

LEGAL SERVICES COUNTRY PROFILE

*PAPUA NEW
GUINEA*

International Legal Services Advisory Council
Attorney-General's Department, Australia

Third Edition

June 1996

LEGAL SERVICES COUNTRY PROFILE

*PAPUA NEW
GUINEA*

International Legal Services Advisory Council
Attorney-General's Department, Australia

Third Edition

June 1996

Copyright

This work is copyright. It may be reproduced in whole or in part subject to the inclusion of an acknowledgment of the source and no commercial dealing or sale. Reproduction for purposes other than those indicated above requires the prior written permission of the International Legal Services Advisory Council (ILSAC). Requests and inquiries concerning the reproduction and rights should be addressed to the Director, ILSAC Secretariat, Commonwealth Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Canberra ACT 2600. Telephone (06) 250 5666; Facsimile (06) 250 5952.

Disclaimer

This Country Profile has been prepared by the ILSAC Secretariat from information provided by members of the legal profession, academics, Commonwealth departments and agencies and other individuals and published and unpublished sources, as referenced.

Whilst every care has been taken in the compilation of this Profile and all information is believed to be accurate at the referenced date, no responsibility is accepted by ILSAC, the Commonwealth, or any of their officers, employees or agents for any errors or omissions in this Profile. Neither ILSAC nor the Commonwealth has independently verified any of this information. No representation or warranty, express or implied, is made by ILSAC, the Commonwealth or any of their officers, employees or agents as to the accuracy or completeness of the information contained in this Profile. Further, the contents of this Profile do not necessarily represent the views or policies of the Australian Government.

The information and comment in this Profile is intended only as a guide. Any aspect should not be relied upon without independent confirmation. ILSAC, the Commonwealth and any of their officers, employees or agents do not accept liability for any actions taken on the basis of the information contained in or omissions from this work.

Acknowledgments

The contributions and assistance of Mr David Frecker, Blake Dawson Waldron, Sydney; Mr David Hallett, Australian High Commission, Port Moresby; Mr Stephen Lewin, Gadens Ridgeway, Port Moresby; Mr Jimmy Maladina, Carter Newell, Port Moresby; the University of Papua New Guinea; and the Papua New Guinea Section, Department of Foreign Affairs and Trade are gratefully acknowledged.

Legal Services Country Profile Papua New Guinea.

International Legal Services Advisory Council (ILSAC).

Third Edition (Revised) June 1996

ISSN 1039-4621

Published by the International Legal Services Advisory Council (ILSAC) Secretariat, Attorney-General's Department, Canberra. Printed in Australia.

TABLE OF CONTENTS

INTRODUCTION	5
How to Order	5
1 GENERAL INFORMATION	7
Official Name	7
Population	7
Languages	7
Legal Language	7
Form of Government	7
Main political organisations.....	8
Economic Information	8
Percentage of GDP in Services Sector.....	8
2 BASIC LEGAL INFORMATION.....	9
Legal System.....	9
Sources of Law	9
Legal Development.....	9
Structure of the Legal Profession.....	10
Regulation of the Legal Profession.....	10
Law-Making Bodies.....	10
Law Derived from Australia	10
Court Structure.....	10
Appointment of Judges	11
Professional Legal Education	11
Primarily Trained	11
Qualifications for Practice	12
Principal Universities.....	12
Other Domestic Training Institutions	12
Post-graduate Legal Courses.....	12
Other Domestic Legal Qualifications	12
Practical Legal Training.....	12
Foreign Legal Training	13
Sources.....	13
Skills Obtained.....	13
3 LEGAL SERVICES MARKET	14
Professional Associations (Law Societies/Bar Associations).....	14
Local Legal Firms	14
Local Legal Firms	14
Local Lawyers.....	14
Percentage in International Commerce	14
\$ Value of Legal Services	14
Local Legal Firms Involved in International Work	14
Practice Mix.....	14
Australian and Other Foreign Legal Firms	14
Australian Firms	14
Other Foreign Legal Firms.....	15
Commercial Arbitration.....	16
Firms/Centres.....	16
Principal Coverage.....	16
Foreign Restrictions	16

International Instruments 16

4	MARKET ACCESS REQUIREMENTS	17
	Foreign Lawyer/Firm Regulation	17
	Body Responsible	17
	Laws & Regulations.....	17
	Foreign Lawyer Admission to Practice Requirements	17
	Citizenship/Residency Requirements	17
	Educational Qualifications.....	17
	Additional Educational Requirements	17
	Experience	18
	Pupillage Period.....	18
	Government Approvals.....	18
	Other	18
	Admission Authority.....	18
	Special Admission	18
	Additional Requirements	18
	Visa Restrictions	18
	Work Permits	18
	Regulation of Foreign Law Firms.....	18
	Use of Firm Name.....	18
	Employment of Local Lawyers	18
	Local Firm Association.....	19
	Government Approvals.....	19
	Other	19
	Restrictions on Practice	19
	Recent Regulatory Changes.....	19
5	AUSTRALIAN LEGAL SERVICES	20
	Australian Law Firms*	20
	Prospects for Australian Legal Services	20
	Legal Assistance Required by Australian Businesses.....	20
	Areas in which Australian legal services might be of value	20
	Future Prospects.....	20
	Dispute Resolution Services	20
	Centres/Firms.....	20
	Legal Education and Training.....	21
	Overseas Students Studying Law in Australia.....	21
	Overseas Students Studying in Australia.....	21
	Qualifications Recognised	22
	Australian Education Centre Representation.....	22
	\$ Value of Educational Services	22
6	REFERENCES/SOURCES.....	23

INTRODUCTION

The International Legal Services Advisory Council (ILSAC) was established in late 1990 by the Australian Government to assist in improving Australia's international performance in legal and related services. To help achieve this purpose profiles for twelve countries and economies of the Asia Pacific region have been prepared. The Profiles, which are intended as a guide only, cover China, Fiji, Hong Kong, Indonesia, Japan, Malaysia, Papua New Guinea, the Philippines, Singapore, the Republic of Korea, Taiwan, and Thailand. Legal Sector Background Papers have also been prepared for Vietnam, Cambodia and Laos.

ILSAC is chaired by the Hon Sir Laurence Street AC KCMG and comprises representatives of the legal profession, business community, commercial dispute resolution centres, education institutions and relevant Government departments and agencies.

The Profiles, which are revised annually, are designed to provide an overview of the legal and related services sector in each country or economy. The information in the Profiles is organised under the following main headings:

- | | | | |
|----------|-----------------------------------|---|---|
| <i>1</i> | <i>General Information</i> | - | key data, legal language, form of government and economic indicators. |
| <i>2</i> | <i>Basic Legal Information</i> | - | system and sources of law, structure and regulation of the legal profession, law-making bodies and professional legal education. |
| <i>3</i> | <i>Legal Services Market</i> | - | professional legal associations, local, Australian and foreign law firms, and commercial dispute resolution. |
| <i>4</i> | <i>Market Access Requirements</i> | - | foreign lawyer admission requirements, regulation and restrictions on foreign lawyers/firms and regulatory change in prospect. |
| <i>5</i> | <i>Australian Legal Services</i> | - | prospects for Australian legal services, Australian dispute resolution services and Australian legal education and training services. |
| <i>6</i> | <i>References/Sources</i> | - | list of source material and date of information contained in the profile. |

Comments, additional information or corrections, and suggestions for improvement of this Country Profile would be welcomed.

How to Order

Copies of the ILSAC Profiles are available at a cost of \$10 each or \$125 for a complete set of the fourteen published profiles (post paid in Australia) from the ILSAC Secretariat, Commonwealth Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Canberra ACT 2600. Telephone (06) 250 6713; Facsimile (06) 250 5952.

Copies of the AILEC Profiles for Vietnam, Laos and Cambodia are also available (from the above address) at a cost of \$10 each or \$25 for the set of three (post paid in Australia).

All seventeen Profiles may be purchased at a cost of \$150 per set (post paid in Australia).

1 GENERAL INFORMATION

Official Name

Independent State of Papua New Guinea.⁹

Population

In 1995 Papua New Guinea's population was estimated at 3.9 million with an estimated growth rate of 2.3% per annum.^{7/19} **(latest DFAT Country Economic Brief)** The population is mainly composed of people of Melanesian descent. Expatriate communities, including Australians, New Zealanders, Chinese, Filipinos, Europeans and Indians are concentrated in urban centres.¹⁷ The population is scattered throughout the country, with the highest concentrations (outside the national capital, Port Moresby) in the Highlands regions.

Languages

There are over 740 different languages spoken in Papua New Guinea.²³ English, Hiri Motu and Tok Pisin (New Guinea Pidgin) are the three official languages.¹⁷ Hiri Motu and Tok Pisin are used as *lingua franca* among persons who do not share a native language.^{1/11}

Legal Language

The official language of the Supreme and National Courts is English. Pidgin and Hiri Motu are also used in the lower courts.^{8/11}

Form of Government

Papua New Guinea is a constitutional democracy with the Prime Minister elected by a Parliament of 109 members. **National elections are conducted every five years with the next one scheduled for mid-1997, but Governments have changed more frequently due to successful no-confidence motions. The Wingti/Chan coalition Government came to power after the 1992 elections but was defeated in a no confidence motion in August 1994 by a Chan/Haiveta coalition after the Papua New Guinea Supreme Court upheld a constitutional challenge against Prime Minister Paias Wingti's attempt to avoid such a vote. In September 1993, Wingti resigned and was immediately reelected on the floor of Parliament in an effort to extend the initial grace period of 18 months in which a new Government is free from no confidence motions. (AUST High Comm PNG)**

~~The national election in July 1992, and a subsequent parliamentary motion of no confidence in August 1994, resulted in the present Government; a Parliamentary coalition which consists of the People's Progress Party (PPP), Pangu Pati, People's Unity Party (PUP), Black Action Party (BAP), the the National Party. resulted in a Government composed of a Parliamentary coalition. The coalition includes the People's Progress Party (PPP), League for National Advancement (LNA), Liberal Party, People's National Party (PNP), Democratic Movement (PDM) and Independents.⁷~~

- **Head of State**

- HM Queen Elizabeth II is represented by the Governor-General, Sir Wiwa Korowi, who is nominated by the National Parliament.

- **Prime Minister**

- The Rt Hon Sir Julius Chan, leader of the People's Progress Party (PPP), heads a coalition Government **comprised of PPP, Pangu Pati, Melanesian Alliance, People's Unity Party and Black Action Party**, having defeated former Prime Minister Paias Wingti in a parliamentary ballot on 30 August 1994. The next elections are due in 1997. **(Aust High Comm PNG)**

~~The Rt Hon Paias Wingti, leader of the People's Democratic Movement, heads a coalition Government, having defeated Mr Rabbie Namaliu of the Pangu Pati in a parliamentary ballot on July 17 1992. In September 1993, Mr Wingti resigned and was re-elected. The next national elections are due in 1997.⁷~~

- **The Executive**

- The National Executive Council (or Cabinet) is comprised of members of Parliament. The Council is appointed by the Head of State on the advice of the Prime Minister, who presides over the Council.
- The Government is responsible to Parliament.
- **National Legislature**
 - The unicameral National Parliament comprises 109 members, who are elected for a period of five years. Eighty-nine of the members represent “open” constituencies, and 19 represent provincial constituencies and the National Capital District (NCD). **Under the new provincial government reforms the provincial members were given the option of becoming Governor of the province. Fifteen chose to do so (Bougainville is excluded from the reforms until mid 1997) while the remainder elected to retain ministerial positions instead. (AUST High Comm PNG)**
- **The National Capital District**
 - Is governed by an elected Commission and has similar powers to provincial governments.
 - The National Capital District is the seat of Government.

• Provincial Government

- Each of the 19 provinces has its own government which enjoys limited revenue-raising powers but is largely financed through grants received from the national Government. ~~Although styled “provinces”, the State is essentially unitary, not federal.~~ A number of provincial governments have been suspended from time to time.²⁵
- ~~Legislation reforming the provincial government system came into effect in July 1994. The new Organic Law on Provincial Governments and Local Level Governments has altered the administration of provincial governments, and increased government allocations to the provinces, increasing their fiscal responsibility accordingly.~~
- **Controversial provincial government reforms aimed at improving service delivery to the rural areas were passed by Parliament in June 1995. The reforms were an initiative of the previous Wingti government which were continued by the Chan government under the Constitutional Review Commission chaired by the Hon Ben Micah MP. The Organic Law on Provincial and Local-level Governments aims to improve the effectiveness of public service delivery at a local level by linking the first and third tiers of Government at the second level. The Organic Law reconstitutes Provincial Governments as Provincial Assemblies with the Provincial Member as Governor and each National MP a member of the Assembly. The Organic Law mandates a higher level of grant funding for the provinces with a corresponding number of national Government functions devolved to the provinces. Implementation of the reforms has provoked considerable confusion amongst all levels of the bureaucracy. (Aust High Comm PNG)**

The Wingti government has indicated an intention to reform the current provincial government system.

Main political organisations

- Pangu Pati
- People's Democratic Movement
- National Party
- Melanesian Alliance
- People's Action Party
- People's Progress Party
- League for National Advancement^{9/11/17}

Economic Information

Basic Indicators	1991	1992	1993 (estimated)
GDP (US\$ m)	3785.8	4181.0	5078.0
GDP (Kina m)	3,606	4,080	4,685
Real GDP growth (%)	9.5	9.0	10.1
Inflation (%)	7.0	4.3	4.7
Exports (US\$ m)	1481.6	1768.5	2632.1
Imports (US\$ m)	1,403.3	1,288.2	1,348.0
Trade Balance (US\$ m)	78.2	480.4	1,284.1

Sources: — Papua New Guinea Country Economic Brief, Department of Foreign Affairs and Trade, March 1994
— Country Report, Pacific Islands: Papua New Guinea, Fiji, Solomon Islands, Western Samoa, Vanuatu Tonga., 1st quarter 1994. The Economist Intelligence Unit

Basic Indicators	1993	1994	1995 (estimated)
GDP (US\$ m)	4341	4599	4603
GDP (Kina m)	4428	3909	3590
Real GDP growth (%)	16.6	3.1	-4.8
Inflation (%)	4.8	2.9	18
Exports (US\$ m)	2547	2682	3287
Imports (US\$ m)	-1110	-1336	-1392

Trade Balance (US\$ m)	1437	1346	1894
------------------------	------	------	------

Sources: Papua New Guinea Country Economic Brief, Department of Foreign Affairs and Trade, March 1994 (Aust High Comm PNG)

Percentage of GDP in Services Sector

In 1993 services represented approximately 30 percent of the total GDP.

There is a relatively large number of financial intermediaries, including five commercial banking institutions (three of which have substantial Australian ownership), a n

umber of state owned financial institutions, and a range of private sector non-bank institutions.⁷

Total Two-way Trade with Australia (1992-93)	A\$2,107.5 million
Total Australian Trade (%)	1.8
Rank in Total Australian Trade	16
Value of Australian Exports (1992-93)	A\$853,281,000
Australian Exports (%)	1.4
Market Ranking in Australian Exports	18
% Growth (Five Year Trend)	2.4
Value of Australian Imports (1992-93)	A\$1,254,297,000
Australian Imports (%)	2.1
Market Ranking in Australian Imports	13
Growth (Five Year Trend) (%)	89

Source: Composition of Trade - Australia, 1992-93, Trade Analysis Branch, Department of Foreign Affairs and Trade, October 1993

Total Two-way Trade with Australia (1994)	A\$2,089.3 million
Total Australian Trade (%)	1.6
Rank in Total Australian Trade	17
Value of Australian Exports (1994)	A\$967.8 million
Australian Exports (%)	1.5
Market Ranking in Australian Exports	16
% Growth on Previous Year	5.2
Value of Australian Imports (1994)	A\$1,121.5
Australian Imports (%)	1.6
Market Ranking in Australian Imports	14
% Growth on Previous Year	-15.5

Source: Composition of Trade - Australia, 1994, Trade Analysis Branch, Department of Foreign Affairs and Trade, 1994

2 BASIC LEGAL INFORMATION

Legal System

Papua New Guinea has a common law system.⁸

Sources of Law

The main sources of law in order of importance are:

- **The Constitution of the Independent State of Papua New Guinea 1975**
 - The Constitution was compiled by the Constitutional Planning Committee from 1973 to 1975. Section 11 provides for its superiority:
"This Constitution and the Organic Laws are the Supreme Laws of Papua New Guinea...(and) all acts (whether legislative, executive or judicial) that are inconsistent with them are, to the extent of the inconsistency, invalid and ineffective."
 - Section 12 provides that all other laws are to be read and construed subject to the Constitution.
- **Organic Laws**
 - An organic law is defined by Section 12 of the Constitution:
"a law made by Parliament that is...for or in respect of a matter provision for which is expressly authorized by this Constitution."
 - Section 12 also provides for their amendment by another Organic law or by alteration of the Constitution.
- **Acts of Parliament**
 - Section 100 of the Constitution gives Parliament the power to make and enact legislation.
- **Provincial Laws**
 - Provincial governments are established under Part VIA of the Constitution, and are allowed to legislate in areas as determined by the *Organic Law on Provincial Governments and Local-Level Governments* (Part III). ~~(Chapter 1)~~. **Under the Organic Law on Provincial and Local-level Governments, the new provincial governments can elect to maintain any or all of the previous provincial government's legislation. (Aust High Comm PNG)**
- **Adopted Statutes**
 - Only certain pre-independence statutes as determined by section 20(3) of the Constitution are adopted.²³
- **Underlying Law**
 - This refers to indigenous common law which incorporates custom and English common law and both Parliament and the courts are responsible for its development.²³ No general indigenous underlying law has been enacted, but recently the Courts have given renewed judicial attention to indigenising the sources of law.¹⁹

Legal Development

Prior to independence, the legal system of Papua New Guinea was determined by British and German colonisation. British New Guinea (Papua) was proclaimed in 1884 and English imperial acts applied. In 1888 a local Legislative Council was established, passing the *Courts and Laws Adopting Ordinance 1888*. The Ordinance adopted the following as the basic law: Queensland laws and later English law (comprising English statutes in force in Queensland on 17 September 1888 and English common law and equity).

Between 1888 and 1914 German law applied to German New Guinea. Germany granted the New Guinea Company legislative powers over most matters. In 1921 the northern part of New Guinea was made a League of Nations mandate, which gave Australia legislative power. German law was repealed and replaced with English law, English statutes applying in Queensland and English common law.

After World War II, the territories of Papua and New Guinea were jointly administered by Australia. This included English laws and laws made by the local legislative councils. Immediately prior to independence, the

laws of Papua New Guinea included English imperial acts, certain Queensland acts, expressly adopted Australian Commonwealth enactments, and laws made by the local legislative council and later the pre-independence House of Assembly. Independence was declared on 16 September 1975, and the Constitution of the Independent State of Papua New Guinea was then adopted.²³

In response to the *Constitutional Commission Act* passed in late 1993, the Constitutional Commission was established in January 1994. The 16 member Commission **headed by the Hon Ben Micah, recommended a controversial new system of provincial and local-level government which was adopted by Parliament in the Organic Law on Provincial and Local-Level Governments. The Constitutional Review Commission has now been given new Terms of Reference (from the Governor-General on instruction from National Executive Council) to report back to Parliament in June 1996 on media accountability, integrity of political parties and at a later stage on the possibility of Papua New Guinea becoming a republic. The CRC has come under increasing criticism for its powerful role in relation to the reforms and has lost much of its bipartisan support. There are Opposition moves afoot to abolish the Commission in Parliament. (Aust High Comm PNG)** ~~which is to report to the Parliament by 31 September 1996, was tasked with proposing new organic laws and Acts, recommending review of administrative procedures and making general recommendations about amendments.²⁷ The provincial government reforms instituted in 1995 came about as a result of the Commission's recommendations. (DFAT)~~

Recognition of customary law throughout Papua New Guinea has been minimal. In New Guinea, the *Laws Repeal and Adopting Ordinance 1921-1923* provided for limited recognition of custom. Papua had no similar statute, but customary law was occasionally recognised, and always when customary land rights were involved. The *Native Customs (Recognition) Act 1963* provides for increased recognition and application of customary law.²³

Structure of the Legal Profession

The Papua New Guinea legal profession is fused, i.e. there is no division into solicitors and barristers.

Regulation of the Legal Profession

The legal profession is regulated by the Lawyers Statutory Committee (established under the *Lawyers Act 1986*) and the National Court.

Law-Making Bodies

Law-making bodies in Papua New Guinea include the National Parliament and the Provincial Governments. **Local-Level Governments and the National Capital District Commission have limited delegated law-making powers. (DFAT)** ~~The National District Commission and town authorities (established by an Act of provincial governments) have limited delegated law-making powers.¹⁹~~

Law Derived from Australia

Nearly all of the Statute law, which was adopted at Independence, including the *Companies Act*, *Stamp Duties Act*, land registration legislation, and the *Criminal Code*, was derived from Australia. Reference is also commonly made in the courts to Australian judge-made law.¹¹ **The PNG *Companies Act* has not kept pace with changes in corporate behaviour and is still largely based on the Australian 1961 *Uniform Companies Act*. The Act has been under review for some time and will soon be replaced by a new bill based largely on the *Companies Act 1993* (NZ). (Aust High Comm PNG)**

Court Structure

The National Judicial system comprises the following courts:

- **Local /Village Courts**

The Local/Village courts deal with local disputes, minor offences and with matters such as child custody. Disputes are usually resolved according to local custom, and Village courts are responsible for all customary matters not dealt with by other courts. Village Courts are presided over by Magistrates with no formal legal qualifications. Appeals from these court decisions are uncommon.

- **District Courts**

The District courts are responsible for civil cases involving compensation, for some indictable offences and for the more serious summary offences. District and Local Land Courts deal with disputes relating to Customary land.^{3/19} Decisions are reached by Magistrates, who are graded in seniority from one to five. Currently there are over 100 Magistrates, of whom only two are non-Papua New Guinean.

- **National Court**

The National Court is the senior trial court and has unlimited jurisdiction in both civil and criminal matters. The work of the court comprises mainly criminal trials and pleas. Appeals are heard from the Local, District, and Children's Courts. Since the late 1980's, National Court Judges have been based in provincial locations: two judges in Rabaul and Lae, and one each in Madang, Goroka and Mount Hagen. Prior to this, they were based in Port Moresby and travelled on circuit during the first three weeks of each month. All National Court Judges (except acting Judges) are also Judges of the Supreme Court.

- **Supreme Court**

The Supreme Court is the senior appellate court, where appeals are brought as a matter of right rather than by leave. The Supreme Court hears appeals on civil and constitutional matters, but most appeals are from the National Court and relate to criminal matters. The Supreme Court sits as a bench of seven judges who can give advisory opinions. When appointed, a judge serves on both the National and Supreme Courts, usually spending the first three weeks of each month sitting as a trial judge in the National Court and the last week in each month sitting as an appellate judge in the Supreme Court.

Additionally, there are Children's Courts, which hear cases involving minors. The Warden's Courts deal with civil cases relating to mining. In addition, there are other courts with responsibility for determining ownership of government land and for assessing the right of Customary landowners to compensation.^{3/19/29}

The Judiciary is independent.^{3/11}

Appointment of Judges

Appointment of judges is made by the Judicial and Legal Services Commission (JLSC). The JLSC comprises five members: the Chief Justice, Deputy Chief Justice, Chief Magistrate, Minister for Justice or Attorney-General and a member of the National Parliament. The Chief Justice, however, is appointed by the National Executive Council (the Cabinet).

The JLSC makes appointments on a case-by-case basis as vacancies arise. Local judges (i.e. Papua New Guinea nationals) are appointed from Papua New Guinea's prosecutors, public defenders, magistrates, Government lawyers, private practice or the Law Faculty at the University of Papua New Guinea. Appointments of lawyers from private practice are uncommon, which may be due to the income differential. Local judges appointed to the National Court usually serve first as an Acting Judge for six or 12 months. After their position has been confirmed, they are appointed for a term of 10 years.

Foreign-born judges are appointed for three year terms, but can usually have their term extended if desired. Foreign-born judges are appointed only if the JLSC is unable to find a suitable local candidate. It is unlikely that foreign lawyers would be appointed in relation to cases involving constitutional matters.

As of December 1993, Papua New Guinea had 14 judges, of whom six were foreign-born and none were Acting Judges.^{3/19/29}

Professional Legal Education

Primarily Trained

Training of local lawyers is conducted both in Papua New Guinea and overseas.²

In 1972 the Law Faculty at the University of Papua New Guinea graduated its first five Papua New Guinean lawyers, and by 1989 over 470 law students had graduated, 83 percent of whom were Papua New Guinean.²³

The non-Papua New Guineans were mainly from Australia, Soloman Islands, Vanuatu, Fiji FSM and Kinibati (UPNG). At the end of 1993 ~~15 students graduated with a Bachelor of Laws degree and~~ 10 non-Papua New Guinea students (mainly from the Solomon Islands, Vanuatu, Fiji **and Kinibati**) were enrolled in the Bachelor of Laws undergraduate course.^{23/26}

Qualifications for Practice

The normal progression of training is:

- complete an undergraduate law degree; and
- attend a one year practical training program at the Legal Training Institute.

A restricted practising certificate is issued following completion of the practical course, providing provisional admission. The certificate is issued by the Papua New Guinea Law Society to those who are employed by a law firm or other organisation. An unrestricted practising certificate is issued to lawyers who are practising on their own account or in partnership. Unrestricted certificates are only issued to lawyers with considerable practical experience, who have an approved professional indemnity insurance policy, and who are fit and proper persons as determined by the Papua New Guinea Law Society.²³

Lawyers who have been admitted as a barrister or solicitor or their equivalent in Australia, New Zealand or the United Kingdom must sit for and pass examinations in Customary Law, Constitutional Law and Land Law Administration and Policy before they are admitted to practise in Papua New Guinea.²⁶ **These examinations are conducted by the Law Faculty under arrangements with the PNG Law Society. (UPNG)**

Principal Universities

The University of Papua New Guinea and a Faculty of Law were established in 1968 following a recommendation from the Law Council of Australia. The Faculty offers a four-year Bachelor of Laws degree. The Faculty of Law has two departments:

- the Law Department; and
- the Department of Legal Clinical Programmes.^{10/20/26}

Other Domestic Training Institutions

The Legal Training Institute conducts a one year practical skills course. The course is mandatory for all local graduates who seek admission to practice, and is equivalent to the College of Law in New South Wales. The Legal Training Institute also recognises graduates from the Australian College of Law for purposes of admission to practice in Papua New Guinea.^{11/20}

Post-graduate Legal Courses

The Faculty of Law at the University of Papua New Guinea offers a Masters of Law and a Diploma in Magisterial Studies.²⁰ Graduates from the two year Diploma course qualify to work in Local courts. At the end of 1993, the number of non-Papua New Guinean students enrolled in this course was two. From 1995 the Diploma will be phased out, and thereafter, all new appointees to the Magisterial Service will have to be Bachelor of Laws degree holders.^{20/26} Magistrates with diplomas and practical experience are eligible to enrol for the Bachelor of Laws degree program.²³

~~Papua New Guinea~~ **The Faculty of Law** is involved in Continuing Legal Education ~~Committee~~ under the auspices of **the National Institute of Continuing Legal Education (NICLE)** of Papua New Guinea.²⁰ ~~The committee~~ **Faculty** assists in developing Continuing Legal Education (CLE) for lawyers and para-legals in Papua New Guinea **through its involvement in the Board and Management Committees of NICLE.**¹²

Other Domestic Legal Qualifications

None.

Practical Legal Training

Legal Training Institute (see *Other Domestic Training Institutions* above).¹¹

Foreign Legal Training

Sources

Australia is the major country involved in the post-graduate training of Papua New Guinea lawyers. Papua New Guineans have also obtained such training in the United States, **Canada** and the United Kingdom.

Skills Obtained

Papua New Guineans undertake post-Bachelor of Laws studies at overseas law schools and work experience in Australian law firms.¹¹

3 LEGAL SERVICES MARKET

Professional Associations (Law Societies/Bar Associations)

Papua New Guinea Law Society
P.O. Box 1994
Boroko
National Capital District
Papua New Guinea

This body was established by the *Lawyers Act* 1986.⁸

Local Legal Firms

Local Legal Firms

As of March 1994, there were 73 local law firms.²⁰

Local Lawyers

As of March 1994, there were 387 admitted lawyers holding a practising certificate to practice in Papua New Guinea.²⁰

Percentage in International Commerce

Information not available.

\$ Value of Legal Services

Information not available.

Local Legal Firms Involved in International Work

There are various local legal firms involved in international work, including: Warner Shand, ~~Dakin~~ Thirwell Koiri & Aisi, (Aust High Comm PNG) Henaos, Fiocco Posman & Kua and Maladinas.²⁰

Practice Mix

Most local firms practise in the areas of criminal law, personal injuries, land disputes and compensation, conveyancing, and commercial work for business groups and local companies. Those with international connections also undertake larger corporate and commercial work.¹⁹

Australian and Other Foreign Legal Firms

Australian Firms

The following Australian law firms have offices in Papua New Guinea:

- Allen Allen & Hemsley, Arthur Robinson & Hedderwicks and Feez Ruthning, have entered into joint venture arrangements with Mr Ben Passingan under the name "Allens Arthur Robinson". This firm also acts as a representative office of other members of the Australian Legal Group;²⁵
- Blake Dawson Waldron, whose presence traces back to 1935, has one of the largest practices. The practice acts for commercial, trading, financial and industrial corporations, as well as governments, institutional organisations and statutory corporations in the Asia-Pacific region. The contact partner in Port Moresby is Mr Matthew May;²⁴

- Carter Newell, whose practice involves civil litigation, resource and mining law, commercial law, international law, corporate service, and international banking and financing.²⁰ The contact partner in Port Moresby is Mr Jimmy Maladina;²⁴ and
- Gadens Ridgeway, one of the largest practices in Papua New Guinea, acts for banks, mining and oil companies, corporations, companies, statutory corporations and governments, and its practice includes industrial, trading and insurance law. The contact partner in Port Moresby is Mr Stephen Lewin.²⁴

The following Australian law firms have associated offices in Papua New Guinea:

- Barker Gosling which is associated with Pato, Lawyers;¹⁹
- Mallesons Stephen Jaques which has an associated office in Port Moresby with Beresford Love;¹⁴
- Phillips Fox which is associated with Henaos;¹⁸ and
- Tress Cocks & Maddox which has an associated firm arrangement with Day & Associates in Port Moresby.⁴

Approximately six locally-based firms employ overseas-born lawyers who may or may not have Papua New Guinea citizenship.¹¹

Australian Lawyers

Carter Newell employs five Australian lawyers, Gadens Ridgeway five and Blake Dawson Waldron six, for a total of 16.²⁰

Local Lawyers

Carter Newell, Gadens Ridgeway and Blake Dawson Waldron each employ six Papua New Guineans, for a total of 18.²⁰

Practice Mix

Primarily corporate law and commercial and civil litigation.

Other Foreign Legal Firms

Status of Lawyers Employed

Information not available.

Foreign Lawyers

There are approximately 66 non-citizen lawyers in Papua New Guinea.²⁰

Principal Home Countries

Foreign lawyers in Papua New Guinea are mainly from Australia, New Zealand and the United Kingdom.

Practice Mix

The type of law practised is primarily corporate, resources, energy, banking and finance, international relations, commercial and civil litigation and commercial arbitration.²⁰

Commercial Arbitration

Firms/Centres

None.¹¹

Principal Coverage

Not applicable.

Foreign Restrictions

Must be lawyers admitted in Papua New Guinea.²⁰

International Instruments

The *Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID Convention)* came into force for Papua New Guinea on 19 November 1978.¹² Papua New Guinea has enacted the *Investment Dispute Convention Act, 1978 (Act No. 48 of 1978)*, pursuant to Article 69 of the ICSID Convention, to make its provisions effective in the territory.¹⁶

Papua New Guinea is not a party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)*.

Papua New Guinea has not adopted the *UNCITRAL Model Law on International Commercial Arbitration (1985)*.¹²

4 MARKET ACCESS REQUIREMENTS

Foreign Lawyer/Firm Regulation

Body Responsible

Papua New Guinea Law Society.

Laws & Regulations

There are five Acts which regulate the practice of law by foreign lawyers in Papua New Guinea. These are:

- the *Lawyers Act 1986* as amended (some sections of which are not yet in force) and *Lawyers Admission Rules* thereunder;¹⁹
- the *Investment Promotion Act*;
- the *Employment Act*;
- the *Employment of Non-Citizens Act*; and
- the *Attorney-General Act*.¹¹

Foreign Lawyer Admission to Practice Requirements

Citizenship/Residency Requirements

There are no such requirements.⁵

Educational Qualifications

Legislation in Papua New Guinea governing admission of overseas practitioners provides that “a legal practitioner admitted elsewhere” may be admitted to practice in Papua New Guinea. This expression means:

- a barrister or a solicitor (or a barrister and solicitor), of the High Court of Australia or of the Supreme Court of a State or Territory of Australia; or
- a solicitor of the Supreme Court of the Judicature of England; or
- a Barrister-at-Law called to the Bar by one of the Inns of Court in London; or
- a barrister or a solicitor of the Supreme Court of New Zealand.

If such a practitioner's admission is provisional only or restricted in any way, he or she will be admitted provisionally in Papua New Guinea and must spend six months in the service of a lawyer before full admission.⁵ A foreign lawyer who later becomes a citizen must be either supervised for two years, or demonstrate experience equivalent to two years supervision before being eligible to practise on his or her own.⁸

Provision is also made for graduates in law from Universities in common law countries where the standard is equal to the Papua New Guinean Bachelor of Laws, or for persons who possess other academic legal qualifications to the satisfaction of the Court, to qualify for admission in Papua New Guinea upon completion of a term of articles or of a practical training course combined with articles. Applicants under these methods must apply for a declaratory order of the Court as to their qualifications.⁵

Additional Educational Requirements

Successful completion of an examination in Customary Law, Constitutional Law and Land Law. There are no other additional educational requirements, except for legal practitioners who are provisionally admitted elsewhere, or for law graduates who have not been admitted to practice in any of the jurisdictions described above (see *Educational Qualifications* above).^{5/11}

Experience

At least three years post admission in a “prescribed jurisdiction”, i.e. Australia, New Zealand or England. There is provision for application to the court for an exemption in respect of non-prescribed common law jurisdictions.¹¹

Pupillage Period

See *Educational Qualifications* above.

Government Approvals

No additional government approval is required.¹¹

Other

To practise law and obtain a work permit, the company engaging a non-citizen lawyer has to agree to undertake a training program with the objective being the replacement of the non-citizen by a local lawyer.^{2/11}

Australian judges, who are appointed only if the JLSC is unable to find a suitable local candidate., tend only to appear in court when lengthy or complex civil matters arise, or where a senior person is subject to criminal charges.²⁹

Admission Authority

To be admitted to practise law in Papua New Guinea, an application must first be made to the Attorney-General. The applicant will then be required to undertake the above-noted examinations (see *Additional Educational Requirements*). The Attorney-General will then interview the applicant. If satisfied that the applicant has the qualifications, he or she will be issued a Certificate of Qualification. The Court admits the holders of such certificates.

Special Admission

There is no provision for special admission.^{5/11}

Additional Requirements

Visa Restrictions

Visas are subject to obtaining a work permit from the Department of **Industrial Relations (Aust High Comm PNG) Labour**.¹¹

Work Permits

Work permits are required. In recent years there has been an increase in the regulation of non-citizen lawyers. There is some prospect of Government restrictions on the issue of work permits to non-citizens to practise law in Papua New Guinea.^{2/11}

Regulation of Foreign Law Firms

Use of Firm Name

No restrictions known.

Employment of Local Lawyers

Not expressly required under the *Lawyers Act*. The Department of Labour's approval for employment of non-citizens depends on the employer training local personnel. This applies to law firms as to all businesses and professions.

Local Firm Association

No express requirements to date.¹¹

Government Approvals

Not known.

Other

Not known.

Restrictions on Practice

Local Law	None.
Home Law	None.
Foreign Law	None.
International Law	None.
Other	None.

Recent Regulatory Changes

Recent Regulatory Changes

None known.¹¹

5 AUSTRALIAN LEGAL SERVICES

*Australian Law Firms**

(*Australian law firms and lawyers providing services see 3 - LEGAL SERVICES MARKET above)

Prospects for Australian Legal Services

Legal Assistance Required by Australian Businesses

The full range of commercial legal support.

Areas in which Australian legal services might be of value

The main areas are commercial, corporate, banking, finance and civil litigation.

Future Prospects

There is some suggestion that prospects for Australian legal services may become more limited in the future.

There is increasing pressure from Papua New Guinea lawyers for restrictions, and for regulations concerning foreign legal practice and the employment of foreign lawyers to be tightened. Changes being called for include restricting the legal profession to Papua New Guinea citizens, or at least restricting the number of foreign lawyers practising in Papua New Guinea.²¹

The Papua New Guinea Law Society has recently drafted legislation which will restrict foreign law firms to 60 percent national equity. This requirement will come into effect at the end of 1995.¹⁹

In April this year, the Investment Promotion Authority (IPA) (the agency responsible for regulating participation in business activity) was to recommend to the Minister for Commerce and Industry that legal practice be changed from an "open" category (i.e. 100 percent foreign owned enterprises are permitted to operate) to the "national" category (i.e. enterprises with greater than 50 percent Papua New Guinea citizen participation).²¹ A draft submission has been prepared, but there is no reported outcome at this stage.¹⁹ Should the recommendation be adopted, it would reduce future prospects for Australian or other foreign legal firms and lawyers.

Dispute Resolution Services

Centres/Firms

The Australian Centre for International Commercial Arbitration (ACICA) provides services on the settlement of international commercial disputes of all kinds to the region. The Institute of Arbitrators Australia, which controls ACICA, has as its main objectives the education and training of arbitrators and their grading, the nomination of arbitrators to arbitrate domestic disputes, and the promotion of arbitration as a means by which commercial disputes can be resolved. ACICA has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACICA is a member of the Council of Asia Pacific Commercial Dispute Resolution Centres and has close relationships with the International Chamber of Commerce Court of Arbitration in Paris.

For further information on ACICA, contact:

Mrs L K Cunningham
Secretary General of ACICA
Level 1
22 William Street
Melbourne Victoria 3000
t: (03) 9629 6799
f: (03) 9629 5250¹⁵

The Australian Commercial Disputes Centre (ACDC) provides consulting, training and dispute resolution services both domestically and internationally. It concentrates on mediation, expert appraisal and determination. ACDC has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACDC is the London Court of International Arbitration (LCIA) Registry for the whole Asia Pacific Region. LCIA's services are available to all involved in international commercial activity. It is open to any party to elect to have his/her dispute determined under the internationally recognised LCIA Arbitration Rules or UNCITRAL Rules.

ACDC is also a member of the Council of Asia Pacific Commercial Disputes Centres. For further information on ACDC, contact:

The Chief Executive Officer
Australian Commercial Disputes Centre
Level 5
50 Park Street
Sydney NSW 2000
Phone: (02) 267 1000
Fax: (02) 267 3125¹³

Legal Education and Training

Overseas Students Studying Law in Australia

Undergraduate

Four students from Papua New Guinea were recorded as undertaking Law/Legal Studies in Australian public Universities in 1993 and none at Bond University.²²

Post-graduate

Two students from Papua New Guinea were recorded as studying Law/Legal Studies at Australian public Universities in 1993 and none at Bond University.²²

Short Courses

Not known.

Overseas Students Studying in Australia

Commonwealth Funded Higher Education Institutions

In 1993, there were 374 students from Papua New Guinea recorded as studying at Australian publicly-funded tertiary institutions.²²

Overall

Australia finances under its international aid program a substantial training program for Papua New Guinea students at the secondary and the tertiary levels. Since 1975, under the development cooperation program, more than 2,500 students have been granted training awards. In 1993/94, A\$16 million has been allocated to educational programs.⁷ The award schemes available to Papua New Guineans for study in Australia are:

- Australian Sponsored Training Scholarships (ASTAS) for short-term specialist training, practical experience and work attachments;
- the Australian Development Cooperation Scholarships (ADCOS) for study at tertiary level; and
- the Secondary School Student Project covers study at the secondary level.³⁰

Qualifications Recognised

Not known.

Australian Education Centre Representation

None.⁶

\$ Value of Educational Services

Information not available.

6 REFERENCES/SOURCES

- 1 *The Asia & Pacific Review*, Hunter Publishing Incorporation, 1990
- 2 *Export of Australian Legal Services, An Overview of the Legal Services Markets in the Asia Pacific Region*, Austrade, August 1990
- 3 *The Europa World Year Book 1991*, Europa Publications Limited, 1991
- 4 *Legal Profiles. A Guide to Australia's Leading Law Firms and Their Expertise*, Andrea Warnecke, Profiles Publishing, 1993 Edition
- 5 *Admission of Commonwealth Lawyers (A Technical Survey)*, 2nd edition, Dr C McLachlan, Commonwealth Lawyers Association, London, February 1991
- 6 Information provided to the ILSAC Secretariat, Attorney-General's Department from the *International Development Program of Australian Universities and Colleges (IDP)*, August 1991
- 7 *Papua New Guinea Country Economic Brief*, Department of Foreign Affairs and Trade, March 1994
- 8 *Kime's 1993 -1994 International Law Directory*, Longman, 1993
- 9 *Country Report. Pacific Islands: Papua New Guinea, Fiji, Solomon Islands, Western Samoa, Vanuatu Tonga*, 1st quarter 1994. The Economist Intelligence Unit
- 10 *The LAWASIA Directory of Law Courses in the Asia and West Pacific Regions*, Centre for Legal Education, July 1992
- 11 Information provided to the ILSAC Secretariat, Attorney-General's Department, from an Australian Law Firm, 20 November 1992
- 12 Information provided to the ILSAC Secretariat, from the Attorney-General's Department, December 1992
- 13 Information provided to the ILSAC Secretariat, Attorney-General's Department, from the *Australian Commercial Disputes Centre (ACDC)*, 25 February 1994
- 14 Information provided to the ILSAC Secretariat, Attorney-General's Department, from an Australian Law Firm, 1 February 1994
- 15 Information provided to the ILSAC Secretariat, Attorney-General's Department, from the *Australian Centre for International Commercial Arbitration (ACICA)*, February 1994
- 16 *Contracting States and Measures Taken by Them for the Purpose of the Convention*, International Centre for Settlement of Investment Disputes, November 1991
- 17 Information provided to the ILSAC Secretariat, Attorney-General's Department, from the Department of Foreign Affairs and Trade, 5 February 1993
- 18 Information provided to the ILSAC Secretariat, Attorney-General's Department, from an Australian Law Firm, 1 February 1994
- 19 Information provided to the ILSAC Secretariat, Attorney-General's Department, from an Australian Law Firm, 13 March 1994
- 20 Information provided to the ILSAC Secretariat, Attorney-General's Department, from an Australian Papua New Guinea Law Firm, 11 March 1994
- 21 Information provided to the ILSAC Secretariat, Attorney-General's Department, from the Department of Foreign Affairs and Trade, 14 March 1994
- 22 Statistical Information provided to the ILSAC Secretariat, Attorney-General's Department, from the Department of Employment, Education and Training, April 1994
- 23 *South Pacific Islands Legal Systems*, Michael A. Ntumy, General Editor, University of Hawaii Press, Honolulu, 1993

- 24 *Legal Profiles. A Guide to the expertise of the leading law firms in Australia and New Zealand*, Andrea Warnecke, 1994 edition, Profiles Publishing
- 25 Information provided to the ILSAC Secretariat, Attorney-General's Department, from an Australian Law Firm, 24 May 1994
- 26 Information provided to the ILSAC Secretariat, Attorney-General's Department, from The University of Papua New Guinea, 21 June 1994
- 27 *Lawasia. Comparative Constitutional Newsletter*. Volume 1, Number 8, May 1994
- 28 Information provided to the ILSAC Secretariat, Attorney-General's Department, from the Department of Foreign Affairs and Trade, 28 January 1994
- 29 'Papua New Guinea Shapes its Legal System' by Justice Graham Ellis, *Australasian Law Times*, December 1993
- 30 *Are you Eligible for an Australian Sponsored Training Scholarship?*, Australian International Development Assistance Bureau