

NATIVE VILLAGE COUNCILS ORDINANCE 1949.⁽¹⁾

No. 11 of 1949.

An Ordinance relating to Native Village Councils.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Papua and New Guinea Act* 1949, as follows:—

Short title. 1. This Ordinance may be cited as the *Native Village Councils Ordinance* 1949.⁽¹⁾

Commencement. 2. This Ordinance shall take effect from such date as is fixed by the Administrator by notice⁽¹⁾ in the *Gazette*.

Definitions. 3. In this Ordinance, unless the contrary intention appears—

“Court for Native Affairs” means a Court for Native Affairs constituted under the provisions of the *Native Administration Ordinance* 1921-1938⁽²⁾ of the Territory of New Guinea;

“Court for Native Matters” means a Court for Native Matters constituted under the provisions of the *Native Regulation Ordinance*, 1908-1930⁽³⁾ of the Territory of Papua;

“Native Village Council” or “Council” means a Native Village Council established under this Ordinance;

“the Director” means the officer for the time being occupying the office, or performing the duties of the office, of Director of District Services and Native Affairs;

“the District Officer”, in relation to a Native Village Council, means the District Officer appointed to administer the District in which is situated the area in and for which the Council is established.

(1) Particulars of this Ordinance are as follows:—

Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwllh. Gaz.</i>	Date on which took effect.
30.11.1949	8.12.1949	30.12.1949 (Papua and N.G. <i>Govt. Gaz.</i> of 30.12.1949)

(2) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. IV., on pp. 3753-3756.

(3) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. IV., on pp. 3289-3291.

4.—(1.) The Administrator may, by proclamation,⁽⁴⁾ establish a Native Village Council in and for the area described in the proclamation. Establishment
of Native
Village Councils.

(2.) The Administrator may, by proclamation, abolish any Native Village Council.

(3.) The area in and for which a Council is established may include more than one village.

(4.) A Native Village Council shall consist wholly of Native members.

5.—(1.) The Administrator may, either in the proclamation establishing a Council or by a subsequent proclamation,⁽⁴⁾ make provision for— Constitution
of Councils.

(a) the manner in which the Council is to be constituted;

(b) the manner in which the members of the Council are to be appointed and cease to hold office;

(c) the tenure of office of the members; and

(d) the order of precedence of the members.

(2.) In determining any matter referred to in sub-section (1.) of this section, the Administrator shall have regard to relevant native custom in the area within which the Council has, or is to have, authority.

6.—(1.) Subject to sub-section (3.) of this section, a Native Village Council shall have such powers and authority as are provided by this Ordinance. Powers of
Councils.

(2.) In addition to the powers and authority otherwise conferred on it by this Ordinance a Native Village Council shall have such powers and authority as are conferred upon it by native custom, in so far as that custom does not conflict with the laws in force in the Territory and is not repugnant to the general principles of humanity.

(3.) The Administrator may, by proclamation,⁽⁵⁾ direct that a Native Village Council specified in the proclamation shall exercise only such powers and authority as are specified in the proclamation, and, while the proclamation is in force, the powers and authority of the Council shall be limited accordingly.

7.—(1.) Notwithstanding anything contained in this Ordinance the Director may, after due inquiry, remove from office a member of a Council where the Director is satisfied that the member has abused his powers or is incapable of exercising them justly or is, for any other reason, not a fit and proper person to continue to be a member. Removal of
members from
office.

(4) A Table containing particulars of Proclamations made in pursuance of Section 4 establishing Native Village Councils and providing for the constitution and election, tenure and precedence of members of Councils in pursuance of Section 5 is printed in this Volume on p. 925 and the Proclamations are printed immediately after the Table.

(5) No Proclamation has been published in Papua and N.G. *Govt. Gaz.* before 1.1.1952.

PART A : NATIVES—

(2.) A District Officer may recommend to the Director the removal from office of a member of a Council.

(3.) Where a District Officer has recommended to the Director the removal from office of a member of a Council, the District Officer may suspend the member from office until the decision of the Director is given and the member shall not act as a member of the Council while he is so suspended.

(4.) The suspension or the removal from office of a member of a Native Village Council shall take effect upon being notified to the member and to the Council.

(5.) The Director shall not remove a member from office under this section unless he is satisfied that the member concerned has been given a reasonable opportunity of answering the allegations made against him.

Joint exercise
of powers of
Councils.

8.—(1.) Subject to the approval of a District Officer, any two or more Native Village Councils may enter into an agreement for the joint exercise of any of their functions within the area in respect of which the agreement applies.

(2.) The agreement may provide for—

- (a) the appointment of a joint committee; and
- (b) the delegation to that committee of any of the functions of the respective councils.

Incorporation
of Councils.

9. A Native Village Council shall be a body corporate by the name under which it is established, with perpetual succession and a common seal, and shall have power to acquire, hold and dispose of property, to enter into contracts, to institute and defend actions, suits and other legal proceedings, and to do all things necessary for the purposes of its functions.

General duties
of Councils.

10. A Native Village Council shall—

- (a) perform the duties and fulfil the obligations imposed upon it by this Ordinance or by any other law in force in the Territory;
- (b) subject to the laws of the Territory, generally maintain peace, order and good government among the natives residing in or being in the area in and for which it is established; and
- (c) intervene for the purpose of preventing, and to the best of its ability, prevent, the commission by any native over whom it has authority of any offence against a law of the Territory.

11. Subject to the approval of the District Officer, a Native Village Council may— General powers
of Councils.

- (a) organize, finance or engage in any business or enterprise;
- (b) carry out any works for the benefit of the community in the area in and for which it is established; and
- (c) provide, or co-operate with any Department of the Administration of the Territory or other body in providing, any public or social service.

12.—(1.) Subject to this Ordinance, a Native Village Council may make rules, not inconsistent with any law in force in the Territory, for the peace, order and welfare of the natives within the area in and for which it is established, and in particular for— Power of
Councils to
make rules.

- (a) prohibiting, restricting or regulating any game or practice in which, in the opinion of the Council, any native is likely to be defrauded;
- (b) prohibiting, restricting or regulating the use of weapons;
- (c) prohibiting any act or conduct which, in the opinion of the Council, might cause a riot, disturbance or breach of the peace;
- (d) preventing the pollution or obstruction of the water in any stream, water-course, water supply or water-hole;
- (e) requiring and regulating the disposal of garbage, excreta or other objectionable matter;
- (f) prohibiting, restricting or regulating the cutting or destruction of trees or plants;
- (g) requiring the control or destruction of any vermin or insect pest;
- (h) requiring the destruction of any diseased or infected vegetation and otherwise preventing the spread of any plant, disease or pest which is declared under any law of the Territory to be a noxious plant, disease or pest;
- (i) preventing the spread of any disease which is declared under any law of the Territory to be an infectious or contagious disease, whether of human beings or animals, and providing for the care of the sick;
- (j) requiring the birth or death of any native to be reported to it or to such person as it directs;
- (k) prohibiting, restricting or regulating the movement of live-stock of any description belonging to any native or natives;
- (l) regulating or ensuring the supply of food to travellers;
- (m) prohibiting, restricting or regulating the burning of grass or bush, and the use of fire or lights;
- (n) prescribing measures to relieve any actual or anticipated famine, food shortage, pestilence, flood or other grave emergency;

PART A : NATIVES—

- (o) requiring natives to cultivate land to which they have title, whether by native custom or otherwise, to such extent and with such crops as will secure a sufficient supply of food for their support and the support of those dependent upon them;
 - (p) prohibiting, restricting, regulating or requiring to be done any matter or thing which the Council by native custom may prohibit, restrict, regulate or require to be done, except where the native custom conflicts with any law in force in the Territory or is repugnant to the general principles of humanity; and
 - (q) prescribing fees to be paid in respect of any matter permitted or directed to be done.
- (2.) Any rule made under this section by a Native Village Council shall—
- (a) be reduced to writing in a language approved by the District Officer;
 - (b) be submitted to the District Officer by the Council for his approval;
 - (c) if it is approved by the District Officer, be notified by the Council in the area in and for which the Council is established in any manner by which it is customary to transmit news or orders in that area; and
 - (d) be binding, from the date on which it is so notified, or from such later date as is specified in the rule, on all natives residing in or being in that area.
- (3.) A District Officer shall at the end of each month furnish a return to the Director setting out in respect of each Native Village Council established in the District every rule approved, not approved or revoked by him.
- (4.) The *Ordinances Interpretation Ordinance 1949*⁽⁶⁾ shall not apply to rules made by Native Village Councils under this Ordinance.

Proof of rule.

13. A certificate purporting to be signed by a District Officer certifying that the rule set out in the certificate has been made by the Council named in the certificate and is in force shall be received as evidence of the matters stated in the certificate.

Powers of District officer.

14.—(1.) If at any time the District Officer is satisfied that any rule made by a Native Village Council is no longer necessary, he may revoke that rule by notice to the Council.

(2.) A revocation under this section shall take effect from the date on which notice thereof is given to the Council concerned, but shall not prejudice anything previously done or suffered under the rule.

(6) Now the *Ordinances Interpretation Ordinance 1949-1951*, and printed in this Volume on pp. 660-688.

15.—(1.) A native shall not—

Offences.

- (a) without reasonable excuse, contravene or fail to comply with any rule made under this Ordinance which is applicable to him;
- (b) obstruct or interfere with the lawful exercise by a Native Village Council of any of its powers or functions; or
- (c) without lawful authority purport to exercise any power of a Native Village Council or of any member thereof or of any person employed by a Council.

Penalty: Five pounds or imprisonment for one month, or both.

(2.) Proceedings for an offence against paragraph (c) of the last preceding sub-section shall not be instituted without the consent of the District Officer.

(3.) A native charged with an offence under this section may be tried in the Territory of Papua before a Court for Native Matters, or in the Territory of New Guinea before a Court for Native Affairs.

(4.) A native may be arrested without warrant by a District Officer, an Assistant District Officer, a Patrol Officer or a Village Constable if the native is believed to be committing or to have committed an offence—

- (a) under paragraph (a) of sub-section (1.) of this section, if the rule concerned provides for arrest without warrant; or
- (b) under paragraph (b) or (c) of that sub-section.

(5.) A person who arrests a native under the last preceding sub-section shall, as soon as possible, bring him before a court having jurisdiction to try him.

16.—(1.) A native shall not conspire against a Native Village Council, or, by force, threats, fraud, misrepresentation, undue influence or in any other manner, attempt to prejudice the free and effective exercise of the lawful power and authority of a Native Village Council. **Conspiring against Council.**

Penalty: Five pounds or imprisonment for one month, or both.

(2.) A native charged with an offence against this section may be tried in the Territory of Papua before a Court for Native Matters or in the Territory of New Guinea before a Court for Native Affairs.

(3.) No proceedings shall be instituted for an offence under this section without the consent of the Director.

PART A : NATIVES—

Offences by
members of
Councils.

17.—(1.) A member of a Native Village Council shall not knowingly—

- (a) purport to exercise as such a member any power or authority which he does not possess;
- (b) take part in or support any purported exercise by the Council of any power or authority which it does not possess; or
- (c) otherwise abuse his position or authority as such a member.

Penalty: Five pounds or imprisonment for one month, or both.

(2.) No proceedings shall be instituted for an offence against this section without the consent of the Director.

(3.) A native charged with an offence under this section may be tried in the Territory of Papua before a Court for Native Matters or in the Territory of New Guinea before a Court for Native Affairs.

Imprisonment
for
non-payment
of fines.

18. The payment of any fine adjudged by any court to be paid upon a conviction of a native for an offence against this Ordinance may be enforced by imprisonment, and, notwithstanding anything contained in any other law, the imprisonment shall be for such period as the court in its discretion thinks fit, but not exceeding the maximum fixed by the following scale:—

Where the fine—	The period shall not exceed—
Does not exceed One pound seven days.
Exceeds One pound, but does not exceed Two pounds fourteen days.
Exceeds Two pounds one month.

Power to levy
rates and
taxes.

19. A Native Village Council may, with the approval in writing of the Administrator—

- (a) levy rates and taxes to be paid by natives within its area; and
- (b) charge fees, or make charges for services rendered by it or by persons employed by it.

Village
treasuries.

20.—(1.) All rates, taxes, fees, charges and other moneys collected or received by or on behalf of a Native Village Council shall be paid into a fund to be known as the village treasury fund, which fund shall be vested in the Council.

(2.) Moneys may be expended from the village treasury fund by a Council subject to such conditions and in such manner as are prescribed.

21.—(1.) The Director may, on such terms and conditions as are prescribed, appoint for each area in and for which a Native Village Council is established such village constables as he thinks necessary to assist in the enforcement of the rules and authority of the Council. Village constables.

(2.) A village constable appointed under this Ordinance shall have such powers and functions as are conferred by this Ordinance and as are prescribed.

22. The Administrator in Council may make regulations,⁽⁷⁾ not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular for providing for— Regulations.

- (a) the procedure to be followed at meetings of Native Village Councils and of joint committees of Councils;
- (b) the manner in which joint committees of Native Village Councils are to exercise their powers;
- (c) the remuneration of members and employees of Native Village Councils;
- (d) the powers, duties, functions and remuneration of village constables;
- (e) regulating the imposition and collection of rates, taxes, fees and charges by Native Village Councils;
- (f) the manner in which village treasury funds are to be supervised, held, expended, invested and audited;
- (g) the accounts and records to be kept by Native Village Councils;
- (h) the imposition of penalties not exceeding a fine of Five pounds or imprisonment for one month, or both, for breaches of the regulations.

(7) See the *Native Village Councils Regulations, 1950*, printed in this Volume on pp. 906-924.