

NATIVE ADMINISTRATION ORDINANCE 1921-1938.⁽¹⁾

An Ordinance to provide for the Control and Administration of Native Matters.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920*, as follows:—

1. This Ordinance may be cited as the *Native Administration Ordinance 1921-1938*.⁽¹⁾ Short title.
Amended by
No. 3 of 1934,
s. 50.

(1) The *Native Administration Ordinance 1921-1938* comprises the *Native Administration Ordinance 1921* as amended by the other Ordinances referred to in the following Table:—

TABLE.

PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

| Short title, number and year. | Date on which made by Gov.-Gen. in Council. | Date on which notified in <i>Owlth. Gaz.</i> | Date on which took effect. |
|--|---|--|--|
| <i>Native Administration Ordinance 1921</i> (No. 21 of 1921) | 11.11.1921 | 17.11.1921 | 17.11.1921 (<i>Owlth. Gaz.</i> of 17.11.1921) |
| <i>Native Administration Ordinance 1922</i> (No. 33 of 1922) | 25.10.1922 | 27.10.1922 | 27.10.1922 (<i>Owlth. Gaz.</i> of 27.10.1922) |
| <i>Native Administration Ordinance</i> (No. 2) 1922 (No. 39 of 1922) | 20.12.1922 | 28.12.1922 | 28.12.1922 (<i>Owlth. Gaz.</i> of 28.12.1922) |
| <i>Native Administration Ordinance 1926</i> (No. 3 of 1926) | 20.1.1926 | 28.1.1926 | 28.1.1926 (<i>Owlth. Gaz.</i> of 28.1.1926) |
| <i>Native Administration Ordinance 1927</i> (No. 6 of 1927) | 23.2.1927 | 24.2.1927 | 24.2.1927 (<i>Owlth. Gaz.</i> of 24.2.1927) |

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

| Short title, number and year. | Date of assent by Administrator. | Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council. | Date on which came into operation. |
|--|----------------------------------|--|---|
| <i>Native Administration Ordinance 1934</i> (No. 17 of 1934) | 7.2.1934 | 31.8.1934 | 7.2.1934 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 53) |
| <i>Native Administration Ordinance 1938</i> (No. 25 of 1938) | 24.8.1938 | 30.11.1938 | 24.8.1938 (<i>Laws of T.N.G.</i> , Vol. XIV, p. 147) |

NATIVES—

Courts for
Native Affairs.

Section 2
substituted by
No. 33 of 1922, s.
2; amended by
No. 39 of 1922,
s. 3 and by No.
3 of 1926, s. 2;
resubstituted
by No. 6 of
1927, s. 2.

2.—(1.) The Administrator may by proclamation⁽²⁾—

- (a) establish Courts for Native Affairs; and
- (b) abolish Courts for Native Affairs.

(2.) The Administrator may, by writing⁽³⁾ under his hand, appoint any person to be a member of a Court for Native Affairs.

(3.) Every District Officer shall, by virtue of his office and without any further commission or authority than this Ordinance, be a member of all Courts established under the provisions of this Ordinance.

(4.) A Court for Native Affairs shall consist of one or more members of the Court.

(5.) A session of a Court for Native Affairs may be held at such time and place as the person or persons constituting the Court may deem fit.

(2) The repealed Section 2(1) provided that, "There shall be such courts for native affairs as the Administrator may prescribe by regulation". The *Native Administration Regulations* 1923, dated 17.7.1923 and published in *N.G. Gaz.* of 25.7.1923, provided for courts for native affairs in and for every district proclaimed under the *Administrative Districts Ordinance* 1922 and such courts were to be respectively known and designated as "The Rabaul Court for Native Affairs" and similarly for Gasmata, Kaewieng, Namatanai, Kieta, Morobe, Madang, Aitape, Talasea and Manus. These Regulations were repealed by the present Regulation 4 of the *Native Administration Regulations* 1924, which, however, provides that "such repeal shall not affect . . . any court established by or under the Regulations hereby repealed".

By Regulations dated 25.6.1925 and published in *N.G. Gaz.* of 30.6.1925, Regulation 6A was inserted in the *Native Administration Regulations* 1924 as follows:—"In and for every district proclaimed under the *Administrative Districts Ordinance* 1922 there shall be a Court for Native Affairs which shall have jurisdiction in and throughout such district and such Court shall be known and designated by the name of such district". Regulation 6B (inserted by Regulations dated 12.10.1925 and published in *N.G. Gaz.* of 15.10.1925), in terms similar to the present Section 2A of the *Native Administration Ordinance* 1921-1938, provided that the Administrator may by notice published in *N.G. Gaz.* transfer to some other Court for Native Affairs, the books and other records of any Court for Native Affairs which had ceased to exist by reason of any alteration of the boundaries of any District. Pursuant to Regulation 6B, the Administrator, by notice dated 24.6.1926 and published in *N.G. Gaz.* of 1.7.1926, provided that, "Whereas the Districts of Rabaul Gasmata and Talasea have ceased to exist . . . the books and other records of the Courts for Native Affairs be transferred to the Court for Native Affairs for the District of New Britain".

The present Section 2(1) was inserted by the *Native Administration Ordinance* 1927 and took effect on 24.2.1927, although Regulations 6A and 6B were not repealed until 1932 by Regulations dated 3.11.1932 and published in *N.G. Gaz.* of 15.11.1932. See Section 4(1) of the *Native Administration Ordinance* 1927 (printed on p. 3757) which provides that the "Courts for Native Affairs in existence immediately prior to the commencement of this Ordinance shall be deemed to have been duly established in accordance with the provisions of the principal Ordinance as amended by this Ordinance".

As at 24.2.1927 there were thus in existence Courts for Native Affairs in and for the Administrative Districts of New Britain, Madang, Morobe, Kavieng, Namatanai, Manus, Aitape, Kieta and Sepik.

Pursuant to Section 2(1) of the *Native Administration Ordinance* 1921-1938, the Administrator, by Proclamation dated 26.6.1928 and published in *N.G. Gaz.* of 30.6.1928, abolished as from 1.7.1928 the Kavieng and Namatanai Courts for Native Affairs and established a Court for Native Affairs in the District of New Ireland; and by Proclamation dated 15.11.1932 and published in *N.G. Gaz.* of 15.11.1932 abolished the Court for Native Affairs for the District of Aitape. These proclamations are printed on p. 3797.

(3) The present Section 2(2) was inserted by the *Native Administration Ordinance* 1927 and took effect as from 24.2.1927. The repealed Section 2(2) provided for appointment of members of Courts for Native Affairs "by notice published in the *New Guinea Gazette*". Pursuant to that Section the Administrator from time to time, by notice published in *N.G. Gaz.* appointed members of Courts for Native Affairs, individually by name, and from time to time similarly terminated such appointments. After the commencement of the present Section 2(2), the Administrator continued to make numerous individual appointments by notices published in *N.G. Gaz.*, the last of such notices being dated 25.10.1929 and published in *N.G. Gaz.* of 15.11.1929. As to the validity of appointments made before the commencement of the present Section 2(2) "by writing under the hand of the Administrator", see Section 4(2) of the *Native Administration Ordinance* 1927, printed on p. 3757.

(6.) Subject to this Ordinance, the jurisdiction, practice and procedure of Courts for Native Affairs shall be as prescribed.

2A. Where any Court for Native Affairs has been abolished, the Administrator may, by the proclamation⁽⁴⁾ so abolishing it, or by any subsequent proclamation, direct that the books and other records of the Court shall be transferred to some other Court for Native Affairs specified in the proclamation, and thereupon all proceedings pending in the first-mentioned Court at the time of its abolition shall be had and determined in the Court specified and that Court shall have jurisdiction to make all such orders and to do all such things in respect of such pending proceedings and of any proceedings had or determined in the Court abolished as the Court abolished would have had, had it not been abolished.

Transfer of proceedings on abolition of court.

Inserted by No. 6 of 1927, s. 3.

3.—(1.) The Administrator may, by notice⁽⁵⁾ in the *New Guinea Gazette*, constitute the Central Court⁽⁶⁾ a court of appeal from a Court for Native Affairs.

Court of Appeal for native affairs.

Sub-section (1) amended by No. 3 of 1926, s. 3.

(2.) The cases in which an appeal may be brought, the grounds upon which an appeal will lie, the practice and procedure in appeals, and all other matters relating to appeals shall be as prescribed by rules⁽⁷⁾ of the Central Court⁽⁶⁾.

(3.) The Central Court⁽⁶⁾ shall have full power to order any amendment to be made at any stage of the proceedings, and no appeal shall be allowed unless it appears to the court that some substantial injustice and hardship will otherwise be caused to the appellant.

4.—(1.) The Administrator in Council may make regulations⁽⁸⁾ affecting the affairs of natives with regard to—

Power to make regulations dealing with native affairs.

Sub-section (1) amended by No. 25 of 1938, s. 2.

- (a) marriage and divorce;
- (b) the succession to property in case of intestacy;
- (c) the testamentary disposition of property;
- (d) the disposal of the dead;
- (e) the jurisdiction, powers and procedure of Courts for Native Affairs in civil and criminal matters;
- (f) the rights to real and personal property;

Paragraph (e) amended by No. 3 of 1926, s. 4.

(4) Pursuant to Section 2A, the Administrator, by the proclamations referred to in footnote (2) above, and printed on p. 3797, directed that the books and other records of the Kavieng and Namatanai Courts for Native Affairs be transferred to the Court for Native Affairs of the District of New Ireland; and that the books and other records of the Court for Native Affairs for the District of Aitape be transferred to the Court for Native Affairs for the Sepik District.

(5) By notice dated 14.4.1924 and published in *N.G. Gaz.* of 30.4.1924, the Administrator constituted "the Central Court a Court of Appeal from a Court for Native Affairs."

(6) See Section 7A of the *Judiciary Ordinance 1921-1938*.

(7) See the *Rules of the Central Court regulating Appeals from Courts for Native Affairs*, printed on p. 3795.

(8) See the *Native Administration Regulations 1924*, printed on p. 3759.

NATIVES—

(g) the observance of native customs;
(h) the cultivation of the soil,
and generally with regard to all matters relating to, or affecting, the good government and well-being of the natives.

Sub-section (2)
substituted by
No. 33 of 1922,
s. 3.

(2.) Any contravention of any regulation shall be deemed to be an offence against this Ordinance.

Sub-section (3)
inserted by
No. 33 of 1922,
s. 3.

(3.) The regulations may in respect of any contravention of the regulations provide penalties not exceeding in any case—

- (a) a fine of Fifteen pounds and in default of payment imprisonment with or without hard labour for any period not exceeding six months; or
- (b) imprisonment in the first instance with or without hard labour for any period not exceeding six months; or
- (c) a fine of Fifteen pounds in addition to imprisonment with or without hard labour for any period not exceeding six months.

Punishment of
juvenile
offenders.

Section 4A
inserted by
No. 17 of 1934,
s. 2.

4A.—(1.) Notwithstanding the provisions of any law to the contrary, a Court for Native Affairs may order that any male person convicted of an offence against the regulations made under this Ordinance, whose age does not in the opinion of the Court exceed the age of fourteen years, shall be once privately whipped in lieu of any other punishment which may be lawfully awarded for that offence.

(2.) The number of strokes which a Court for Native Affairs may order under this section shall not exceed eight.

(3.) A person sentenced under this section to a whipping may be detained in a prison or some other convenient place for such time as may be necessary for carrying the sentence into effect.

(4.) A sentence of whipping under this section shall be inflicted with a cane or birch rod.

Section 5
repealed by
No. 25 of 1938,
s. 3.

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Limits of
jurisdiction of
Courts for
Native Affairs.
Amended by
No. 3 of 1926,
s. 5.

6. Nothing in this Ordinance, or in the regulations made under this Ordinance, shall be taken to confer upon any Court for Native Affairs any authority except as between natives and over natives.