of the Code as to recruitment
from particular Districts are continued in the new Ordinance.
Except where a native is to be employed in the District in
which he is engaged for employment, a person must not engage
or attempt to engage for employment a native unless he has
given to the Inspector of the Subdistrict in which the offer
of employment is made prior notice in writing or by telegram
of his intention to endeavour to engage workers from that
Subdistrict and of the name or names of the person(s) on
whose behalf he is acting (s.29).

A key part of the Code continues to be the provisions
relating to agreement workers. The 'agreement' itself must
be in writing, in a form and containing particulars prescribed
under the Ordinance. It must also specify the occupation and
nature of the work to be performed, the place of employment and the place where the employee is to be paid off, and the period of the agreement. It must contain an undertaking by the employee that he will perform to the best of his ability the duties allotted to him under the agreement, be signed by the employer and employee in the presence of an Employment Officer and has no force or effect until sanctioned and attested by an Employment Officer in accordance with the Ordinance. One copy of the agreement must be retained by the employer at the place of employment, one handed to the employee and the third retained by the Employment Officer attesting the agreement (ss.30-31). Previously there had been only one category of agreement worker but the new Code provides for two classes of such workers. Class 1 comprises single men or men who are not accompanied by their wives and families. The maximum period of employment for this group is two years, although married men who are joined by their wives and families during the agreement period may enter into a further agreement for a maximum additional period of two years. Class 2 comprises married men accompanied by dependants. Men in this group may engage for a period of up to three years, with the option of re-engageing at the expiry of the agreement for a further two years, giving a maximum agreement period of five years. Except for the cases of immediate re-engage ment a lapse of at least three months must take place between successive agreements entered into by either class of worker (s.34). Again, that rests on the notion of giving some protection to the social structure.

Sanctioning of agreements

There are the usual very formal provisions as to the sanctioning and attestation of agreements as part of the generally protective nature of the Code. An agreement cannot be sanctioned or attested until the employer has lodged with the Employment Officer a guarantee in a prescribed form with at least one surety approved by an Inspector in a sum sufficient to cover the deferred wages payable during the period of the agreement and the estimated cost of repatriating the worker and his dependants (if they have accompanied him) to his home. Alternatively, the employer may deposit with the Employment Officer attesting the agreement an amount equal to the deferred wages which will be payable under the agreement together with the cost, as calculated by the Employment Officer, of repatriating the worker and, in the case of a Class 2 worker his dependants, to the worker's home. A third alternative is also provided. That is to
lodge with a bank a deposit under the sole control of the government in an amount equal to the deferred wages and repatriation costs, again as calculated by the Employment Officer. The Secretary of the Department of Labour is empowered by notice in writing to exempt a person from these provisions on such conditions as he thinks fit. A list of such exemptions in force from time to time must be published in the Gazette (s.36).

There are further provisions relating to the attestation of agreement workers. An Employment Officer is forbidden to sanction or attest an agreement until a Medical Officer or Medical Assistant (as defined in the Ordinance) has certified that the native is medically fit and physically able to perform the class of work in which he is to be employed and that he is in his opinion of employable age. Where such persons are not available to conduct the required examination, an Employment Officer may, if he is satisfied as to the apparent medical fitness, physical ability and age of the native sanction the employment. If he does this, he must endorse the agreement accordingly and the native must then be medically examined as soon as practicable thereafter. When that examination does take place, if the native is not passed on any one of the three grounds - fitness, physical standard, age - the employer must comply with any direction given by the Medical Officer or Assistant as to the variation or termination of the agreement or as to treatment or hospitalisation (s.37). The Employment Officer's next task is to satisfy himself about the articles which employers are required to issue to agreement workers. As part of the sanctioning and attestation process he must require the employer to produce for examination the clothing and other articles prescribed under the Code for issue to the employee and his accompanying dependants, if any. If the Employment Officer is not satisfied with the articles produced, on the ground that they do not conform with the standards set by the Ordinance, he may refuse to sanction the agreement until suitable articles are produced. When he does approve the articles, they must, after the formal step of the sanctioning and attestation of the agreement has been taken, be issued to the employee in his presence. There is one qualification to this process. The Employment Officer is given an absolute discretion to sanction and attest an agreement without requiring some or all of the articles to be issued where the proposed method of transport to the place of employment makes it inconvenient to so issue the articles or where any clothing or article is
unprocurable at the place of attestation. In these cases, the deficiency must be made good within one month of the date of attestation, the employer notifying the Employment Officer that the issue has been completed (s.39).

One further step of this formal process remains. Before sanctioning and attesting an agreement, an Employment Officer must satisfy himself as to a number of matters: that the agreement is in accordance with the Ordinance; that both employer and employee are competent to enter into the agreement; that the proposed employee understands and intends to undertake the conditions of the proposed employment and his rights and duties under the agreement and that the requirements of the Ordinance have been complied with (s.40(1)). He is expressly empowered to refuse to sanction an agreement. If he does so, he must immediately furnish a written report to the senior officer of the Department of Labour in the District setting out the grounds of his refusal. Copies of the Report must also go to the person who engaged the worker, 'the person who produced the native for sanctioning and attestation' and the prospective employer (s.40(2)). An officer of the Department of Labour, on receiving such a written report, may himself sanction the agreement (s.40(4)). But where an Employment Officer has refused to sanction an agreement 'and the native desires to return to the place where he was engaged for employment or is ineligible for or has no prospect of obtaining other employment in the Subdistrict where sanction is refused' he must be returned to the place where he was engaged as though he were an agreement worker whose agreement has been terminated (s.40(3)). In general, where the worker refuses to enter the agreement, at the point of the sanctioning process before an Employment Officer, the expense of returning him to the place of management is borne by the government (s.41).

Variation, transfer and termination of agreements

There are extensive provisions relating to the variation, transfer and termination of agreements. Again, wide discretionary powers are vested in Employment Officers. Such an officer may, on application by the employer and employee jointly, vary the terms and conditions of an agreement, other than in respect of the period of the agreement, in any manner not contrary to any other provision in the Code (s.41). The Courts are also invested with powers to vary agreements. These are harsh quasi-penal provisions, the tenor of which strongly reflects the origins of the Code in the earlier indenture
system. Where an agreement worker is convicted by the Supreme Court or other court and sentenced to a term of imprisonment, the Court may order, if the employer so desires, that the term of the agreement be extended by a period not exceeding six months, the term of imprisonment served or the remaining period of the agreement as at the date of conviction, whichever is the least. This Court power of variation overrides the discretion vested in Employment Officers. Where a Court makes a variation order of this nature, an Employment Officer must, on the application of the employer concerned, endorse the agreement to give effect to the order of the Court (s.43(1) and (2)). The Court powers do not stop at that point. Where a Court is satisfied that an agreement worker has been absent from work without the permission of his employer or without 'reasonable excuse' the Court may 'at any time' on the application of the employer, order that the term of the agreement be extended by a period not exceeding six months or the period of absence from work, whichever is the less. And where, pursuant to this power, a Court orders the extension of the term of an agreement it may make such further or other order which it deems fit (s.43(3) and (4)). It is easy enough to understand why the expression 'deserter' still has some currency in Papua New Guinea.

The provisions as to the transfer of agreements are not so draconian. An Inspector may, on the joint application in writing of an employer or his legal personal representative or liquidator (as the case requires), an agreement worker and another person, approve of the transfer of the agreement to that other person. Such a transfer must be made in a form prescribed under the Code. It will be recalled that an Inspector is defined to mean a District Officer or other person appointed as an Inspector by the Secretary of Labour for the purposes of the Ordinance. A transfer cannot be approved until the transferee (the new employer) has undertaken the duty which rests on all employers at the time of sanctioning and attesting agreements in relation to the provision of guarantees etc. to cover deferred wages arising under the agreement and the costs of repatriation at the end of the agreement period. Again, as with the original or primary employer, the Secretary of Labour may by notice in writing except, on such conditions as he thinks fit, the transferee or second employer from the provisions relating to guarantees etc. A list of such exemptions in force from time to time must be published in the Gazette (s.44). There is an express preservation of the rights and obligations
vesting in the original employer. A transferee of an agreement is entitled to the same rights and privileges and subject to the same liabilities and obligations (including liability for all wages, both current and deferred, due to the employee under the agreement at the date of the transfer) as the original employer (s.45). A transfer of an agreement made otherwise than in accordance with these provisions is deemed void and of no effect (s.46).

Turning now to the termination of agreements. As with the variation of agreements, powers are vested in both Employment Officers and the Courts. Where an employer and an agreement worker make a joint application for the termination of an agreement before the date of expiration of that agreement, an Employment Officer may, if he is satisfied there is no reason why the matter should be dealt with by a Court, terminate the agreement in a manner prescribed under the Ordinance. That is a general power resting with Employment Officers. Such officers have another power which arises only in specific circumstances. Where an employer reports to an Employment Officer that an agreement worker is absent without reasonable cause or excuse and the employer has not exercised a power given him to claim from the employee out-of-pocket expenses, but has deposited with an Employment Officer all unpaid wages and allowances, the agreement may be terminated if the Employment Officer concerned is satisfied that there is no reason why the matter should be dealt with by a Court (ss.48,50,90).

The Courts are empowered to terminate agreements both on the application of an employer and of an agreement worker. In each case, the application must be made on one or more of a number of specific grounds. In the case of an employer application, that the agreement worker has been convicted of an offence against or contravention of the Ordinance or of any other law in relation to his employment; has been imprisoned for a period in excess of seven days; has been negligent or careless in the discharge of his duties to the employer under the agreement; has disobeyed a lawful order; has been absent from work without leave or reasonable excuse or has committed any act or omission such as would, if committed by a servant, justify the termination of a contract of service by a master. The last ground is another surprising example of the express importation into the Code of the ordinary common law of employment, presumably of the Australian variety. It thus includes such grounds for the summary termination of
the employment relationship as 'mis-conduct' in the sense in which that expression is understood in this branch of our law. Equally, however, virtually all of the other specified grounds would also be the basis for summary dismissal by an employer. The difference in the Code is that instead of an employer having a right to act unilaterally where he believes an employee has transgressed on such grounds, the Code requires the intervention of a Court to make an order in response to an application by an employer (s.49(1)). And an agreement cannot be terminated on any of these grounds unless action for termination is taken on or as soon as practicable after the happening of the event on which the application is based (s.49(2)). An Australian employer who, on becoming aware of grounds justifying the summary dismissal of an employee, say, wilful disobedience of a lawful order, elects to keep the employment relationship in question on foot, may be held to have waived that particular ground for summary dismissal.

In the case of an application by an agreement worker for the termination of his agreement, a Court may make an order to that effect on one or more of a number of grounds; that the employer - or a person acting or purporting to act on his behalf or by his authority - induced the employee to enter into the agreement by force, fraud or a materially misleading statement; has been convicted of an offence against or contravention of the Ordinance in relation to the employee or his dependants; has been negligent or careless in the discharge of his duties towards the employee or his dependants under the agreement or the Ordinance or has committed an act or omission such as would, if committed by a master, justify the termination of a contract of service by a servant (s.49(3)). As with termination by an employer, in the case of an employee application for termination, this last ground specifically, and the other grounds by implication, import the Australian learning as to the termination of the master/servant relationship into the agreement system. The only substantial difference is again that the intervention of a Court is required rather than a unilateral act by an employee. But in Australian law the action of either employer or employee in this context may be reviewed by a Court if either party moves to that end. Under the Code the Courts have a further function in relation to the termination of agreements. This is part of the protective fabric of the Code which emerges in so many areas. A Court may at any time whether on its own motion or otherwise and on such conditions (including the payment of compensation) as it thinks just, terminate an agreement on any one of four
grounds, namely, where: the agreement worker is unfit for any reason to carry out his duties under the agreement; termination is, in the opinion of the Court, in the interests of the welfare of the worker or his dependants; the employer and agreement worker agree to the termination or for any other reason it considers that the agreement should be terminated (s.49(4)).

Hard on the heels of these provisions, however, the Code looks to the protection of the employer's interests. Where a Court terminates an agreement under those provisions on account of a wrongful act or default of the agreement worker, it may award to the employer concerned such amount as it determines of any additional out-of-pocket expenses, as assessed by it, as are reasonably caused or to be caused to the employer by reason of the wrongful act or default or the early termination of the agreement. In the event of such an award, the Court may also order that the employer be authorised to retain the amount in question out of the deferred wages or ordinary wages due to the employee. It is also provided that an amount awarded under these provisions shall be deemed to be a judgment debt against the worker (s.50). The Code envisages equality of treatment in respect of employer and employee default. There are corresponding provisions applying to the case where a Court has terminated an agreement on the application of an agreement worker on one or other of the specified grounds dealt with above. Where a Court has so terminated an agreement it may award to the agreement worker such amount as it determines of the value, as assessed by it, of the loss of wages and allowances and of any expense to the worker or his dependants reasonably caused, or to be caused, by the wrongful act or default of the employer or person acting on his behalf or by his authority. And an amount so awarded may be deemed to be a judgment debt against the employer (s.51). There is a provision for a 'set-off' by the Court where there is an award to both employer and employee (s.52). Given the nature of the work force in Papua New Guinea it is, of course, one thing to provide in the legislation for equality of treatment in this way on the termination of an agreement and quite another to ensure that that goal of equality is carried into practice.

Finally, there are a number of consequential provisions which follow on the termination of an agreement. The employer must, as soon as practicable, prepare and present to an Employment Officer at the place of pay-off the original agreement
together with a statement in a prescribed form showing full
details of all current and deferred wages due to the agree-
ment worker, the arrangements made for the repatriation of
the worker and his accompanying dependants and containing
such other particulars as may be prescribed (s.55). Where
an agreement worker enters into a continuing agreement, the
employer is not responsible for his return until the termi-
nation of the continuing agreement. Unless the worker is
absent without leave from his place of employment or is in
prison, the employer must arrange for him to be medically
examined by a Medical Officer or Medical Assistant (s.56).
All current and deferred wages and other amounts due to the
worker must be paid to him, in the presence of an Employment
Officer at the place of pay-off (s.57). A place of pay-off
in relation to an agreement worker is defined to mean a
District Office in the District to which the employer is
bound under the agreement to return the worker at the termi-
nation of the agreement or such other District Office as an
Employment Officer, on the joint application of the employer
and the worker, for any special reason approves (s.5). Where
an agreement worker enters into a further continuing agree-
ment on the termination of his original agreement his deferred
wages due under that agreement are not paid to him but accrue
in relation to the second agreement (s.58). Should an agree-
ment worker die before all wages due to him under the Ordi-
nance have been paid, the agreement, if not already terminated,
is deemed to have been terminated by the death and any wages
due to the deceased worker must be paid to an Employment
Officer for distribution according to law or native custom
as the case requires (s.59).

The remaining matter is the repatriation of the worker,
a feature of the successive Codes. An employer is made
responsible for, and for the expenses of, the return of the
agreement worker and his accompanying dependants 'to such
of the homes of the worker as is specified in the agreement'
(s.62(1)). But where he enters into a further agreement
this responsibility resting on the employer is deferred until
the termination of that second agreement (s.62(2)). In
either case, an Employment Officer must be satisfied with
the arrangements made for repatriation (s.62(3)).

Casual workers

A separate Part of the Ordinance [Part VIII] deals with
'casual workers'. A blanket provision says simply that
subject to the Ordinance 'a native may be employed without
an agreement as a casual worker' (s.67). In the absence of evidence to the contrary, the Ordinance deems it to be a condition of a contract of employment between an employer and a casual worker that the contract may be terminated at any time by either party without notice (s.68(1)). It was noted earlier that in a number of areas the Ordinance, by implication, imports certain incidents of the ordinary common law of employment into employment contracts; whether that is an appropriate thing is another question. This provision, however, amounts to a seemingly harsh express exclusion of one of the common law incidents attaching to contracts of employment. Where the parties to such a contract have not provided expressly for a period of notice to bring the contract to an end, the law implies that reasonable notice must be given on either side. What is reasonable notice is gathered from the nature of the particular employment contract. The reason for the inclusion of this basic provision in the Ordinance lies in the special nature of the work force in Papua New Guinea and in the attitudes of workers to wage employment. This is supported by a major qualification to the general rule - where a casual worker has completed six months continuous service with the same employer both parties must, before terminating the employment, give one week's notice of intention to terminate the employment (s.68(2)). That does accord with the practice of the common law. In ordinary industrial employment, where the parties have not adverted to a period of notice, the law customarily implies a requirement for a week's notice on either side. The remainder of the qualification also follows the common law. An employer may pay such an employee one week's wages in lieu of notice and may deduct from any moneys due to such an employee the equivalent of one week's wages if the employee terminates the contract without giving the required period of notice. Moreover the employer is expressly given a right to dismiss an employee summarily, i.e. without notice, on the same grounds as those on which an employer may terminate the agreement of an agreement worker (s.68(3) and (4)). It was noted earlier that those grounds also broadly follow the common law.

This is the major difference drawn in the scheme of the Ordinance between an agreement worker and a casual worker; i.e. an agreement worker is engaged for a fixed period, either two or three years; a casual worker needs at best only a week's notice to bring the employment to an end at any time. It is much closer to the ordinary concept of wage employment.
Another important difference between the two categories of workers lies in the provisions concerning repatriation on termination of the employment. For the agreement worker it has been seen that the employer has a number of obligations in this respect to the worker and his dependants. But in the case of casual workers the only obligations in relation to repatriation are those which arise if the worker is employed on a vessel and his employment is terminated at a place other than the place where he was engaged (ss.68B,68C).

Although closer to wage employment, the casual worker has not yet reached that status. The Code still places that final arbitrary shield around him as it does for the agreement worker. The Secretary of Labour may, if he believes it desirable in the interests of a casual worker, by notice in writing both to employer and worker, order the employer to cease employing the casual worker concerned. Such a notice must set out the reasons for the order and both employer and worker have a right to appeal (s.69).

When the 1958 Code came into effect, it defined the limits within which casual workers, as distinct from agreement workers, could be employed. Such workers could be employed only within their own home Subdistrict or within 25 miles of their homes. The Administrator had power to declare that the distance limitations should not apply in specified areas or to individuals or classes of workers. Thus, to take some examples, declarations were made that the limitations did not apply in the case of workers employed as members of boat's crews, in domestic service, mineral exploration, the construction and maintenance of airfields and the seasonal harvesting of coffee. As a result of an amendment to the Ordinance which came into operation in March 1963, the former distance limitations on the employment of casual workers were abolished. Henceforth, such workers could be employed anywhere in the country subject only to proclamations directed at regulating the employment of indigenous workers from or in certain areas, the Highlands being a case in point.

There was one short-lived development in the Code which specifically looked towards the recognition of a class of freely engaged labour consisting of those indigenous workers 'fully capable of engaging themselves for employment and to a large extent protecting their own interests' (Hasluck, 1961:12) which the then Commonwealth Minister for Territories spoke about in his statement on employment policy in 1961. This found expression in a separate Division of that Part.
[VIII] of the Ordinance dealing with casual workers. That Division, which had the title, 'Advanced Workers', provided that a worker who had reached a certain stage of advancement could be issued by a District Officer with an Advanced Worker's Certificate. Such a certificate would permit him to be employed anywhere in the country on a cash wage basis. That wage would include cash in lieu of the rations, clothing and other articles prescribed under the Code for agreement and casual workers. The experiment was premature, the provisions proving totally ineffective, and it was abandoned with the repeal, in 1972, of the Division of the Ordinance.¹

Females. The remaining Parts of the Code, though containing many detailed provisions on such matters as conditions of service and the health of workers, lend themselves to a fairly brief summary treatment. Part IX deals with the employment of females. It specifies those categories of employment in which indigenous female workers may be employed as either agreement workers or as casual workers, forbids employment in heavy labour and provides for the limitation of places at which females may be employed (ss.74,75,76). There are provisions as to rest periods (s.77), employment at night (s.78), the provision by employers of transport to and from places of employment (s.79), pregnancy and maternity (ss.80-84), and medical examination (s.85).

Conditions of service

Part X, entitled Conditions of Service, lies at the heart of the Code, continuing as it does the various prescriptions as to wages, accommodation, issues of clothing and materials, medical examinations and so on. It commences with a comprehensive statement to the effect that the provisions of this Part shall, subject to the Ordinance and to the Industrial Relations Ordinance (see later) apply to and be deemed to form part of every employment contract entered into under the Ordinance (s.86(1)). An 'employment contract' is defined to mean a contract which creates the relationship of master and servant between the parties (s.5). Thus, these provisions are incorporated into the contracts of all agreement workers and all casual workers. And 'to the extent that it is in conflict with any provision of this Part, an employment contract entered into with a native employee shall be of no force or effect' (s.86(2)). For some years after the enactment of the Principal Ordinance in 1958, minimum wage rates continued, as in the past, to be prescribed in the Ordinance

¹Native Employment (Minimum Conditions) Ordinance, 1971,2.18.
itself. Thus, to take an example, in 1967 Section 87 provided that in the case of an employee who had had not more than one year's continuous service with an employer the minimum wage would be $52 per annum rising to $65 per annum for an employee with more than two years continuous service with an employer. In 1970 an amendment to the Ordinance inserted a new Section 87A providing that each minimum wage prescribed by Section 87 should be increased by the sum of $26 per annum. In 1971 this clumsy procedure was finally abandoned. In that year a further amendment to the Ordinance repealed Section 87 of the Principal Ordinance and inserted a new Section 87 providing that 'the wages payable to an employee shall be not less than those provided for by the Industrial Relations Ordinance 1962-1971.' The provisions of this latter Ordinance are dealt with subsequently.

Other provisions of this Division [Wages] of Part X of the Ordinance deal with the following matters. The wages of an employee must be in addition to the payment of such allowances, bonus and penalty rates as are prescribed or provided for in the Industrial Relations Ordinance and in the employment contract and commence, in the case of agreement workers, on and from the date on which the employee is attested and, in the case of other employees, on and from the date on which they commence duty at the place of employment (s.88). Wages accrue from day to day, must be paid in coin or notes which are legal tender and paid during normal working hours (ibid.). The manner in which wages are to be paid is also prescribed. There are separate prescriptions for agreement workers on the one hand and 'employees' on the other (s.89). And it is provided that wages shall not be payable in certain circumstances. Here, a complex set of provisions provides a further insight into both the nature of the Code and the work force itself. Where an agreement worker is absent from work owing to illness or injury (other than illness or injury arising out of or in the course of the employment) for a period exceeding one month at any one time, the employer is liable to pay wages for the first month only of such absence. But where an agreement worker is absent from work because of either imprisonment or absence without leave or reasonable excuse, if such absence is reported by the employer to an Employment Officer within one month of the employer becoming aware of the absence, the employer is not liable to pay wages in respect of any such period of absence (s.90(1) and (2). Where an employee other than an agreement worker is absent

1Native Employment (Minimum Conditions) Ordinance 1971, s.20.
from work on any one or more days in any week otherwise than because of illness or injury arising out of or in the course of his employment, the employer is not liable to pay wages in respect of that absence (s.90(3)). And where an employer is not liable for the payment of wages during a period of absence in accordance with these provisions but has issued food as required by the Ordinance before the absence, and any such food is not returned or replaced by the employee, the employer may make a prescribed deduction from wages due to the employee or subsequently accruing to him (s.90(5)).

The following three Divisions of Part X contain the detailed prescriptions as to the accommodation, cooking, messing, ablution and latrine facilities, the types and quantities of food and methods for their storage, and the clothing and other articles to be provided for employees and their accompanying dependants. ¹ It will be recalled that such provisions are deemed to form part of every employment contract and thus apply in respect of both agreement workers and casual workers (s.86(1)). The impact of these provisions was changed significantly by amendments to the Principal Ordinance made in 1971 and which came into effect early in 1972. Until that time the Code had always provided for a cash wage and in addition to that wage the employer had to provide accommodation, food etc. to the prescribed standards. Amendments to the Principal Ordinance made by the Native Employment (Minimum Conditions) Ordinance in 1971 and other amendments to the Industrial Relations Ordinance made at the same time, provided for the establishment of a Minimum Wages Board and a minimum all cash wage of $5.90 per week. That was a transitional wage which has since been varied by determinations of the Minimum Wages Board. From the all cash wage weekly deductions of prescribed amounts for accommodation, food, clothing and other personal issues may be made by agreement between the employer and employee. The amounts may be deducted only where the items concerned, say accommodation, are supplied by the employer at a standard not lower than that prescribed under the Native Employment Ordinance itself. The prescriptions in the Ordinance thus remain of key importance in the Code.

The 1971 legislation also made some change in the repatriation provisions in respect of agreement workers. Before these amendments an agreement worker had to be repatriated to his home village without cost to him. Now a deduction of a prescribed amount per week may be made from his all cash wage to cover the cost of his eventual repatriation (s.13).

¹Native Employment Ordinance 1958-1971, Part X, Divisions 3-5, ss.91-111
There is now no compulsion upon an employee to return home if he does not wish to do so. In such circumstances, the deductions made from his wages to cover repatriation costs must be refunded to him at the expiration of the agreement, thus relieving the employer of repatriation obligations. If the worker elects to be repatriated and the sum deducted exceeds the cost of repatriation, the balance must be refunded to the employee (ibid.).

The remaining Division of this Part of the Ordinance [X - Conditions of Service] deal with hours of work, overtime and penalty rates [Division 6], recreation leave and long leave [Division 7A] and a number of miscellaneous matters such as the conditions of any tools of trade to be issued by an employer [Division 8]. Until the 1971 amendments it contained a Division [7] dealing with allowances. Subject to a number of safeguards, both agreement and casual workers could be paid allowances in lieu of certain prescribed issues required to be made by employers. This Division was repealed by the 1971 legislation as it was no longer appropriate after the introduction of the all cash wage.

Health

The Code has always contained quite extensive provisions relating to the health of workers. Parts XI [Health] and XII [Deaths and Diseases] continue this tradition. It is not proposed to deal with those matters in any detail; the tenor of the provisions may be gathered from a few examples. Employers are under a positive duty to ensure that employees 'shall not be required or permitted to perform work for which [they] are not physically fit' (s.132). They must also provide and keep in serviceable condition for immediate use 'at the place of employment such drugs, dressings, instruments and other medical requisites as are prescribed or directed in any particular case by a Medical Officer or Medical Assistant for the use and treatment of his employees and accompanying dependants (s.133). An employer must ensure that all buildings and premises and surrounding areas in which an employee or accompanying dependants is employed or accommodated or which are used by him are maintained in a clean and hygienic condition (s.134(1)). The scales of operation of plantation industry may be gathered from the provision that at each place where an employer employs or accommodates more than 800 employees and accompanying dependants, the employer must provide a legally qualified medical practitioner and a medical assistant whose full-time duties are, in both cases, the
medical care of the employees and dependants (ibid.). From that point, the Code provides for a diminishing scale in the level of professional medical assistance to be provided by employers. Thus, for not less than 400 but not more than 800 employees and dependants in the one place, a full-time medical assistant must undertake the medical care of employees and dependants. And for not less than 10 but not more than 50 the employer must provide a person in possession of a current first aid certificate (s.135(2) and (4)).

There is a general provision that these requirements of the Code do not apply to a place which is at all normal times less than thirty minutes travel by some means of transport available to employees and accompanying dependants from a hospital conducted by a legally qualified medical practitioner or medical assistant or nurse registered under the Medical Services Ordinance, the services of which are available to the employees and accompanying dependants. (s.135(5))

But this general exemption may be set aside; a medical officer may, for good cause, declare that a particular place shall not attract the exemption (s.135(6)). And there is a further and overriding power reposed in the Secretary for Labour. The Secretary may, with the approval of the Director of Public Health, by notice in writing, exempt an employer from these provisions generally or relax or modify them in any particular case (s.135(7)). This Part of the Code goes on to lay down requirements, again on a sliding scale according to the numbers of employees and dependants, in respect of the provision of hospitals and sick wards. For example, where 400 or more employees and accompanying dependants are employed or accommodated, the employer must provide a building approved by the Director of Public Health or a medical officer as suitable for use as a hospital (s.136(1)). Both hospitals and sick wards must be constructed to standards laid down in the Code (s.136(2)). And again there are similar provisions for exemptions from these requirements: where there is a nearby hospital, where a medical officer has declared that they shall not apply to a particular place and the general power in the Secretary of Labour to exempt employers either wholly or in part (s.136(4),(5),(6)).

Employers are required generally to ensure that their employees and accompanying dependants get all necessary medical
and other treatment free of charge and must, if necessary, arrange for their treatment or hospitalisation at a hospital other than a hospital or sick ward which has been provided by an employer in fulfilment of the requirements mentioned earlier. In such a case, suitable free transport to the regular hospital is also an employer responsibility (s.137 (1) and (2)). A further general requirement is that employers must comply with any reasonable directions given by a Medical Officer, Medical Assistant or Inspector in any matter affecting the health, treatment or hospitalisation of an employee or accompanying dependant or the hygiene or sanitation of the place of employment (s.138). Finally, the same officials may declare any premises or place to be prohibited premises or a prohibited place if there are reasonable grounds for believing that it would be dangerous or prejudicial to the health of employees or dependants for them to work or reside on the premises or place. Where such a declaration is made employees and dependants must be removed from the premises or place concerned (s.139).

Part XII, Deaths and Diseases, commences with the somewhat surprising definition that for the purposes of this Part 'disease' means a disease or personal injury other than one of a trivial nature (s.140). The Code, as has been seen more than once, abounds in definitions cast in such wide terms that a great deal depends on the administrative discretions conferred on various officials in its enforcement. But whatever does constitute a disease, an employer is required to enter in a record known as the 'Register of Medical Treatments', details of all diseases suffered by his employees, their causes and treatment (s.141). When an employee dies or is believed to have died, the employer is required immediately to deposit with an Employment Officer: all amounts due to the employee under the terms of his employment; any moneys or articles of value, the property of the employee found among the personal effects of the employee or which have come into possession of the employer, and any other clothing or personal effects of the employee not covered by the two preceding provisions. The employer may, at his discretion, hand articles in this third category to the accompanying dependants, if any, of the employee. Likewise, any money, clothing or other articles found amongst the personal effects of a deceased accompanying dependant must be handed to the employee (s.142). And where an employee or accompanying dependant dies in a hospital, other than a hospital provided by the employer pursuant to the requirements of the Ordinance,
the person in charge of the hospital must immediately notify an Employment Officer and the employer concerned (s.143).

Offences

Part XIII of the Ordinance deals with offences. Its provisions also say something about the nature of the Code and of the work force to which it is directed. It starts by providing that a person shall not, on pain of a substantial monetary penalty, commit an act of fraud, misrepresentation, intimidation or coercion or exert undue influence for the purpose of: inducing a native to enter into or to refrain from entering into employment under the Ordinance whether with that first person or another; inducing a person to employ or engage for employment or to refrain from employing or engaging for employment a native under the terms of the Ordinance; inducing a person to refrain from exercising his rights under the Ordinance; misleading a person as to his rights, duties or responsibilities under the Ordinance or under an employment contract; inducing a person to fail to carry out a duty or obligation under the Ordinance or under an employment contract and inducing a person to take action to terminate an agreement (s.145). A person must not falsely claim, either directly or indirectly, that he is entitled to be employed as an agreement or casual worker under the Ordinance. Again there is a monetary penalty for infringement (s.146). A substantial penalty lies against employers who employ or engage for employment natives contrary to the provisions of the Ordinance (s.148). But it is a defence to such a charge if the defendant proves that he bona fide believed on reasonable grounds that the employment or proposed employment was not contrary to the provisions of the Ordinance (ibid.). It is also an offence for an employer to fail to provide for an employee or accompanying dependant the conditions and things which the Ordinance requires of him (s.149(1)). Again, it is a defence to such a charge if the employer proves that 'the terms or conditions of service or matters or things actually provided were, having regard to the general welfare of the employee, accompanying dependant or transit employee, not inferior to those prescribed (s.149(2) by or under the Ordinance. That provision, needless to say, gives a tribunal hearing such a charge an enormously wide discretion as to whether to record a conviction or not. A Native Employment Agent who has engaged a native on behalf of an employer must take all reasonable steps to ensure that the native who proceeds to the place of employment is identical with the native so engaged. There is a penalty for breach of this
provision (s.150(1)) but it might well be asked, what are reasonable steps in this regard? It is also provided that a person shall not knowingly permit a native to proceed to a place of employment under the assumed identity of another native who has been engaged for employment (s.150(2)).

An employer or a member of the staff or family of an employer must not, under threat of a penalty, use undue influence to induce an employee or accompanying dependant to purchase goods from any person (s.151). Offences obviously directed at trade store abuses have been referred to earlier. Nor must an employer, for gain, place an employee employed by him under the immediate authority of a person other than the employer, a member of a firm or partnership of which the employer is a member, or a person employed by the employer or a member of any such firm or partnership, or permit any such employee to be so placed (s.153(1)). But a prosecution for an offence against this provision cannot be instituted without the consent of the Secretary of Labour (s.153(2)).

Persons are enjoined generally, under threat of a penalty ($200) from refusing or failing to answer questions or producing documents or things lawfully required under the Ordinance or from disobeying any order, direction or requirement lawfully made or given under the Ordinance. Similarly, they must not knowingly make a false entry or unauthorised alteration in any document made or given under the Ordinance. But such general offences are not constituted by a simple refusal or failure of an employee to obey an order given by his employer merely in his capacity as employer (s.154). And an employer, again under pain of penalty, must not refuse to supply any information reasonably required by an employee covering his employment or the provisions of the Ordinance (s.155). For their part, employees or accompanying dependants must not 'wilfully or negligently damage, deface or destroy any article issued under...this Ordinance until such time as it would normally require replacement under this Ordinance' (s.156).

Miscellaneous

The final Part of the Ordinance [XIV] deals with a number of miscellaneous matters which do not fit neatly into any Part. The following are the most important provisions of this Part of the Ordinance. The Administration is expressly empowered to incur any expenditure on account of any employer in respect of any employee, transit employee or accompanying
dependant for any matter or thing for which the employer is liable under the Ordinance (s.159(1)). There is an extensive definition of the expression 'transit employee'. It includes a native who has been engaged for employment, from the time of such engagement until he arrives at the place of employment; a native who, upon cessation of his employment, is to proceed or is proceeding at the expense of the employer in accordance with the Ordinance from the place of employment to the place of pay-off and thence, if he so elects, to his home from the date of cessation of employment until the date of his arrival at the place of pay-off, or his home, as the case may be; an agreement worker or an accompanying dependant immediately upon discharge of such worker or accompanying dependant from a hospital and until return to the place of employment, place of pay-off, or home as the case may be; and an employee and the accompanying dependants who, during a period of paid leave of absence are proceeding to or from the place of employment (s.5). Where any expenditure is incurred by the Administration on account of any employer under the provisions set out above, the expenditure is held to be a debt due to the Administration by the employer and is, any law to the contrary notwithstanding, a first charge upon the real and personal property of the employer (s.159(2)). And in any proceedings for the recovery of the debt, the production of an account of the debt supported by a certificate from an Employment Officer stating that it is true and correct and relates to the expenditure actually incurred, is prima facie evidence of the debt and its amount (s.159(3)).

For the purposes of the Ordinance, an Inspector, Medical Officer, Medical Assistant authorised in writing by the Director of Public Health or officer authorised in writing by the Secretary for Labour may, at all reasonable times and with or without notice to any person: enter and inspect any premises, land, place, mine, vehicle, ship or aircraft used or believed or suspected to be used by employees accompanying dependants or transit employees; 'examine' a person who is believed or suspected to be an employee, accompanying dependant or transit employee; question any person in regard to any matter which in his opinion affects or may affect the employment, safety, health or welfare of employees, accompanying dependants or transit employees; require any person to produce any document in his possession or control in any way relating to employees, accompanying dependants or transit employees; and require any person to produce any food, clothing or article in his possession or control issued or kept for issue
to employees, etc. (s.161(1)). These are very wide powers. They are supplemented by a further provision allowing a wide range of officials, District Officers, Patrol Officers, Inspectors, Employment Officers and Medical Officers or Medical Assistants to require a person to produce a licence or authority to engage natives on behalf of an employer (s.162(1)). There is, too, an attempt to ensure that employees are acquainted with the provisions of the Ordinance. Provisions of the type in question cannot have much impact. Nevertheless, for what they are worth, a copy of the Ordinance, the Regulations made under it and of all amendments must be kept by employers at each place where ten or more employees work. These must be made available for examination by any employee upon request (s.163(1)). Moreover, an employer must display prominently at each place where a person employed by him works or is accommodated, such notices as are approved and made available by the Secretary for Labour. Such notices may relate to employment conditions, to safety, health or welfare of employees and accompanying dependants or such other matters as are approved by the Secretary (s.163(3) and (4)).

Another provision in this Part of the Ordinance bears some family resemblance to a long-standing section in the Commonwealth Conciliation and Arbitration Act in respect of the Commission's procedures in industrial disputes. That Act provides that in the hearing and determination of an industrial dispute or in any other proceedings before the Commission, the procedure of the Commission is generally within its own discretion, that it is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks just. It is also provided that the Commission shall act accordingly to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.\(^1\)

This formula is, of course, directed to the Commission's procedures in hearing and determining industrial disputes. The Commonwealth Act, unlike the Ordinance, is not an employment code. It is the awards which the Commission makes in settlement of 'disputes' - which have the nature of a Code. But with those differences in mind, the Ordinance provides that in determining any question (other than in a criminal proceeding) under the Ordinance a Court 'shall be guided by equity and good conscience and is not bound by rules of evidence or legal procedure' (s.164(1)). The provision does not apply to a prosecution

\(^1\text{Conciliation and Arbitration Act 1904-1973, s.40(1).}\)
for an offence against, contravention of or failure to comply with a provision of the Ordinance (s.164(3)). In such cases normal procedure and the usual evidentiary rules apply.

There is the usual express power found in legislation of this type to make Regulations under the Ordinance. A general power is given for the making of Regulations prescribing those matters which the Ordinance requires or permits to be prescribed and other matters necessary for giving effect to the Ordinance (s.167(1)). It is also provided that Regulations made under this power may be of general application or may be limited to a particular area or areas, or restricted in their operation to employees, accompanying dependants, transit employees, employers, Native Employment Agents or other persons or to any class or classes of employees, accompanying dependants, transit employees, employers, Native Employment Agents or other persons.

There is, in short, a very wide power to make Regulations having a limited or particular field of operation. Thus, for example, recruitment from a particular area could be closely regulated. One important provision remains. It is the penultimate section of the Ordinance and it gives point to a number of the earlier observations about the nature of the Code itself. An understanding of this particular provision, however, requires some appreciation of a little known aspect of the common law of employment both in England and Australia.

For centuries, the common law has recognised a right in a master (employer) to recover from a third party who has negligently caused injury to one of his servants (employees). The third party need have no knowledge of the master/servant relationship in question. If, for example, a stranger negligently runs down a person in the street and that person is the servant of another, the law has recognised a cause of action lying at the suit of that person's master to recover any loss he has suffered by reason of losing his servant's services. That action lies against the third party who has deprived the master of the services he was entitled to expect from his servant by reason of his negligent action. The name of the action itself makes this clear. It is known as the action per quod servitium amisit [whereby he lost his services]. Its origins lie in feudal England in a relational action by a husband for a tortious act which deprived him
of the society and services of his wife or a child. It rested, therefore, on status rather than on contract. A master was given that cause of action because of a 'status' relationship between him and his servant; he was entitled simply because of the existence of the master/servant relationship to look forward to a continuation of service to him. In recent years the Courts in England have felt that this ancient cause of action, although too entrenched in the common law to be abolished other than by legislation, does not accord with contemporary thought. The English Courts have, therefore, in a series of decisions, confined it within increasingly narrow bounds. Theoretically, it now lies only in respect of the loss of services of a domestic servant actually employed in a master's household; it has been forced back to its origins in relational interests in a household. In Australia, on the other hand, the High Court has refused to follow the English Courts entirely in this respect. True, the action has been confined in Australia but the final step of forcing it back into the household of an employer has not been taken. This process of narrowing by the Courts in both countries has been a response to the fact that the master/servant relationship is now seen to rest purely on a contractual basis and not on any notions of status.

It is against that background that the provision in the Ordinance falls to be considered. Where a Court has convicted a person of an offence 'of which employing or attempting to employ engaging or attempting to engage for employment a native who is employed or engaged for employment by another person is an element' (s.166), the Court may, in addition to any penalty (for the offence) order that the first person pay to the second person 'such sum by way of damages for any loss he has suffered or is about to suffer by reason of that action' (ibid.). Employment under the Ordinance is based both on status and on contract.

1 Commissioner for Railways (N.S.W.) v. Scott (1959).
Chapter 6

The future of the Code

The Code has often been criticised. It was last amended in 1971 and the outline of its provisions just completed includes amendments to that date. At the time of writing, early in 1975, no further changes, so far as could be ascertained, were in train. It is known that officers of the Department of Labour were discussing, in 1972 and 1973, what was envisaged as a major revision of the Code. One of the aims of this projected revision was to be the removal of the discriminatory provisions in the Code — it does, after all, use the expressions 'worker', 'employee' and 'native' interchangeably. It would be simply a comprehensive employment Code. But though important for a newly independent country (the title of the Ordinance itself is hardly felicitous), such changes would be superficial. The Code governs the employment of indigenous people and whether or not the discriminatory provisions are removed it will not, as a practical matter, touch the employment of Europeans, the majority of whom will continue to be employed under special contractual arrangements. More important are the extensive administrative discretions which are an integral part of the Code. A great deal depends upon an adequately staffed Department of Labour and the other administrative agencies involved to some extent in the administration of the Code. The Department of Labour is presently under intense pressures through loss of experienced officers and there is a real possibility of serious breakdowns in the administration of its elaborate provisions. The same problems occur in relation to the enforcement of the various prohibitions and sanctions of the Code.

The more fundamental criticisms concern the nature of the Code itself. A Board of Inquiry was appointed by the then Acting Administrator in December 1964 under the provisions of the Industrial Relations Ordinance which came into operation in 1962. The Board was asked to investigate rural wages and a number of related matters and to report. In that Report it was pointed out that until the last war the great majority of rural employees were under the indenture system and engaged
in various aspects of the copra industry. That virtual mono-culture with coconuts established mainly on the coastal fringes provided ideal conditions for a labour system based mainly on migrant workers. The unbalanced distribution of population in the Territory in which many of the areas of highest agricultural potential had very low populations, was a contributing factor of some importance. (TPNG, Department of Labour:8)

Although the more recent diversification of rural industry has modified this situation and provided opportunities for employment of larger numbers of people closer to their homes, the need to move large numbers of workers has always been an important factor underlying the provisions of the Code. In turn, however, this has equally important consequences both for the labour force and the laws which are made concerning that labour force. In a section of the Board's Report entitled 'Background and Attitudes of Workers', the basic subsistence nature of the economy is again emphasised as a prime determinant of the type of labour offering for employment and of employee attitudes. That traditional economy together with the land policies pursued by successive Australian governments ensured that there was very little natural economic pressure to seek employment. In these circumstances, workers have not had the usual motivations and have tended to use employment either as a means of travelling to see other parts of the country and gain experience before settling down at home, or as a means of participating in the economic advantages of some of the richer districts in the case of people who have no land in those districts. At the time the Board reported,

by far the most important single influence in the whole work force is still that of groups of young men from the more backward areas who enter into agreements to work for the standard two year period. (TPNG, Department of Labour:11)

The Board said that an important consequence of these factors is a constantly changing work force in which there is little development of experience or managerial capacity. 'New groups of workers coming into industry are constantly having to be trained before they can perform even the simplest tasks and in the early months of employment have a very low level of productivity' (ibid.). The Board also drew attention
to the significance of worker attitudes in this situation.

Few regard themselves as career workers who are settling down to a lifetime job or look at a particular level of income which they intend to sustain. Many would, in fact, expect to become proprietors in their own right, usually using some of their land inheritance in cash crop development and at the same time becoming an employer. The type of 'target thinking' which has been described by Morris (1958) is fairly common, work being carried out over rather short term periods for the purpose of achieving isolated short term objectives. In some areas which were studied by the Board, there was credible evidence for instance that the level of bride price was closely related to the deferred pay received at the end of a two year agreement. For casual workers other limited targets such as a bicycle, a sewing machine or some other piece of furniture or implement, tended to result in numerous short periods of employment interspersed with periods of the traditional subsistence life in the village. (TPNG Department of Labour:11).

Although the Board did not refer to it as such, another factor in this employment pattern has been the so-called 'bright lights syndrome' - the desire of young men in village areas to have a taste of urban life. The Board did note that at that time there were signs of a small but growing number of rural work force 'who appreciate the benefits of continuous employment, capitalise on their skill and experience by increasing their income with piece rate work and through side enterprises, and are content to leave the traditional environment behind them' (ibid.).

Some years earlier one of the best known authorities on Papua New Guinea, Professor C.D. Rowley, had reached the same conclusion. 'A class of wage earners, permanently dependent on earnings from wage employment, has begun to coalesce, and will pose significant social, economic and even political problems, as new recruits cut adrift from subsistence agriculture' (Rowley, 1958:540). Professor Rowley took the issue further by arguing, with great force, that the Code, being essentially a vehicle for the provision of migrant labour, has been a major factor militating against the development of a freely engaged wage labour force. It was his view that the country should 'move away as soon as possible from dependence on migrant labour. It is the migrant labour system
which is socially and economically evil: the indenture system was simply crude and unpleasant but possibly the only way of controlling a crude and unpleasant situation' (ibid.). He supported this view by reasoning that labour legislation must be subordinated to social objectives. But those objectives should not be formulated in the abstract without regard to economic and social facts. The preoccupation of Australian policy with the maintenance of the social structure of the village 'has so profoundly affected labour policy that social and economic developments round the places of work have been largely disregarded' (ibid.). In fact, there had been a tendency to use the assumed needs of the village as an excuse for conditions at places of employment and for social evils in the village. The Administration has assumed that the absence of complete families from villages was a greater evil than the absence of husband and father and that the village could maintain dependants left behind in the village. In turn, villagers living close to places of employment had tended to reject wage employment. That necessitates 'further dependence upon unsophisticated primitives, a primitive standard of labour efficiency as the norm, and poor management' (Rowley, 1958:540). Thus, the history of labour recruitment has been predominantly one of dependence on areas more and more remote. 'The majority have made one experiment, rejected wage labour and elected for the village' (ibid.541-2).

It is for these reasons, in Rowley's view, that the evolution of a wage earning class has been slow (Rowley, 1958:543). Villagers can decide to remain subsistence gardeners and in this respect the situation is markedly different from that in most under-developed areas. In such places would-be wage earners outnumber work opportunities because changes to cash-cropping, loss of land, absentee landlords, the decline of handicrafts and great population increases have forced large numbers from villages on to the labour market (ibid.). Papua New Guinea has been spared such pressures. But Rowley argued that 'development involves the establishing of permanent industries, and industries depend on a permanent pool of wage earners, established with their families in dependence on wages, and on health, education, pension schemes, and other social services' (ibid.).

The employment Code, or at least that part of it concerned with agreement labour, stood in the way of such developments. It supported inefficient small-scale enterprises and the depressed standards on which they depended discouraged local
workers. Policy should facilitate and not discourage the development of a group 'based on free decisions for wage earning in preference to subsistence gardening' (Rowley, 1958: 543). Rowley recognised that the emergence of permanent wage earners would have a special significance as constituting a group from whom political as well as labour leadership could develop. Moreover, in such a situation, whilst protective laws such as the employment Code might remain necessary for the majority of workers, 'they may be both unnecessary and irksome for the elite, because protective laws tend to be discriminatory and restrictive' (ibid.). The law should, therefore, provide a framework within which workers may legally organise. Workers who have reached the maturity of opting for wage employment as a way of life will resent the protective nature of the Code. Equally, however, they should not be left to unregulated economic and social chaos outside the Code. And finally, capital investment on an increasing scale is not possible without a committed wage labour force (ibid.:544).

The entirely new industrial relations legislation of 1962 might appear to be a direct response to such reasoning. Certainly that was a factor but perhaps a more important one was the recognition that independence could not be long delayed. There was, therefore, a natural impulse to legislate quickly for a new institutional framework in the labour field. Significantly however, the employment Code was continued and has been, as noted earlier, refined further since the introduction of the 1962 legislation. That legislation is the final topic for discussion. Before turning to it, however, some brief reference should be made to a number of experiments in wage fixation, some of which contributed to the decision to bring in the new legislation.
Some experiments in wage fixing

Some reference to two of these experiments, the establishment of a Native Employment Board and a Board of Inquiry to investigate rural wages, was made earlier. They make a convenient starting point for elaboration. The Native Employment Board Ordinance 1957-1958 provided for the establishment of a Board to advise the Administrator on all employer/employee relationships, wages, conditions of employment and on other matters specifically referred to it. It was also to watch cost of living trends likely to affect minimum wages and to report at least annually on the operation of the labour legislation. The Board consisted of a chairman, who was a member of the Public Service, two other officers of the Administration, two employee representatives and two employer representatives. The first matter referred to the Board for inquiry and report was the question of 'Wage Scales for Natives'.

It will be recalled that the usual method of altering wage rates under the employment Code had been by way of direct amendment of the Ordinance from time to time to specify such rates in the legislation. It was thought that it would be unwieldy for the seven members of the Board to hear evidence together and this task was delegated to the chairman, Mr F.D.L. Caterson. Evidence was submitted to the Board from all major Territory centres, by various associations, private firms and individuals (Papua Annual Report, 1959-60:72). Subsequently the Board reviewed the evidence and submissions and prepared a report. At the outset of the Board's work the chairman expressed the view that the Board did not meet the needs of the time. There was insufficient provision for free negotiation and three public service appointments to the Board might be seen as a guarantee that it would offer the Administrator simply a public service point of view. At that time it could be argued that the two employee representatives would follow whatever line the public service representatives adopted as these people would be regarded as 'kiaps'. In fact, the chairman did exert considerable influence and one of the
public service representatives held a number of independent views. Ultimately, both the employer and employee representatives agreed that each should rely upon a spokesman or advocate. Mr W.A. Lalor, the Public Solicitor, represented the employees and Mr J. Conybeare, an industrial advocate from Australia, appeared for the employers. Joint discussions were held between these two representatives with the chairman in attendance and agreement was reached on a minimum cash wage of £3 per week, with provision for certain deductions where accommodation and other items were provided. This minimum cash wage was to apply to indigenous employees in or near the towns of Port Moresby, Lae and Rabaul. The agreement was reported to the Board which adopted it and recommended its acceptance to the Administrator. It was gazetted as a 'common rule' for the three towns on 12 January 1961.

At that time Part XA of the Native Employment Ordinance made provision for industrial agreements and it was under those provisions that the agreement was given the force of a common rule. A similar exercise was later undertaken in relation to the town of Madang and a minimum wage of 2.15s. per week gazetted. Subsequently, after the Industrial Relations Ordinance 1962 had come into operation early in 1963, these two common rules were registered as common rules under that Ordinance. And with the passage of this legislation, the provisions of the Native Employment Ordinance relating to industrial agreements were repealed as was the Native Employment Board Ordinance itself. The Board, which was in the nature of an experiment, had proved an unsatisfactory and cumbersome vehicle for carrying out the functions assigned to it. But it was a first step in the direction of new institutional arrangements for dealing with employer/employee relationships in the private sector.

One of the other initiatives in wage fixation has already been mentioned. That was the Board of Inquiry charged with an investigation of rural wages and related matters appointed by the Acting Administrator in December 1964 under the provisions of the Industrial Relations Ordinance. The Board had seven members, four European and three indigenous. The European members comprised the chairman, who was a senior public servant, the President of the Planters' Association of Papua, the President of the Highland Farmers' and Settlers' Association and an Executive Council member of the Planters'

1The foregoing account of the work of the Native Employment Board is based on discussions with officers of the Department of Labour.
Association of New Guinea. The three indigenous members were all officials of workers' associations: the Rabaul, Goroka and New Ireland associations. The Industrial Relations Ordinance provides for the establishment of Boards of Inquiry for the purposes of the Ordinance and such Boards as are appointed are charged with inquiring into and reporting on such matters as are referred to them under the Ordinance. And where an industrial dispute exists or is apprehended, the Secretary for Labour may be directed to refer to a Board for inquiry and report any matter connected with the economic or industrial conditions of the country which is involved in the dispute (s.18). The Acting Administrator, being of the opinion that an industrial dispute existed, directed the Secretary to refer to this Board the following matters connected with the economic and industrial conditions of the then Territory which were involved in the dispute: to investigate the plantation and other rural industries for the purpose of ascertaining

(1) whether the wage rates prescribed under the Native Employment Ordinance should be varied and if so, in what manner and in what industries

(2) the feasibility of introducing a system of bonus payments for rural employees, the nature of any such system, and the method of calculating payments

(3) whether the current system of payment of wages partly in cash together with provision of accommodation and issues of food, clothing and other articles, should be replaced by an all inclusive cash wage with provision for items such as food, clothing, other issues and accommodation

(4) whether there should be any variation to the maximum period of service prescribed for agreement workers under the Native Employment Ordinance (TPNG, Department of Labour:1).

Although space precludes any analysis of the Report, there are a few points of general interest which need some comment.

Both the establishment of the Board of Inquiry and the terms of reference assigned to it provide a very good illustration of a method of devising changes in the employment Code which has quite often been used. The Report is evidence, too, of the range and depth of the matters considered by such a Board in discharging its task. Thus, in this instance, the Board examined such matters as the historical development of

\[1\] Industrial Relations Ordinance 1962-1972, ss.9-10.
provisions governing the employment of indigenous workers, the nature of the rural work force, employee attitudes to wage employment and costs of production in major rural industries. Finally, this is a neat example of the interaction of the employment Code with the new industrial relations type legislation introduced in 1962. This Board was appointed pursuant to the later legislation in order to inquire into aspects of that other Ordinance which has for so long been a cornerstone of the country's labour laws.

A similar procedure was followed in setting up another Board of Inquiry some six years later, that is, the Acting Administrator at that time having come to the opinion that an industrial dispute existed, directed the Secretary of the Department of Labour to refer to a Board a number of 'matters connected with the economic and industrial conditions of the Territory which were involved in the dispute'. In short, by following the formula in the Industrial Relations Ordinance it is possible under the guise of the existence of an industrial dispute to set up inquiries with virtually no limits on the terms of reference which may be given them. The Board comprised two Australian academics, both economists, Professor D. Cochrane (chairman) and Dr R.T. Shand and two Papua New Guineans, Dirona Abe and Rev. Zurewe Zurenuo. On this occasion the Board was asked to investigate and report on -

(a) the level and components of the rural minimum wage for the Territory, in particular whether the minimum cash and kind wage under the Native Employment Ordinance 1958-1968 should be
   (i) varied - and if so, in what respect; or
   (ii) converted to an all cash wage - and if so, at what amount and with what deductions, if any (e.g. rations, issues and accommodation); and

(b) the appropriate machinery for determining and reviewing minimum wages.

The inquiry shall be conducted against the background of the Government's stated objectives and policies in Papua and New Guinea especially the following:

(a) to develop the country politically, economically and socially towards self-government and to ensure that by the time this stage of self-government is reached the country will, to the greatest degree possible,
be able to stand on its own feet economically;

(b) to implement successfully the five year programme for economic development which commenced in 1968/69 with the major aim of developing the physical and human resources of Papua and New Guinea;

(c) to develop a balanced wage structure which will relate rural wages and non-rural incomes to earnings in the subsistence sector and in cash cropping and will ensure a continuing and stable supply of labour to meet the requirements of rapid development of rural as well as urban industries, and in both the private and public sectors;

(d) to promote continued rapid growth in the export industries and enable them to compete successfully in world markets;

(e) to encourage increased productivity of labour and efficiency of management; and

(f) to generate growing opportunities for employment and training for Papuans and New Guineans both skilled and unskilled in all sections of the economy at levels of earnings appropriate to the needs of employees and appropriate to the economic capacity of Papua and New Guinea.

Confronted with this the Board observed:

From the terms of reference it will be seen that we were asked to investigate the wage level determined under the Native Employment Ordinance 1958-68 against a very comprehensive background of Government objectives and policies in regard to the development of the economy of the Territory of Papua and New Guinea. Since wage levels and wages policy impinge upon and are affected by all of the various factors mentioned in the list of Government objectives and policies set out in the terms of reference, the Board might well have caught up in an investigation which examined almost every aspect of the economy of the Territory. However, we have constrained our activities in this regard very considerably. (TPNG, 1970:2-3)

The Board went on to say that it had concentrated on a determination of an appropriate level of wages under the Native Employment Ordinance, and on those factors which it believed were of the greatest importance in influencing levels
of production, productivity and employment in the rural sector of the economy. But any decisions regarding wages affect and are affected, as the Board pointed out, by government policies concerned with such matters as taxation, banking, tariffs, education and health. In that light, and because of the stress laid upon policy objectives in the terms of reference, the Board said it had drawn attention to a number of policy measures which it believed would require careful consideration if its recommendations were to have 'the maximum impact on standards of living, working conditions and economic development in the Territory, and ensure that the economy can be viable as an independent economic unit' (TPNG,1970:3). This was, in short, much more than an inquiry into the level of rural minimum wages and minimum wage fixing machinery. In looking at rural wages, for example, the Board addressed itself to the question of how best to promote the further development of a committed wage earning force able to take care of itself (ibid.:63). The interesting point for present purposes is that the industrial relations legislation was broadly enough drawn to accommodate the appointment of an inquiry of this nature. And like the previous inquiry it is also a useful source of historical material. The Board's Report contains a brief history of both the minimum wage and the agreement labour system. But the most significant result of its work was the later adoption, on its recommendations, of the all cash wage from which deductions for items issued to approved standards can only be made by agreement between worker and employer (ibid.:64) and the establishment of new minimum wage fixing machinery in the form of Minimum Wage Boards. The latter development receives further attention in the later discussion of the industrial relations legislation.

The Board of Inquiry under the Chairmanship of Professor Cochrane was appointed pursuant to the provisions of the Industrial Relations Ordinance in January 1970 and submitted its report in September of the same year. Another inquiry was proceeding contemporaneously during the first few months of the Board's deliberations. This was conducted by Dr J.E. Isaac, now a Deputy President of the Australian Conciliation and Arbitration Commission, but at that time, like Professor Cochrane, a Professor of Economics at Monash University. The inquiry conducted by Dr Isaac was not, however, made pursuant to the Industrial Relations Ordinance or, for that matter, any other legislation. It was conceived as an executive act by the then Commonwealth Minister for External Territories,
the Hon. C.E. Barnes, who directed that the report resulting from this inquiry, 'The Structure of Unskilled Wages and Relativities Between Rural and Non-Rural Employment in Papua and New Guinea', should be submitted to the Administrator. This report was, by direction of the Department, made available to the Board of Inquiry. Dr Isaac described the scope of his particular assignment as 'the proper balance of the wage structure especially between rural and non-rural employment' in the context of the government's aim
to promote the evolution of a balanced wage structure in the Territory which would ensure adequate supply of labour to the rural industries as well as the urban; avoid an undue drift to urban areas in excess of employment opportunities offering there and to ensure attractive employment opportunities in all fields (including at the managerial level) to the native people on terms and conditions in keeping with the stage of the Territory's economic development and in keeping with the Government's aims of higher living standards and increased economic self-reliance in Papua and New Guinea. (Isaac, 1970: preface)

These reports remain as the most authoritative and detailed studies of labour market issues in Papua New Guinea. In September 1970, with the submission of the Report of the Board of Inquiry chaired by Professor Cochrane, the Administration had a comprehensive background of information against which it could frame changes in the employment Code and in the machinery of rural wage fixation.

Both reports, like that of the earlier Board of Inquiry referred to previously, were critical of a number of aspects of the employment Code, particularly the concept of labour under agreement. The Cochrane Report noted that the total work force more than doubled between 1950 and 1968 and that during that period the percentage of those workers who found jobs through the Agreement System fell from a peak of approximately 50 per cent in 1953 to only 20 per cent in 1968. 'In fact the absolute number of agreement workers in employment reached a maximum early in the 1960s and has been declining ever since' (TPNG, 1970:33). On the other hand, however, the importance of the Highland Labour Scheme in providing agreement workers increased steadily after its introduction from around 10 per cent in the early 1950s to over 60 per cent in 1968. But the Board observed, as had the departmental study of the Scheme, and Ward, that even it 'is now having its
troubles finding recruits' (TPNG, 1970:33). With the opening up of successive highland areas, an outflow of labour had taken place. But as development proceeded in such areas, local labour is employed within the district and the flow of labour to jobs outside the district declines. "This has necessitated pushing still further into newly opened up highland areas for labour" (ibid.:31). And agreement labour continues to be of major importance in rural industries.

The Board observed that with increasing economic development the relative importance of primary production will continue to decline. Nevertheless, the absolute size of its contribution to the gross national product will continue to increase. 'Accordingly, its importance as a provider of employment on the one hand, and as an earner of net export receipts on the other, will continue to dominate the economy of the Territory for a number of years' (TPNG, 1970:39). The productivity of agreement labour, however, has always remained low. The mandatory time limit on each contract has ensured a continuous turnover of the work force. Moreover, 'the whole basis of the Agreement System has been the recruitment of unsophisticated young men with a relatively low proportion returning for more than one term of employment' (ibid.:97). It will be recalled that Professor Rowley had also been highly critical of the system (Rowley, 1958:540).

In his Report, Isaac, acknowledging the extent to which he had drawn on the Departmental Report entitled The Highland Labour Scheme, underlined the reasons for the decline in agreement labour provided by those areas. Essentially, this decline has arisen from the increased attractiveness of local and 'casual' work compared with agreement employment. Two elements, Isaac said, are responsible. Firstly, the Highland Scheme, having over the years encouraged a movement of labour to the cash economy and then back to the village, has itself brought about the circumstances causing a decline in agreement labour. Increased contact with the cash economy and an inflow of cash with returning workers creates a demand for goods as well as stimulating cash cropping. Together, these factors promote increased paid employment and self employment opportunities in the highland areas. Secondly, increased sophistication and education in those areas tend to discourage the flow of labour to what is generally looked upon as a less attractive form of work - agreement labour (Isaac, 1970:13). Isaac went on to ask, how can wage policy bring about significant change by promoting the development of a more committed
and job-oriented work force?

Scholars who have studied this problem in relation to Africa suggest that commitment comes with an adequate family income from wages and adequate economic and social security. These are the prerequisites for the weakening and ultimately severing of the worker's ties with the village social system. So long as these prerequisites are not assured, the worker will not be prepared to run the risk of detribalization. This partly explains the high turnover of low-income unskilled labour in New Guinea hitherto, the more skilled workers having largely secured the prerequisites for commitment. (ibid.:25)

It is in this sense that the employment Code, to the extent to which it nurtures and bears modes of employment contrary to this goal, is the albatross of the labour laws of Papua New Guinea.

Isaac, however, went on to acknowledge that in the period which must elapse before there is an adequate committed wage labour force, the agreement system and one of its important components, the Highland Labour Scheme, will continue to serve a valuable, though declining purpose by enabling workers in low income areas to improve their economic position by moving into paid employment (Isaac, 1970:28). For present purposes one further fundamental point made in this Report should be kept in mind. This relates to the balance between rural and urban wages. Isaac makes the point that the creation of a balanced wage structure for Papua New Guinea requires that rural and urban unskilled wages must be considered and determined in relation to each other. A particular rural wage, appropriate in relation to subsistence and transitional incomes, might fail 'to establish a proper basis for a stable rural labour force if the urban minimum wage is substantially higher in real terms than the minimum rural wage' (ibid.:32). Thus, the gap between rural and urban unskilled wages bears on the determination of the appropriate wage rates in both sectors (ibid.). The same point is made in the Report of the Cochrane Board of Inquiry. That Report states that in the course of the Inquiry it quickly became apparent that the minimum wage determined under the Native Employment Ordinance could not be considered in isolation, but that the whole of the wage structure had to be taken into account. The matter was taken a stage further than consideration of the inter-relation between rural and urban wages. The wage structure
'requiring consideration and integration should not be restricted to the rural and urban sections of the private sector; it should also include the public sector' (TPNG, 1970:174). This would suggest that an institutional framework for wage fixation similar to that in Australia, which allows a multiplicity of authorities and tribunals to determine wage rates, would, at least for the time being, be inappropriate in Papua New Guinea. Rather, a tight control through a minimum wages board type of structure would be more desirable. This issue will be taken further in the last chapter of this work.

The terms 'rural' and 'urban' have acquired particular meanings in Papua New Guinea and their usage in that context must be understood. The term 'urban' is applied in the Department of Labour's annual statistical collection to those centres which had a population in excess of 2,000 persons at the time of the 1966 population census. At that time there were thirteen such centres, including Port Moresby, Lae, Rabaul, Wewak and Madang. The term 'rural' on the other hand, is applied to all areas which are, on the above definition, non-urban. In this way, small centres such as Balimo, Wau or Meudi have been classified rural together with those areas which are rural in the usual sense of being country areas (TPNG, 1970:15-16). The latest figures are contained in the Department's Labour Information Bulletin, no.8. At the end of June 1971, there were fourteen areas classified as urban and the total indigenous work force employed in those areas was only 49,865, of whom 10,256 were employed in the government sector and 39,609 in the private sector (Dept. of Labour, 1974:39-40). These figures alone give some idea of the problems confronting effective trade union organisation in the country.

The origins of the various urban cash wages which are currently in force lie in the work of the Native Employment Board which was established under the short-lived Native Employment Board Ordinance. It will be recalled that the Board reached agreement on a minimum cash wage to apply to indigenous employees in or near the towns of Port Moresby, Lae and Rabaul. And at the beginning of 1961, the Administrator declared that wage a 'common rule' under Part XA, Industrial Agreements (since repealed) of the Native Employment Ordinance for the three towns. Later in 1961 agreement was reached between the Madang Chamber of Commerce and the Ambenob Native Local Government Council for a cash wage of 2.15s.
per week in Madang. That was also subsequently declared a common rule for that centre. There are two exceptions in all these cases, namely, domestics and stevedores. After the Industrial Relations Ordinance had come into operation early in 1963, these common rules were registered under that Ordinance. From those beginnings, urban cash wage awards, or, to give them their official title, General Employment Awards, are in force in all the centres which are classified as urban. All of them, with the exception of the Kerema General Employment Award, have been negotiated between the Employers' Federation of Papua New Guinea and the relevant local Workers' Association or union. The awards apply to all workers employed by members of the Employers' Federation whether or not they are members of a Workers' organisation, other than those employees directly engaged in primary production, domestic duties, stevedoring operations, shipping services, apprenticeships, or those covered by a specific industry award as, for example, the Port Moresby Building and Construction Industry Award. In Kerema, the agreement was negotiated between the local Workers' Association and an individual employer. In all cases the agreements cover rates of pay and annual and sick leave entitlements and other general conditions of employment. In the majority of the urban centres, the agreements have been declared common rules (Dept. of Labour, 1974:5-9; PNG Annual Report, 1971-72:151-2).

The Report of the Cochrane Board of Inquiry summarises the position which had been reached in respect of wage fixation by September 1970 when the Board reported.

(1) All workers are employed under the Native Employment Ordinance and therefore under its prescribed minimum wage levels except where they are-

(a) the subject of an urban cash wage award;
(b) the subject of special industry awards;
(c) public servants employed under the Public Service Ordinance;
(d) apprentices employed under the Apprenticeship Ordinance;
(e) employed under the Administration Servants Ordinance.

(2) Workers are classified as 'rural' by the Department of Labour if they are employed outside any of the centres which have been designated as 'urban' (TPNG, 1970:17-18).
Chapter 8

The industrial relations legislation

Mention has already been made of some aspects of the new industrial relations legislation which came into operation in 1963. This now comprises two principal Ordinances, the Industrial Relations Ordinance 1962-1972, and the Industrial Organisations Ordinance 1962-1973, together with an ancillary or supporting enactment, the Bureau of Industrial Organisations Ordinance 1971. Each Ordinance is, by Australian standards for industrial arbitration legislation, comparatively short and uncomplicated. Separate legislation, which will be referred to later, deals with public service arbitration.

The industrial relations legislation is entirely different in concept from that of the Native Employment Ordinance. It has been seen that the latter is designed 'for the protection of the unorganised or poorly organised wage earners against the risk of employer "exploitation" by providing, through legislation, basic minima for pay and working conditions' (Isaac, 1969:4). The Industrial Relations Ordinance, on the other hand, has been described in official publications as 'designed to emphasise that the informal settlement of disputes and negotiation are to be preferred to litigation or arbitration' (PNG Annual Report, 1971-72:150). Similar sentiments in relation to the hoped for primacy of conciliation over arbitration have, of course, been expressed throughout the history of industrial conciliation and arbitration in Australia. The most significant amendments to the legislative scheme contained in the two principal Ordinances since their original enactment were those effected by the Industrial Relations (Minimum Wages Board) Ordinance of 1971. In dealing with each Ordinance in turn, the legislation incorporating the latest amendments available at the time of writing will be the basis of discussion.

The Industrial Relations Ordinance

This is an interesting Ordinance providing a number of distinct methods or paths of negotiation, dispute settlement and wage fixation. Inevitably, of course, some of these
patterns have so far proved to be ahead of their time and have remained virtually unused. It is now possible to see which paths will be most often used, at least until economic and social change has proceeded a good deal further.

The first path set out in the Ordinance is a provision allowing the establishment of 'Industrial Councils'. Any number of employers and employees in a trade or industry and any registered organisations (under the Industrial Organisations Ordinance) may by agreement form an Industrial Council for a number of specified purposes: fostering the improvement of industrial relations between those employers and employees; encouraging the free negotiation of the terms and conditions of employment of those employees; and promoting the peaceful settlement of disputes or differences as to the terms and conditions of employment of those employees (Industrial Relations Ordinance 1962-1972, s.7(1)). The method of calling meetings of such a Council and the procedure to be followed at meetings lies within its own determination (s.7(4)). An Industrial Council may, subject to some limitations, make arrangements for the alteration of, or settling of disputes or differences as to the terms and conditions of employment of the employees represented on the Council by 'free negotiation, conciliation or arbitration' (s.8). The provisions have not so far been used — no single such Council has been appointed.

The second path has been taken on a number of occasions. These are the provisions relating to the appointment of Boards of Inquiry. The Ordinance provides that there 'shall be such Boards of Inquiry as the Administrator may from time to time establish for the purposes of this Ordinance' (s.7(1)). References to the 'Administrator' in all the former Territory legislation have, of course, been changed. That is a matter common to the country's legislation. Other changes are also necessary following self-government. These matters do not, however, affect the substance of the matters under consideration here. References to the Administrator are now read as references to the High Commissioner. A Board of Inquiry, which must consist of a chairman and not less than three other members, is required 'to inquire into and report on such matters as are referred to it' (ss.9(1),10(1) under the Ordinance. A Board may authorise one of its own members to inquire into and report to it on any aspect of a matter referred to it under the Ordinance. In such a case the member so appointed has and may exercise for the purposes of that
inquiry all the powers and functions of the Board (s.10(4)). This is a provision which gives Boards a great deal of flexibility in their mode of operation. A question arising at a meeting of a Board is determined on a majority vote of the members present, the chairman having a casting as well as a deliberative vote (s.11(4)). The two Boards of Inquiry to investigate rural minimum wages and related matters referred to earlier were appointed under these provisions.

The third group of provisions relate to the establishment of Arbitration Tribunals. Such a tribunal, which may be established to deal with an industrial dispute, is constituted in such manner as is specified in the instrument establishing the tribunal. Once established, the tribunal may be disbanded at any time and another tribunal can be appointed to deal with the same dispute (s.13). Again, there is almost complete flexibility. Where a tribunal has been appointed consisting of more than one person, is inquiring into an industrial dispute and a vacancy occurs in its membership, the tribunal may, with the consent of all parties to the dispute, continue to act in spite of the vacancy (s.14(1)). Where it does continue to act after such agreement any act, proceeding, determination or award of the tribunal cannot be questioned or invalidated by reason of the vacancy having occurred in its membership (s.14(2)). And a tribunal must deal with the industrial dispute in relation to which it was established without delay and, in any case, within twenty-one days after the date of reference. A longer period may be allowed but only if the circumstances of a particular case warrant such an extension (s.15).

Some use has been made of these provisions. Tribunals, for example, have been appointed to settle police pay and in a few other cases. But overall the use made of these provisions has been minimal. They are, after all, directed towards industrial disputes. Economic and social conditions and the virtual absence of effective unionism in the private sector have resulted in the great majority of such 'disputes' being effectively settled by Regional and District Labour Officers and by Inspectors appointed under the Ordinance.¹

In this Ordinance, industrial disputes may, as was noted earlier, take on another guise. The existence of such a 'dispute' or the fear that one will occur, may be used as a vehicle for the appointment of a Board of Inquiry. Where an industrial dispute exists or is apprehended, the Secretary

¹ Based on discussions with officers of the Department of Labour.
for Labour may be directed, as was seen in relation to the appointment of Boards in respect of rural wages etc., to refer to a Board for inquiry and report any matter connected with economic or industrial conditions which is involved in the dispute. The terms of reference of the Cochrane Board demonstrate how widely this formula may be interpreted. Moreover, the Secretary may himself take the initiative. Again, the formula is that where an industrial dispute exists or is apprehended the Secretary may with the approval of the High Commissioner, inquire into the causes or circumstances of the dispute. Alternatively, he may refer to a Board any matter which, in his opinion, is connected with or relevant to the dispute (s.18). The existence or likelihood of an industrial dispute is also used as a means of vesting other powers in the Secretary.

A person concerned or interested, or likely to be concerned or interested, in an industrial dispute may report the dispute to the Secretary. On that happening, the Secretary, if he has not already acted under the provisions set out above, must inquire into the industrial dispute reported to him and may require the parties to it to enter into negotiations for its settlement within fourteen days. Provisions of this nature require the existence of representative employer and employee bodies. What happens if, as is likely in Papua New Guinea, they do not exist? Then, for the purpose of negotiating a settlement where

(a) no registered organisation of employers or employees exists; or

(b) no registered organisation of employers or employees exists which, in the opinion of the Secretary, sufficiently representative of the employers or employees or any of them,

the employers or employees may, on the invitation of the Secretary, appoint such number of representatives, not exceeding five, as they think fit and those representatives may act on behalf of the employers or employees by whom they were appointed in negotiating settlement of the dispute (s.20(1)). And at any time during negotiations for the settlement of an industrial dispute, a party to the dispute may apply to the Secretary for assistance in the negotiations. Upon receipt of such an application the Secretary is required to attend the negotiations in order to bring about, if he can, a settlement (s.21).
There are, too, provisions relating to compulsory conferences which involve the Secretary. Where the Secretary has given notice to the parties to an industrial dispute requiring them to enter into negotiations within fourteen days of the giving of the notice, and

(a) at any time before the expiration of a period of twenty-eight days from the date of the notice—

(i) a party to the dispute has refused to negotiate or to negotiate further for the settlement of the dispute; or

(ii) the parties to the dispute consent; or

(b) at the expiration of that period, no settlement of the dispute has been effected,

the Secretary may by notice in writing to the parties, require them to attend a conference, at a time and place fixed in the notice, for the purpose of endeavouring to arrange a settlement of the dispute under his supervision (s.20(1)). There is, however, a qualification to this provision for a compulsory conference. Where there is, in a trade or industry in which there is an industrial dispute, an arrangement for the settlement of industrial disputes by conciliation or arbitration which has been made pursuant to an agreement between employers, or a registered organisation representing employers, and employees, or a registered organisation representing employees, in that trade or industry, and which applies to the parties to the dispute, the Secretary is forbidden to require the attendance of parties to a dispute in that trade or industry under the preceding provisions relating to compulsory conferences unless

(a) at the expiration of the period of twenty-eight days, no settlement of the dispute by means of the arrangement between employers and employees has been effected; or

(b) a party to the dispute has refused to proceed or to proceed further under that arrangement; or

(c) the parties to the dispute consent to or request the conference (s.22(1)).

An amendment to the Ordinance had the effect of conferring an overriding discretion in the Secretary. Notwithstanding the previous provisions, the Secretary may, where in his opinion it is desirable in the public interest so to do and
whether or not he has given notice to the parties requiring them to enter into negotiations within fourteen days of the giving of that notice, by notice in writing to the parties to an industrial dispute, require them to attend a conference for the purpose of endeavouring to arrange a settlement of the dispute under his supervision (s.22(2A)). The Secretary is required to preside at compulsory conferences and to endeavour 'to conciliate the parties to the dispute and to effect a settlement of the dispute by all means at his disposal (s.22(4)).

Where the Secretary is unable to effect a settlement under the foregoing provisions relating to compulsory conferences he must report the dispute to the High Commissioner who is then empowered to take one of two courses. He must, if the parties to the dispute so require, or he may if he thinks fit, direct the Secretary to refer the dispute so reported to an Arbitration Tribunal for decision and the making of an award. That tribunal is then required to make an award deciding the matters in issue between the parties to the dispute (s.23). Separate provision is made for the reference of certain disputes in the same way. If the High Commissioner is of the opinion that a particular industrial dispute is of such importance that, in the public interest, it should be dealt with by a separate prescribed procedure and is so declared by him by notice in the Gazette and certain conditions are satisfied, then the Secretary must report the dispute to the High Commissioner who may, if he thinks fit, refer the dispute to an arbitration tribunal for decision and the making of an award. The conditions are that

(a) in the opinion of the Secretary no suitable means of settling the dispute exists;

(b) an attempt to negotiate a settlement of the dispute has failed;

(c) an attempt to conciliate the parties to the dispute has failed;

(d) in the opinion of the Secretary a settlement of the dispute is unduly delayed;

(e) twenty-one days have elapsed since the dispute was reported to the Secretary and no settlement has been negotiated; or

(f) a party to the dispute so requests (s.24(1)).

Where the Secretary reports a 'public interest' dispute under
these provisions to the High Commissioner and the latter thinks it fit to refer that dispute to a tribunal, the reference must be made within seven days from the date on which the dispute was reported by the Secretary, or such further time as the High Commissioner may in any particular case allow (s.24(3)).

A separate Part of the Ordinance deals with awards generally: those made by the Arbitration Tribunals, if any, established under the Ordinance and those arising upon the registration of agreements reached between employers and employees. An award of an Arbitration Tribunal must be made in such manner as is specified in the instrument establishing the Tribunal and be filed with the Registrar for registration (s.25). An agreement made between employers and employees and registered organisations, or any of them, provided

(a) it relates to industrial matters only; and

(b) it does not purport to oblige,

(i) an employer to employ only members or persons willing to become members of a specified or any industrial organisation; or

(ii) an employee to restrict his entry into employment to, or to remain in employment with, only an employer who is a member of, or who is willing to become a member of a specified or any industrial organisation,

must be filed with the Registrar for registration and on registration is deemed to be an award as between the parties to the agreement (ss.26(1), 26B,29A). But if the Registrar is of the opinion that an agreement filed with him is inconsistent with the terms of a registered award already binding on some or all of the parties to the agreement and ought not, by reason of that conflict, be registered, the Registrar must not register the agreement without the approval of the High Commissioner in Council (s.26(2)), similarly, where the Registrar thinks that an agreement filed with him is inconsistent with the terms of a registered determination of the Minimum Wages Board (dealt with later) without a similar approval (s.26(3)). It was noted earlier that little use has been made of the power to appoint ad hoc Arbitration Tribunals and there are, in consequence, few examples of direct awards of such tribunals. On the other hand, quite a large number of awards have resulted from this process of the filing of agreements with the Registrar for registration as awards.
This method of award making seems likely to be the predominant one for the foreseeable future. Some examples are the Bougainville Copper Project (Indigenous Construction Workers) Award 1970 which sets out rates of pay and conditions of employment for those workers employed by Bougainville Copper Pty Ltd, and was negotiated between that company and the Bougainville Construction and General Workers' Union. That employers find this an attractive method of proceeding may perhaps be gathered from the fact that this union, three years after the making of the award, had only 172 members (Department of Labour, 1974:21). The Port Moresby Building and Construction Industry Award is an agreement made between the Employers' Federation of Papua New Guinea and the Central District Building and Construction Industry Workers' Union which applies to all employees directly engaged in the building industry in the Port Moresby area and employed by members of the Employers' Federation of Papua New Guinea.

A wide power is conferred to grant preference 'to such organisations or members of organisations as are specified in the award'. And whenever in the opinion of an Arbitration Tribunal it is necessary, for the prevention or settlement of an industrial dispute, for ensuring that effect will be given to the purposes and objectives of an award, for the maintenance of industrial peace or for the welfare of society, to direct that preference be given to members of organisations, the Tribunal must so direct (s.26A(2)). Provision is made for granting exemptions, on grounds of conscientious beliefs, from giving preferences to members of organisations over particular employees (s.26A (3)-(7)). An award of an Arbitration Tribunal can only relate to industrial matters and an agreement made and registered under the Ordinance is enforceable as an award only in relation to industrial matters (s.26B). Awards may in some cases be given a retrospective operation and can, in some cases, be inconsistent with other awards and with determination of the Minimum Wages Board (ss.27,29(11)). But where the Registrar is of the opinion that an award filed for registration is inconsistent with the terms of a registered determination of the Minimum Wages Board, the Registrar cannot register that award without the approval of the High Commissioner in Council (s.29(2)).

Subject to the provisions relating to the granting of preference, an award or agreement must not oblige

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1Industrial Relations Ordinance 1962-1972, s.26A(1).
(a) an employer to employ only members of, or persons willing to become members of, a specified or any industrial organisation; or

(b) an employee to restrict his entry into employment to, or to remain in employment with, only an employer who is a member of or who is willing to become a member of a specified or any industrial organisation (s.29A).

The Registrar is required to register awards and determinations of the Minimum Wages Board filed with him for that purpose. But where he is of opinion that an award or determination so filed is inconsistent with a law, goes beyond the terms of reference of the Board, is contrary to public policy or not in the country's best interests he must immediately refer the award or determination to the High Commissioner in Council for consideration. When doing so he must give reasons for his opinion and must not thereafter register the award or determination without receiving approval so to do (s.31).

There is, too, provision for the disallowance of awards and determinations of the Minimum Wages Board on two specific grounds, namely, as contrary to public policy or as not in accordance with the country's best interests (s.32). And an award or a determination of the Minimum Wages Board has no force or effect until registered and notified in the Gazette (s.34(1)). When that step has been taken the registered award or registered determination of the Board is binding on the employers and employees to whom it relates and as from the date specified in the award or determination (s.34(2)).

There are a number of provisions relating to the declaration of common rules. Where it appears necessary or expedient to do so, the High Commissioner in Council may, by notice in the Gazette, declare that the terms of a registered award shall be a common rule 'in relation to such employers or class of employers, or to such employees or class of employees, or to employment in such area' (s.36(1)) as thought fit. Before a common rule is declared in this way, an advertisement procedure in relation to the proposed common rule must be followed so as to allow for the receipt for objections (s.36(2)). Once a registered award has been gazetted as a common rule, it has 'the same force and effect in relation to the persons or the area to which it relates or in relation to which it is declared to be a common rule as if it were an award made, registered and notified under this Ordinance in relation to those persons and employees in that area' (s.37(1)). The procedures for the declaration of common rule have been used, this now being an
established feature of the country's industrial relations system.

For present purposes, it is not necessary to deal with the remainder of the Ordinance, apart from one key Part, in any detail. There are provisions relating to the conduct of proceedings (ss.40-41), rules of evidence (s.42), the representation of parties (s.43), the public nature of proceedings (s.44), offences (Part VI) and a number of subsidiary matters. In 1971, following on the report of the Cochrane Board of Inquiry, the Ordinance was amended so as to provide for the establishment of a Minimum Wages Board. It was noted above that the provisions enabling the appointment of Boards of Inquiry for various purposes have been an important feature of the industrial relations legislation. The amendments to make formal provision for the establishment of a Minimum Wages Board were a logical and desirable extension of the idea underlying the use of Boards of Inquiry. It is provided that there shall be a Minimum Wages Board for the purpose of the Ordinance and that the Board shall consist of a chairman and not less than four other members who must be appointed ad hoc for each particular matter referred to the Board (s.12A(1) and (2)). And if the membership of the Board for the purposes of any matter referred to it includes a representative or representatives of employers or employees, the members of the Board must be appointed in such a way as to ensure equal numbers of employer and employee representatives (s.12A(3)). Meetings of the Board must be held at such times and places as the chairman of the Board determines or as the High Commissioner directs. The chairman must preside at all meetings and a question arising at a meeting must be determined by a majority of the votes of the members present. In the event of an equality of votes, the chairman has a casting vote as well as a deliberative vote (s.12D(1),(2),(3)).

The High Commissioner may refer to the Minimum Wages Board for determination any matter relating to minimum wages and conditions of employment of employees, other than apprentices, including (but without limiting the generality of the foregoing) matters relating to

(a) minimum rates of pay;

(b) any allowable deductions from wages for food, accommodation or issues supplied by employers and for recruitment and repatriation costs;

(c) deferred wages;
(d) allowances;
(e) penalty and overtime rates;
(f) hours of work; and
(g) leave.

In referring a matter to the Board, the High Commissioner must specify the terms of reference of the Board in relation to the matter and a copy of the terms of reference must be given to the Registrar (s.12E(1),(2),(3)). A matter may be referred to the Board notwithstanding the fact that it is the subject of, or is connected with, an industrial dispute and whether or not the dispute is the subject of other proceedings under the Ordinance (s.12E(4)). The Board is required to deal with matters referred to it without delay (s.12G(1)) and a determination of the Board 'may differentiate between parts of the Territory, different industries and different occupations' (s.12G(2)). The latter is a vital provision enabling the Board to set different rates for, say, rural and urban areas. The above are the principal provisions relating to the Minimum Wages Board.

In June 1972, the Administrator appointed the Minimum Wages Board provided for in the amending legislation (to the Industrial Relations Ordinance) which came into operation at the beginning of 1972. Mr L.G. Matthews, the Public Service Arbitrator, was appointed as chairman of the Board and two separate matters were referred for determination, namely:

(a) The calculation of allowable deductions for food, accommodation and issues supplied by employers to employees at a scale or of a standard other than that prescribed by the Native Employment Ordinance 1958-1971.

(b) The appropriateness or otherwise of the present minimum wage levels payable under awards and common rules to unskilled adults and unskilled married juniors (under 19 years) in the City of Port Moresby and surrounding areas to which the awards and common rules apply and, if in the opinion of the Board the present minimum wage levels are inappropriate, what are the appropriate levels.

Since that time other matters, including the determination of a new rural minimum wage, have been referred to the Board.

It is now possible to discern the direction, at least for a considerable time, of the main thrust of this key Ordinance.
It lies firstly and primarily in the work of the Minimum Wages Board. Such a body does not depend for its effective operation on a strong institutional framework for collective bargaining; it can function in the absence of much effective trade unionism, indeed when unions are weak it provides an offset to employer power and influence; and it will enable the government to maintain a fairly tight hand at the centre of the system. This it can do through the range of matters it chooses to refer to the Board and the submissions which go to the Board from the government in respect of those matters. Clearly, too, the Board will be the nexus between the new industrial relations machinery and the employment Code enshrined in the Native Employment Ordinance. Thus the Board will determine such critical matters for the Code as the minimum rural wage, deferred wages, allowable deductions from wages and hours of work. The other group of provisions which will continue to be important are those relating to the registration of agreements under the Ordinance and the power to declare common rules. This area does allow for a gradual evolution of the collective bargaining process whilst still ensuring to the government a control, necessary in the present state of development, over this process through the provisions relating to the public interest.

The Industrial Organizations Ordinance

In Australian industrial arbitration legislation, Federal and State, it is usual to bring together in the one enactment the provisions relating to the prevention and settlement of 'disputes' by means of conciliation and arbitration, the registration of agreements, the effect of awards and the like and those concerned with the registration and control of representative bodies of employers and employees. For their successful functioning, these systems depend on the existence of such bodies. This is why each of the Australian Acts contains extensive provisions dealing with the process of registering representative bodies, their legal status once registration is achieved, the circumstances in which they may be deregistered, the content of their rules and providing for a strong measure of control generally over their internal affairs.

In Papua New Guinea it was decided that this part of the industrial relations legislation should find expression in a separate Ordinance - the Industrial Organizations Ordinance 1962-1973. It is an entirely orthodox example of this particular aspect of such legislation and requires little
comment. Thus, without being exhaustive of the content of the Ordinance, it provides for the appointment and specifies the duties of particular officers, the Registrar and Deputy Registrar of Industrial Organizations, Inspectors and other necessary officers (ss.6-9). The Registrar is required to keep a Register of Industrial Organizations and bodies consisting of not less than twenty employees or four employers may be registered (ss.10-11). The prescription of such low numbers reflects the fact that union and employer organisation is still at a very early stage of development. There are the usual provisions relating to the advertising of applications for registration, the receipt of objections from other organisations and persons, and the final hearing of the application by the Registrar. Essentially, such provisions are designed to avoid fragmenting representation and to preserve the position of already registered organisations in the face of challenges from new bodies (ss.16-21). The accepted pattern of this type of legislation finds reflection also in powers conferred on the Registrar to refuse registration on a number of specific grounds and to cancel the registration of presently registered organisations (ss.25-26). A registered organisation is expressly declared to be a body corporate (s.30). Thus, it can both sue and be sued. And extensive powers in relation to such matters as the investment of funds and the raising of moneys are conferred upon such bodies (s.31). And unlike all of the Australian Statutes, with the exception of the Queensland Act, an immunity from civil suit for certain tortious acts important in the industrial sphere, notably inducing breach of contract, is conferred upon registered organisations (ss.32-33).

The qualifications and disqualifications for membership of organisations are spelled out and provision made for the resolution of disputes as to membership (ss.36-40). And certain restrictions are placed upon the holding of offices in organisations (s.41). The Ordinance contains a straightforward and simple set of requirements in relation to the rules of organisations which draws heavily on the Australian experience (ss.50-51). That experience is also reflected in a provision empowering the Registrar to make orders for the performance of the rules upon complaint by a member or other interested party (s.52). The objects for which the funds of an organisation may be expended are set out in detail as are requirements in respect of financial records, the rendering of accounts by officers and the keeping of records. The Registrar is empowered to call for detailed accounts (ss.56-63).
The account books and register of members must be open to inspection by officers and members of organisations and by the Registrar at any reasonable time and copies of the rules must be furnished to members on request (ss.62,63,65). Provision is made for the conduct of secret ballots under the supervision of the Registrar (s.64) and employees are given the protection found in the Australian Acts against victimisation for belonging to, or taking a part in the affairs of organisations. A like protection is given to employers in respect of employee action (s.66). Officers, servants, agents and members of the executive or other Committees of an organisation or of a branch thereof are prohibited, under threat of penalty, from obstructing or hindering the observance of awards during their currency (s.67). Finally, the duties of Inspectors appointed under the Ordinance are set out (s.69) and a right of appeal to the Supreme Court given from decisions of the Registrar (s.73).

One rather curious feature of the industrial relations legislation comprised in the two principal Ordinances must be mentioned. It is that many of the key definitions which one would expect to find in the Industrial Relations Ordinance are in fact contained in the Industrial Organizations Ordinance. Thus, the latter Ordinance contains, for example, definitions of the expressions, 'employee', 'employer', 'industrial dispute' and 'industrial matters' (s.4). The explanation for the adoption of this particular legislative scheme lies in the fact that the legislation, when it was introduced, was regarded as a whole and not as two distinct Ordinances.

In the statement on labour policy made by the then Commonwealth Minister for Territories in the House of Representatives in 1961, the Minister spoke about the legislation which was then about to be introduced. After describing the nature of the proposed Bills, the Minister said:

At this stage our purpose has been to provide the minimum necessary for the legal existence, recognition and proper functioning of industrial organizations and for the conduct of industrial relations, and to leave as much room as possible for development and adjustment so that the people of the Territory may work out for themselves the form of organization and the industrial system best suited to local needs and their own wishes.
We have tried to refrain from imposing on the Territory too many of our own ideas or methods. We do not propose to bring into being the complete system of industrial tribunals and procedures with which we are familiar in Australia but to content ourselves with providing sufficient statutory powers to enable any claims or disputes to be handled ad hoc as the occasion requires, and to rely on the Territory to develop the machinery and methods that best suit its situation. (Hasluck, 1961:16)

It is true that the Australian Government at that time was faced with the political imperative of providing for self-government within a much shorter period than that which hitherto had been envisaged. In those circumstances, there may be a tendency to dismiss the new legislation as being largely a political exercise; a form of 'window dressing'. That would be unfair. Whilst political considerations undoubtedly had a part, the legislation was a genuine attempt to provide sensibly for future development. A great deal depended, of course, on the Department of Labour in its response to the administration of this legislation. That Department responded to the challenge although, as noted earlier, the present changeover situation is imposing severe strains due to the loss of experienced officers.

There was one weakness, quite unavoidable, in the 1962 legislation. It looked towards the emergence of representative employee bodies - trade unions - as an integral part of the new industrial relations machinery. That development has, however, been painfully slow. The establishment of the Minimum Wages Board was in part a response to this fact and it is certainly helping to bridge the gap. In 1971 it was decided to pass further legislation aimed at speeding up the process by actively promoting the development of trade unions. Results so far have been disappointing.

The Bureau of Industrial Organizations Ordinance

The legislation in question is the Bureau of Industrial Organizations Ordinance 1971 which came into effect on 23 March 1972. It provides for the establishment of a corporate body by the name of the Bureau of Industrial Organizations managed by a Board of Management comprising the Director as chairman of the Board, the Secretary of Labour, or in his absence from a meeting a person-nominated by him for that purpose, and two other members.¹ The director is a

¹Bureau of Industrial Organizations Ordinance 1971,ss.5,6,12,13.
full-time officer (ss.23,24). The functions of the Bureau are

to encourage and assist the formation and development of industrial organizations, in particular by —

(a) fostering a better understanding of the role of industrial organizations amongst employers and employees and the community generally;

(b) stimulating and encouraging employers and employees to pursue industrial aims through registered industrial organizations;

(c) encouraging closer relations and understanding between industrial organizations of employers and industrial organizations of employees;

(d) improving the administration and management of industrial organizations; and

(e) carrying out, stimulating and encouraging study and research into matters affecting industrial organizations (s.7(1)).

In performing its functions the Bureau must, 'as appropriate, consult and co-operate with the Administration, industrial organizations and any other persons or bodies, whether inside or outside Papua New Guinea on matters in respect of which they or any of them have common interests' (s.7(2)). The powers of the Bureau towards fulfilling these functions are spelled out. Subject to the Ordinance, the Bureau 'may do all things that are conducive to, or necessary or convenient to be done, or incidental to, the performance of the functions of the Bureau' (s.8(1)). And without limiting the generality of that provision in any way, the Bureau may also

(a) provide advice and assistance, including financial assistance, in relation to the establishment, administration and development of industrial organisations;

(b) provide courses and programs of training for members and officials of industrial organisations;

(c) provide instruction and advice as to the handling of industrial problems generally, including the investigation of complaints, and as to the basic principles and procedures involved in formulating and responding to industrial claims.
(d) arrange for and offer fellowships at and scholarships to other institutions on such conditions as are determined by the Board of Management; and

(c) organize discussion of matters affecting the interests and activities of industrial organisations. (s.8(2))

These are wide powers. The Ordinance, therefore, goes on to enjoin the Bureau to be impartial in their use. 'In all its activities the Bureau and the members of the Board of Management shall maintain strict impartiality as between industrial organizations and as between employers and employees' (s.9(1)). In particular, the Bureau and Board members in their capacities as such are instructed not to represent, advise or assist a party to an industrial dispute in relation to the dispute or advise or assist any industrial organisation or person in formulating or presenting any claim, submission or agreement as to an industrial matter or in the enforcement of an award under the Industrial Relations Ordinance, nor must the Bureau permit any of its officers or employees to do any of these things (s.9(2)). It is provided, however, that these provisions are not contravened by any advice or assistance given as to:

(a) the requirements of or the procedures available under any law of Papua New Guinea; or

(b) matters of form or procedure only not going to matters of substance. (s.9(3))

These express limitations on its activities confronts the Bureau with a most serious dilemma. On the one hand, it is easy enough to appreciate, at least in a theoretical sense, the reasons underlying the prohibition on the Bureau involving itself in substantive matters, such as advising or assisting a party to an industrial dispute in relation to that dispute. But in Papua New Guinea if the embryonic unions are to gain skills in collective bargaining and to learn how to function within the industrial relations machinery, these are the very sort of matters in which they desperately need advice and assistance.

The Bureau started life with an Acting Director, a former officer of the Department of Labour, who at once recognised that these limiting provisions could easily frustrate the effective functioning of the Bureau in the task entrusted to it. A full-time Director, Mr Charles Lepani, has now been
appointed. A Papua New Guinean, he was formerly an officer of the Public Service Association. In that capacity he appeared before the first Minimum Wages Board hearing on behalf of the Association. Perhaps a partial answer may be found in a none too strict interpretation of the distinction between substantive matters on the one hand and procedural matters on the other.

Meetings of the Board of Management must be held at such times and places as the Board from time to time determines, but in any event not less often than once in every six months. The Director may at any time convene a meeting of the Board. He must do so within seven days after the receipt of a written request by a member of the Board asking for a meeting. The Board of Management may, by instrument in writing under its seal, delegate to the Director or to an officer of the Bureau any of its powers and functions under the Ordinance (other than the power of delegation itself) (s.28(1)). The remainder of the Ordinance deals with machinery provisions: such matters as the quorum for meetings of the Board, the appointment of staff, terms of office, power to deal with property, the validity of proceedings and financial arrangements.

What unionism does exist is at present centred largely in Port Moresby. And one trade union, the Public Service Association, accounts for nearly half of the total number of trade unionists in the country. Indeed, the latest official figures available, those at 30 June 1973, disclose that three public service type unions, the Public Service Association of Papua New Guinea, the Police Association of Papua New Guinea and the Papua New Guinea Teachers' Association accounted for well over 70 per cent of the then estimated total of 35,591 unionists. At the other end of the scale a large number of the forty odd unions had membership of less than two hundred (Department of Labour, 1974:21). Table 6 shows the members and membership of registered employee organisations at the end of June 1973.

Strict enforcement of the provisions of the Industrial Organizations Ordinance by the Registrar would result in the registration of many of these 'unions' being cancelled. They either do not have the required minimum number of financial members (low as that figure is) or have failed in some other respect, such as in the submission of rules or returns to the Registrar, to comply with the requirements of the Ordinance.\footnote{1} \footnote{1}Bureau of Industrial Organizations Ordinance 1971, s.26(1)(2)(3). \footnote{2}Based on discussions with the Registrar and with the Bureau of Industrial Organizations.
## Table 6

*Registered industrial organisations as at 30 June 1973*

<table>
<thead>
<tr>
<th>Employees' Organisations</th>
<th>No. of Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madang District Workers' Union</td>
<td>130</td>
</tr>
<tr>
<td>Morobe District Workers' Association</td>
<td>2,347</td>
</tr>
<tr>
<td>Rabaul Workers' Association</td>
<td>49</td>
</tr>
<tr>
<td>Public Service Association of Papua New Guinea</td>
<td>16,851</td>
</tr>
<tr>
<td>Port Moresby Miscellaneous Workers' Union</td>
<td>277</td>
</tr>
<tr>
<td>East Sepik District Workers' Union</td>
<td>300</td>
</tr>
<tr>
<td>Goroka Workers' Association</td>
<td>63</td>
</tr>
<tr>
<td>New Ireland District Workers' Union</td>
<td>187</td>
</tr>
<tr>
<td>Police Association of Papua New Guinea</td>
<td>2,656</td>
</tr>
<tr>
<td>Northern District Workers' Association</td>
<td>123</td>
</tr>
<tr>
<td>Western Highlands District Workers' Association</td>
<td>22</td>
</tr>
<tr>
<td>Milne Bay District Workers' Association</td>
<td>330</td>
</tr>
<tr>
<td>Bank Officials' Association of Papua New Guinea</td>
<td>205</td>
</tr>
<tr>
<td>Staff Association of the University of Papua New Guinea</td>
<td>142</td>
</tr>
<tr>
<td>Manus District Workers' Association</td>
<td>134</td>
</tr>
<tr>
<td>Staff Association of Papua New Guinea Institute of Technology</td>
<td>52</td>
</tr>
<tr>
<td>Abau District Workers' Association</td>
<td>163</td>
</tr>
<tr>
<td>Bougainville Catholic Teachers' Association</td>
<td>229</td>
</tr>
<tr>
<td>Western District Workers' Association</td>
<td>84</td>
</tr>
<tr>
<td>Central District Waterside Workers' Union</td>
<td>175</td>
</tr>
<tr>
<td>Central District Building Construction Industry Workers' Union</td>
<td>800</td>
</tr>
<tr>
<td>Senior Police Officers' Guild (Expat.)</td>
<td>39</td>
</tr>
<tr>
<td>West Sepik District Workers' Union</td>
<td>110</td>
</tr>
<tr>
<td>Bougainville Mining Workers' Union</td>
<td>800</td>
</tr>
<tr>
<td>Airline Employees Association</td>
<td>38</td>
</tr>
<tr>
<td>Gulf District Workers' Association</td>
<td>20</td>
</tr>
<tr>
<td>Bougainville Construction and General Workers' Union</td>
<td>172</td>
</tr>
<tr>
<td>Air Traffic Services Officers' Association</td>
<td>143</td>
</tr>
<tr>
<td>Port Moresby Clerical Workers' and Shop Assistants' Union</td>
<td>46</td>
</tr>
<tr>
<td>Lonbrum Naval Civilian Workers' Association</td>
<td>175</td>
</tr>
<tr>
<td>Local Government Officers' Association</td>
<td>20</td>
</tr>
<tr>
<td>Papua New Guinea Teachers' Association</td>
<td>7,000</td>
</tr>
<tr>
<td>Kainantu Workers' Association</td>
<td>55</td>
</tr>
<tr>
<td>Air Line Hostesses Association of Papua New Guinea</td>
<td>200</td>
</tr>
<tr>
<td>Merchant Service Officers' Association</td>
<td>33</td>
</tr>
<tr>
<td>Central District Transport Drivers' and Workers' Union</td>
<td>24</td>
</tr>
<tr>
<td>Papua New Guinea Nurses' Association</td>
<td>200</td>
</tr>
<tr>
<td>Lae Stevedoring Union</td>
<td>658</td>
</tr>
<tr>
<td>Papua New Guinea Overseas Seamen's Union</td>
<td>28</td>
</tr>
<tr>
<td>Madang Waterside Workers' Union</td>
<td>47</td>
</tr>
<tr>
<td>Wau Bulolo Workers' Association</td>
<td>474</td>
</tr>
</tbody>
</table>

Total: 35,591

*Source: Department of Labour, 1974.*
Workers' or Welfare Associations have emerged at various times in Papua New Guinea. Most of them were short lived. One commentator attached particular significance to the developments which accompanied the proceedings of the Native Employment Board established in 1959. This experiment was described earlier. The point here is that the method of procedure adopted by the Board, namely, an agreement resulting from the appearance of an employer representative or advocate and an employee representative (advocate) being adopted by the Board, was seen as the emergence of a process of collective bargaining. 'The year 1960 marked the beginning of both trade union organisation and bargaining about wages between representatives of employers and employees in the Territory of Papua and New Guinea' (Kerr, 1961:17). It will be recalled that following the Board's Report, the Native Employment Ordinance was amended to include a new Part - 'XA, Industrial Agreements'. That was in 1960. The following year, the agreement reached before the Board and adopted by it was declared a common rule in relation to unskilled workers in and around three towns. This was done under the amended Native Employment Ordinance.

These provisions dealing with Industrial Agreements and the making of a common rule and the decision of the 12th January, 1961 [by the Administrator to declare the agreement just described as a common rule], must encourage the making of further industrial agreements and the spread of their operation by decisions making them common rules. Trade unions must grow in this environment. (Kerr, 1961:23)

Such views have, of course, proved to be much too optimistic. It has, on the other hand, been forcibly said that the nature of both the Papua New Guinea economy and society itself will make the emergence of trade unions and trade unionism a long and difficult process. Lawrence (1964:28-9), it will be remembered, has described the differences in attitudes to work between European and traditional Papua New Guinea society and the effect of these differences on trade union organisation. Martín (1969:125-72) has taken the matter further in a major and perceptive analysis of the prospects for trade unionism in Papua New Guinea. After examining the African experience and the prospects for the development of unions in Papua New Guinea, Martín concluded:

It is still possible that manual unionism may strike firm roots in one or two industrial pockets, given the combination
of a close-knit work force and vigorous part-time leadership, even without outside encouragement which places the emphasis where it should be — on recruiting members and expanding union funds and activities. But the general prospect of a significant development of manual unionism seems bleak in the absence of full-time officials capable of articulating and acting on workplace grievances. Unless a genuine and substantial attempt to help them overcome this obstacle is forthcoming, whether from government or from Australian trade union leaders, the workers' associations face a long and possibly fruitless struggle against odds far greater than those that confronted the pioneers of Australian trade unionism. (ibid.:168-9)

Unionism has a hold and will develop steadily in the public service, professional and semi-professional areas. But economic and social factors seem at present to be almost intractable barriers to that wider development without which there will be no widely representative trade union movement. The Cochrane Board of Inquiry observed that 'the relatively high standard of living supported by the subsistence sector and the "as of right" access to it possessed by all men has meant that wage employment has been slow to develop as a means of livelihood... The implications of this for unionism are obvious (TPNG, 1970: 171-2). Isaac saw labour policy as a means of bringing about that development of a committed and job oriented labour force which is the basis of unionism. 'The case for higher wage rates as for establishing the basis for more successful incentive pay systems is that it may produce a break-through towards establishing a stable labour force. What is needed is to sever the circle of low-wages-because-of-low-productivity and low-productivity-because-of-low-wages (Isaac, 1970:25).

Those are the basic issues confronting the Bureau of Industrial Organizations. There are others. The complex web of inter-personal relationships built up through village and tribal associations and the equally intricate pattern of personal obligations which rest on those relationships make the task of trade union leadership a difficult one indeed. Members of the House of Assembly are not free from the pressures imposed by these factors. They also make their presence felt in another respect, namely, that official positions in trade unions have been looked upon as a stepping-stone to political office. There are, too, the immense problems posed by the number of distinct languages and people in the country.
The main activities of the Bureau are to provide practical advice and assistance in the administration and development of industrial organizations, to train members and officials of industrial organizations and to stimulate and encourage study, discussions and research on matters affecting industrial organizations. (Department of Labour, 1974:20).

The Bureau will have some impact in these areas. To take one example, workers' associations/ unions face a crippling organisational problem. Workers, having paid a subscription to join, very often cannot appreciate that thereafter membership continues to require an annual payment. The Bureau through its educational programs can hope to make inroads into this sort of difficulty. But the most fundamental problems which stand in the way of trade union organisation and growth, those which spring from the economic and social factors discussed above, cannot be affected very much by the existence of such a body.
Chapter 9

Conclusion

A number of developments in the labour field and certain industrial legislation have not been touched upon in this work. There have, for example, been a number of labour missions from Australia to Papua New Guinea which were officially sponsored one way or another. Australian trade union and A.C.T.U. officials have also visited in both official and private capacities. Various impressions have been brought back to Australia. In September/October 1960, a mission whose members were drawn from the principal Australian employers' organisations, the Australian Council of Trade Unions and the then Commonwealth Department of Labour and National Service visited Papua New Guinea. The primary purpose of this tripartite, non-political mission, was to enable its members to gain a first-hand impression of labour matters in the country so that they would be in a position to advise their own organisations in Australia. Towards the end of 1967 two Commonwealth Minister (Labour and National Service and Territories) decided that a second tripartite mission should visit the Territory with a composition similar to that of the first mission. Accordingly, the Australian Council of Trade Unions, the Associated Chamber of Manufactures of Australia and the Australian Council of Employers' Federations were invited to nominate members of the mission. The Minister for External Territories announced on 1 March 1968 that a Tripartite Labour Mission would visit Papua New Guinea 'to study the development of employer and employee organisations and industrial relations machinery'. The Minister explained 'that this will enable employer and A.C.T.U. members to inform and advise their own organisations, as may be needed, on labour matters in Papua and New Guinea' (Department of Labour and National Service, 1968:1-2). The mission, under the leadership of the Secretary of the Department of Labour and National Service, duly visited Papua New Guinea and made a report.

A Labour Advisory Council of thirteen members was established in 1971 to advise the government on labour matters generally.
In announcing the appointment of the Council, the Minister for Labour said that the Council would act in a consultative and advisory capacity with particular reference to such matters as: methods of improving industrial relations; measures needed to achieve full and efficient use of manpower; methods of bringing about more rapid localisation of the workforce in the private sector and incentives and other measures to achieve this end; measures to improve productivity; and trade union development. For good measure, the Minister said the Council would also consider other matters such as changes in the employment situation and any related necessary action, any additional measures required to create a better employment placement service, unemployment and under-employment and measures needed to correct such problems, improved labour mobility, measures to improve personnel management and practice techniques suited to the country, particular employment problems, technological change, prevention of and protection against industrial accidents and methods of improving industrial safety, health and welfare generally. Unfortunately, large bodies of this nature with virtually unlimited terms of reference usually achieve very little: they are, in fact, simply a form of window dressing.

Turning to the other industrial legislation not touched upon, the most significant from the industrial relations standpoint are the provisions made for the determination of wages and conditions in the Public Service and in the Teaching Service.¹ These are quite distinct systems from that established under the Industrial Relations Ordinance, it being expressly provided that the latter Ordinance 'does not apply to or in relation to a matter or thing to which the Public Services Conciliation and Arbitration Ordinance and the Teaching Service Conciliation and Arbitration Ordinance applies' (s.6). Thus, employment in the public service is covered by the awards of the Public Service Arbitrator and this is the only area of employment at present under continuous arbitration. The remaining industrial legislation includes Ordinances relating to workers' compensation, industrial safety

¹Public Services Conciliation and Arbitration Ordinance 1964-1971; Teaching Service Conciliation and Arbitration Ordinance 1971).
(factories and shops type legislation), employment placement and work in mines.¹

All of this legislation, though important in the various individual contexts to which it relates, is peripheral to the major labour law issues in Papua New Guinea. They are to be found in connection with the major labour Ordinances which have been the subject of this work. And in relation to them, the question must be asked, how appropriate is the legal framework which they embody? It must at least contain wage fixing machinery appropriate for a developing economy. Isaac examined the major industrial legislation in that light and his judgment is not unfavourable (Isaac, 1969:5). It was said at the outset, however, that over a very wide area, the law can at best have only a marginal influence. The fundamental problems for labour in Papua New Guinea rest in the nature of the economy and of society in that country. Those problems will not yield to legal rules.

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Papua New Guinea

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