

FIRST NATION OF NACHO NYAK DUN
GOVERNMENT ACT

**An Act to provide for the organization
of Nacho Nyak Dun government**

Citation

1. This Act may be cited as the First Nation of Nacho Nyak Dun *Government Act*.

Coming into Force

2. This Act shall come into force on a day to be fixed by the Council.

Self-Government Act

3. Sections 7 to 17 and sections 31 to 56 of *The Self-Government Act of the First Nation of Nacho Nyak Dun, 1994* are repealed as of the time that this Act comes into force.

Definitions

4. In this Act,

All terms contained in this Act that are also contained in the *Constitution of the First Nation of Nacho Nyak Dun* shall have the same meaning as in the *Constitution*.

“Administrative Tribunal” means a body established under First Nation legislation or pursuant to an Administration of Justice Agreement that has the power to hear matters arising from this Act.

Purpose

5. The purpose of this Act is to provide for:
 - (a) the exercise of the First Nation's legal capacity and self-government powers;
 - (b) the management and administration of the First Nation;
 - (c) the management and administration of rights and benefits realized pursuant to the Final Agreement by beneficiaries; and
 - (d) matters ancillary to the foregoing.

PART 1

COUNCIL AUTHORITY

6. The Council shall:
 - (a) exercise its authorities under the *Constitution* and this or any other Act;
 - (b) exercise the capacity, rights, powers and privileges of the First Nation, and
 - (c) manage, administer and represent the First Nation;in accordance with this Act.

7. For the purposes set out in section 6, the Council exclusively shall have the authority, on behalf of the First Nation, to:
 - (a) enter into or delegate the power to enter into contracts, agreements and memoranda of understanding;
 - (b) acquire and hold property or any interest therein, and sell or otherwise

dispose of property or any interest therein;

- (c) subject to limitations established by the Assembly, raise, invest, expend and borrow money;
 - (d) sue, defend or compromise any lawsuit or any claim brought or threatened against the First Nation , its officials, bodies or other entities;
 - (e) form corporations or other legal entities;
 - (f) appoint or nominate for appointment any person to serve as a member of any board, committee, council, commission or tribunal established:
 - (i) by the Council;
 - (ii) under a law of the First Nation;
 - (iii) under the Final Agreement, the Self-Government Agreement or any agreement ancillary thereto; or
 - (iv) under the authority of another jurisdiction, either alone or concurrently under the authority of the First Nation;
 - (g) enter into agreements with Yukon or Canada for the assumption of responsibility for delivery of programs and services; and
 - (f) do such other acts and things as may be conducive to the purposes set out in section 6.
8. The Council, in addition to its authorities and duties under the Constitution and for the better governance of the First Nation, implementation of any law or performance of any agreement, may pursue initiatives and establish departments, agencies, and offices of the First Nation.

Access to Programs and Services

9. The Council may establish regulations, rules and/or policies regarding access by First Nation of Nacho Nyak Dun citizens to any program and service that is being

generally offered by the Council with the goal of assuring equal access to all citizens.

Emergency Powers

10. (1) Where the Council has determined on reasonable grounds that there is an emergency, it may take such steps as it considers necessary to represent or protect us, our rights, titles or interests, or to implement our laws in response to the emergency.
- (2) Where the Council exercises its authority under subsection (1), it shall concurrently or at the first opportunity thereafter make arrangements to convene a meeting of the Assembly.
- (3) An exercise of authority under subsection (1) shall be effective until the termination of the emergency or until the conclusion of the next meeting of the Assembly, or for ninety (90) days, whichever is sooner.

Procedure

11. The Council shall determine its own procedure, and any failure by the Council to adhere to or follow its own procedure shall not be reviewable by any court and shall not affect the validity of any Council proceeding or decision.

PART 2

COUNCIL STANDARDS

Oath of Office and Oath of Confidentiality

12. (1) Every Council member shall take the oath of office and the oath of confidentiality set out in Schedule 1 within 30 days of his or her election to the office.
- (2) The oaths described in subsection (1) shall be administered by a Notary Public or other person authorized to administer oaths.

- (3) Every person who is a Council member when this Act comes into force shall continue to have all of the powers and responsibilities of a member, notwithstanding that he or she has not taken the oaths described in subsection (1).

Conflict of Interest

13. (1) Every Council member who, directly or indirectly, has an interest that conflicts with or, in the opinion of the Council (excluding that member), reasonably might be perceived to conflict with the interests of the First Nation shall disclose the nature and extent of that interest to the Council at the earliest opportunity after becoming aware of the conflict or circumstances giving rise to the perception of it.
- (2) Where a Council member or a member of his or her immediate family:
 - (a) is a director of, or has a financial interest in, a corporation or partnership or is a sole proprietor; or
 - (b) is a director of a society or organization;that may benefit from any contract, loan, grant, financial guarantee or other similar financial relationship entered into by the Council, the Council member shall be deemed to be in a conflict of interest for the purposes of the awarding of the contract, loan, grant, financial guarantee or other similar financial relationship.
- (3) The Council may by regulation:
 - (a) identify interests, other than those interests identified in subsection (2), which are deemed to be interests that conflict with the interests of the First Nation;
 - (b) establish procedures for the disclosure and resolution of conflicts or perceived conflicts of interest, and
 - (c) addressing any other matter as the Council may consider necessary to protect the integrity and dignity of the Council, citizens and the First Nation.

Conduct Unbecoming

14. Every Council member whose conduct or behaviour may call into question the dignity or integrity of the member, the Council or the First Nation shall be accountable to the Council for that conduct or behaviour and may be subject to discipline up to and including removal from office.

Undue Use of Influence

15. (1) No Council member shall receive or agree to receive any fee, compensation or reward, directly or indirectly, either alone or with another, for services rendered or to be rendered to any person, either by himself or another, in relation to the preparation or promotion of any draft enactment, resolution, question, petition, proceeding, controversy, charge or other matter before the Council or any committee established by the Council or in order to influence any member or any committee.
- (2) No person shall offer a member a reward to use his or her position as a member to promote any enactment, contract or other matter before the Council.
- (3) A person who violates subsection (1) or subsection (2) commits an offence and may be prosecuted in accordance with the *Summary Convictions Act (Canada)* unless he or she is required by the Council to
- (a) appear before the Administrative Tribunal to account for their actions; and
 - (b) abide by the direction given by the Administrative Tribunal to remedy the violation.

Disqualification

16. (1) Where a person is convicted under subsection 15 (3), his or her seat shall become vacant immediately upon the conviction and the person
- (a) is disqualified from entering any appointment process initiated to fill

the vacancy created, and

- (b) may not be appointed by the Council to fill the vacancy created.
 - (2) Where a person is required to appear before the tribunal to account for their action under subsection 15 (3), any disqualification on serving as a member shall be as determined by the tribunal.
17. A person who is a member of the Senate or House of Commons of Canada or of the Legislative Assembly of a territory or province, and the Grand Chief of the Council of Yukon First Nations, is not eligible to be a Council member.

Compensation

18. (1) A Council member shall not receive compensation of in any form by the First Nation except in his or her capacity as a Council member.
- (2) The personnel policy of the First Nation shall apply to and for the benefit of members of Council.
19. (1) Each Council member shall be paid:
- (a) wage; and
 - (b) reasonable transportation and living expenses incurred in connection with the performance of his or her duties while away from his or her ordinary place of residence;
- at a rate or rates approved by the Finance Committee or set out in regulations.
- (2) (a) where Council members receive honoraria or other compensation from an organization other than the First Nation, they shall not be eligible for compensation from the First Nation;
 - (b) subsection (a) does not apply where the compensation was limited to reasonable levels of reimbursement for travel costs.

PART 3

COUNCIL ACCOUNTABILITY

Records, Access and Privacy

20. (1) The Council shall keep records of its proceedings which disclose at least;
- (a) the items discussed;
 - (b) the main issues considered; and
 - (c) any decision made, including any formal resolutions.
- (2) These records shall be filed and maintained, and shall be available to be read by any First Nation citizen during regular business hours and upon reasonable notice.
- (3) Notwithstanding subsections (1) and (2), no access shall be granted to any person other than a Council member to a record that discloses any matter considered confidential by the Council or under First Nation law or policy.
21. The records of the First Nation shall be preserved in a central or departmental filing system, as determined by the Council, and shall not be removed or destroyed except as authorized by procedures approved by the Council and in compliance with the applicable rules or rulings of the Canada Revenue Agency.

Council to Report Annually

22. The Council shall report not less than annually to the Assembly on its activities under this Act.

PART 4

LEGISLATIVE PROCESS

Authorities

23. No law shall be considered valid or in force unless it has been passed in accordance with PART 4 of this Act.
24. Council shall have the sole authority to introduce, develop or otherwise produce First Nation legislation.
25. The Assembly shall have the sole authority to pass First Nation legislation.

Introduction of Legislation

26. Council may, by resolution, prepare or cause to be prepared proposed legislation for introduction to the Assembly.
27.
 - (1) During the development of proposed legislation Council shall consult with First Nation citizens regarding the purpose and content of the initial draft legislation.
 - (2) Consultation shall take place not later than 60 days prior to Council introducing proposed legislation to the Assembly.

Adoption of Proposed Legislation

28.
 - (1) Proposed legislation shall be presented to the Assembly for approval.
 - (2) The Assembly may accept, alter or reject the proposed legislation.
29.
 - (1) If the proposed legislation is accepted or altered by the Assembly, Council shall prepare or cause to be prepared final draft legislation to present to the Assembly.
 - (2) During the development of the final draft legislation Council shall consult with the First Nation citizens on the content of the legislation.

Final Approval

30.
 - (1) Final draft legislation must be approved by two meetings of the Assembly, one of which must be the Annual General Meeting.

- (2) The meetings to approve legislation must be a minimum of thirty (30) and a maximum of one-hundred eighty (180) days apart.
- (3) Meetings must contain a quorum in accordance with the *Constitution*.

Emergency Passage

31. Notwithstanding Section 30 in the case of an emergency legislation may be adopted by two meetings of the Assembly, not less than fourteen (14) days apart if approved by an Assembly resolution supported by not less than 75% of a duly constituted meeting in which a minimum of forty (40) citizens are present.
32. Legislation passed in accordance with Section 31 shall only be in force until the next Annual General Meeting at which the Assembly must affirm approval of the legislation.

Amendments

33. Amendments to legislation passed in accordance with this Act, may only be made in accordance with the procedures established for amending the Part II of the *Constitution*.

Previous Legislation

34. Nothing in PART 4 of this Act affects the validity on any First Nation legislation passed prior to the coming into force of this Act.

PART 5

DEPARTMENTS AND STAFFING

Executive Director

35. The Council may hire an Executive Director.

Departments

36. (1) The Council, after consultation with the Executive Director, may establish departments of the government for the better management, administration and operation of the First Nation.

(2) Where a department is established in accordance with subsection (1):

(a) the mandate of the department shall be set out in writing and approved by the Council; and

(b) a suitably qualified person shall be designated by the Executive Director to act as the director responsible for that department.

Staff

37. The Council, may direct the Executive Director to employ such employees, officials, servants or agents, maintain offices, and do all such other acts and things as are necessary, in the opinion of the Council, to effectively

(a) administer the implementation of the Final Agreement and Self-Government Agreement;

(b) manage, administer and deliver First Nation programs and services; and

(c) carry out the duties, obligations and powers of the First Nation set out in the Final and Self-Government Agreements, Constitution, this Act and any other Act.

Committees

38. Committees may be established from time to time by the Council to perform designated functions or to advise the Council on specific matters or issues under such terms of reference as Council may provide.
39. (1) The Council may delegate to other bodies or citizens the authority to carry out any of the provisions of this Part.
- (2) The Council may delegate to any Council member, the Executive Director or any manager the authority to enter into contracts for approved purposes, within specified limits and approved budgets and subject to such other terms and conditions as may be considered necessary.

Facilities

40. The Council shall endeavor to ensure that adequate facilities and equipment are provided to enable the Executive Director, departments and committees to carry out their functions.

Offices

41. (1) The principal offices of the First Nation shall be located in the vicinity of Mayo, Yukon on Settlement Land.
- (2) Subsidiary offices of the First Nation may be located within the Yukon as determined by the Council.

Security

42. The Council shall establish systems, policies and procedures as may be required to maintain the physical security of the premises and the confidential information of the First Nation.

PART 6
REGISTERS

Register of Citizens

43. The First Nation shall maintain a Register of Citizens which shall contain the name and other identifying information of every living person who is a citizen of the First Nation under the Citizenship Code.

Register of Beneficiaries

44. The First Nation shall maintain a Register of Beneficiaries which shall show the name and other identifying information of every living person who is enrolled as a beneficiary and affiliated as a beneficiary with the First Nation under the Final Agreement.
45. The Register of Citizens and the Register of Beneficiaries shall be a record of information only and the entry or omission of the name of any person in either Register does not create, deprive, increase or diminish the rights of any person.

Register of Laws

46. The First Nation shall maintain a Register of Laws which shall contain original or certified copies of:
- (a) the Final Agreement and Self-Government Agreement and related enabling legislation;
 - (b) the Constitution and Citizenship Code;
 - (c) all laws enacted by the First Nation; and
 - (d) all regulations, proclamations, orders and directives approved by the Council;

and may enter into an agreement with other self-governing Yukon First Nations, on terms satisfactory to the Council, for the maintenance of a central registry of First Nation laws.

47. The Council shall publicize every Law in a manner and at times it considers appropriate, and a certified copy of every law shall be placed in the Register of Laws on or before the date it comes into force.

Register of Legal Entities

48. The First Nation shall maintain a Register of Legal Entities which shall contain the name and a certified copy of the constituting documents of all corporations and other entities wholly-owned or controlled by, or established for the benefit of, the First Nation or authorized by the Assembly or the Council to hold or exercise rights or obligations, directly or indirectly, for the benefit of the First Nation.

Register of Contracts

49. The First Nation shall maintain a Register of Contracts which shall contain a certified copy of every contract or agreement entered into by or on behalf of the First Nation and having force for or during the fiscal year.

Access to Registers

50. The Registrar of Laws shall be available for review by the public during business hours.
51. The Register of Citizens, Register of Beneficiaries, Register Legal Entities and Register of Contracts shall be available for review by any citizen in accordance with policies set by the Council and the *Privacy Act of the First Nation of Nacho Nyak Dun*.

PART 7

LIABILITIES

52. Except as provided in this or any other Act, no Council member, employee or agent is liable to any civil action or prosecution, arrest, imprisonment or damages by reason of any matter or thing brought by him or her before the Council, or any committee established by the Council by petition, bill, resolution motion or otherwise, or anything said by him or her before the Council or any such committee.
53. Employees of the First Nation are not liable for anything done or omitted to be done in good faith in the exercise or purported exercise of any powers given to the employee under an enactment or as directed by the Council.

No Liability where Making Laws

54. Neither the First Nation nor the Council, in the exercise of passing a law, is liable in negligence or any other cause of action.

No Liability for Failing to Make Laws

55. Notwithstanding our inherent right of self-government, neither the First Nation nor the Council is liable in negligence or any other cause of action for not passing a Law or for not establishing a program or policy respecting a matter within our authority and jurisdiction.

No Liability for Policy Decisions

56. For greater certainty, neither the First Nation, the Council nor any persons or bodies authorized to act on our behalf by the Council or our Laws are liable in negligence or any other cause of action for policy decisions.

Vicarious Liability

57. Neither the First Nation nor the Council is liable for damages, loss or injury arising out of an act or omission by any employee, servant or official of a Council where
- (a) that person was guilty of dishonesty, gross negligence or malicious or willful misconduct; or
 - (b) the cause of action is libel or slander.

Failure to Enforce Laws

58. Neither the First Nation nor any of the Council is liable for failing to enforce, whether by prosecution, civil action or otherwise, a Law of the First Nation of Nacho Nyak Dun, or any law of general application which applies to the First Nation of Nacho Nyak Dun or to Settlement Land.

Nuisance Actions

59. Neither the First Nation of Nacho Nyak Dun, the Council nor any persons or bodies authorized to act on our behalf is liable in an action based on negligence, nuisance or the rule in *Rylands v. Fletcher* where the damages arise, directly or indirectly, out of the breakdown or malfunction of
- (a) a sewer system,
 - (b) a water or drainage facility or system, or
 - (c) a dyke or road.

Regulations

60. The Council may make such regulations as are contemplated by this Act or as the Council otherwise may deem necessary for the purposes of this Act.

SCHEDULE 1

OATHS

Oath of Office

“I, _____, do declare that I will bear true allegiance to the First Nation of Nacho Nyak Dun’ citizens and governance according to the Constitution, the mission statement, laws, policies, culture, teachings of our Elders, language and spirituality of the First Nation of Nacho Nyak Dun, so help me _____.”

Oath of Confidentiality

“I, _____, do so solemnly pledge that I shall preserve and maintain the confidentiality and privacy of all information entrusted to me during my term in office and that I shall keep private and confidential

1. All information obtained during the course of my term of office as a Council member;
2. All business affairs, records, reports or other information made available to me as a result of my position as a Council member; and
3. All other information of a sensitive or private nature regarding the First Nation of Nacho Nyak Dun and its citizens, and
4. I will comply with all procedures adopted by Council in respect of information received.

I shall maintain and be bound by this oath of confidentiality during and after my term of office as a Council member has expired, regardless of the reasons or means of the expiration.”