

NATIVE CHILDREN ORDINANCE 1950.⁽¹⁾

No. 41 of 1950.

An Ordinance relating to the Custody and Care of Certain Native Children.

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:—

1. This Ordinance may be cited as the *Native Children Ordinance* Short title. 1950.⁽¹⁾

2. This Ordinance shall come into operation on a date to be Commencement. fixed by the Administrator by notice⁽¹⁾ in the *Gazette*.

3.—(1.) The *Native Children's Ordinance, 1911*⁽²⁾ of the Territory of Repeal. Papua is repealed.

(2.) All mandates issued and orders made under the repealed Ordinance and in force immediately before the commencement of this Ordinance shall continue in force as if issued or made under this Ordinance.

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

“child” means a boy or a girl—

(a) who is, or is commonly reputed to be, the offspring of parents both of whom are natives; and

(b) who, in the opinion of the Administrator—

(i) is not over fourteen years of age at the time when a first mandate relating to that boy or girl is directed to be issued under this Ordinance; or

(ii) was not over that age at the time when a first mandate relating to that boy or girl was directed to be issued under the repealed Ordinance;

“the repealed Ordinance” means the Ordinance repealed by this Ordinance.

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

Date on which made by Gov-Gen. in Council.	Date on which notified in <i>Cullth. Gaz.</i>	Date on which took effect.
14.12.1950	21.12.1950	1.5.1951 (Papua and N.G. <i>Govt. Gaz.</i> of 26.4.1951)

(2) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. IV., on pp. 3523-3529.

PART A : NATIVES—

Children
against whom
mandate may
issue.

5. A mandate under this Ordinance may be issued in regard to any child—

- (a) who has been convicted of an offence against any law of the Territory whether the child has been or is convicted before or after the commencement of this Ordinance ;
- (b) who is proved to the satisfaction of the Administrator to have committed an offence against any law of the Territory whether the offence was committed before or after the commencement of this Ordinance and whether or not any proceedings have been taken against the child in respect of the offence ;
- (c) who is an orphan or has been deserted by his relatives under such circumstances that, in the opinion of the Administrator, it is desirable that the child should be dealt with under the provisions of this Ordinance ;
- (d) either of whose parents is in gaol under a sentence of imprisonment for twelve months or more and who, in the opinion of the District Officer of the District in which the child is, is neglected or insufficiently cared for ; or
- (e) who has been deserted by either of his parents or either of whose parents is dead and who, in the opinion of the District Officer of the District in which the child is, is neglected or insufficiently cared for.

Administrator
may issue
mandate.

6.—(1.) The Administrator may, in the case of a child who, in his opinion, comes within any of the descriptions set out in the last preceding section, issue or direct the issue of a mandate relating to that child.

(2.) A mandate shall be—

- (a) in or to the effect of Form 1 in the Schedule to this Ordinance ;
- (b) in triplicate ; and
- (c) signed by the Administrator, a District Officer, a Magistrate for Native Matters or a member of a Court for Native Affairs.

(3.) One of the triplicates shall be retained by the person signing the mandate, one shall be filed in the office of the Government Secretary, and the other shall be delivered with the child to whom the mandate relates to the person in whose custody and care the child is, in pursuance of the mandate, placed.

(4.) Notice of every mandate issued under this Ordinance shall be published in the *Gazette*.

7. A mandate may direct that the child to whom it relates shall— Nature of
mandate.
- (a) be taken by a person authorized to do so to any station of any of the Christian missions established in the Territory, and, for the period during which the mandate remains in force, be detained at that station, or at any station that may be established in the Territory by the authorities of the mission to which the first-named station belongs in the place of that station, in the custody and care of the person who, for the time being, is in charge of the station ;
 - (b) be taken by a person authorized to do so to any Government station, public establishment or Government vessel in the Territory, and, for the period during which the mandate remains in force, to be detained at that station or establishment or in that vessel, or at any station or establishment or in any vessel that may be established or used in the place of that station, establishment or vessel, in the custody and care of any public officer who, for the time being, is in charge of the station, establishment or vessel ; or
 - (c) be taken by a person authorized to do so to the residence of any private person in the Territory to whose care and custody the Administrator may, with the consent of that person, have entrusted the child by mandate, and, for the period during which the mandate remains in force, be detained at that residence in the custody and care of that private person.

8. Where a mandate has been issued in relation to a child, the following consequences shall ensue :— Effect of issue
of mandate as
regards previous
offences by
child.

- (a) if the child has been convicted in the Territory of any offence and, in consequence of that conviction, has been sentenced to undergo any punishment, the sentence shall be deemed at an end ;
- (b) if the child has been convicted in the Territory of any offence, but not sentenced, the child shall not be sentenced ;
- (c) if proceedings have been instituted in the Territory against the child with respect to any offence, the proceedings shall not be further prosecuted ; and
- (d) whether or not the child has been sentenced or convicted or proceeded against, no further or other proceedings, criminal or civil, shall at any time be taken in the Territory against the child for any offence against any law of the Territory which the child may have committed before the date of the mandate.

PART A : NATIVES—

Duty of mission accepting custody of child.

9.—(1.) The authorities of a mission shall not be bound to accept the custody and care of a child in respect of whom a mandate has been issued, but if those authorities accept the custody and care of any such child, the person for the time being in charge of the station at which the child is detained under the mandate shall see that the child is properly lodged, fed and cared for, and instructed as other native children are instructed at the station.

Penalty : Ten pounds and, in default of payment, imprisonment for two months.

(2.) The person in charge of the station shall, while a child is detained under a mandate at that station, have the power and authority of a parent over that child.

Duties of officer or person custodian of child.

10.—(1.) When a child has been placed in the custody and care of a public officer or of a private person, that officer or person and every officer who is the successor or substitute in office of that officer shall see that the child is properly lodged as near to the residence of that officer or person as can conveniently be done and is properly fed and cared for and that the child attends regularly at a mission church or school, or both, if circumstances admit of the child so attending.

Penalty : Ten pounds and, in default of payment, imprisonment for two months.

(2.) Subject to attendance at church or school, the child may be employed at any occupation at which the officer or person deems it to be for the child's benefit that he should be employed.

(3.) An officer or person in whose custody and care a child is detained under a mandate shall have the power and authority of a parent over that child.

Custodian to produce child if required to do so by District Officer.

11. A person who, for the time being, has, under a mandate, the custody and care of a child shall, upon receiving from the District Officer of the District in which the child is detained notice to produce the child to the District Officer, produce the child accordingly.

Penalty : Ten pounds and, in default of payment, imprisonment for two months.

Child not to be removed from specified residence.

12.—(1.) A person who has, under a mandate, the custody and care of a child shall not, except with the permission in writing of the District Officer of the District in which the child is, under the mandate, to be detained, remove the child from the place specified in the mandate.

Penalty : Ten pounds and, in default of payment, imprisonment for two months.

(2.) The removal of a child from one place to another place or from one vessel to another vessel in pursuance of the terms of the mandate relating to that child shall not in any case be an offence against the provisions of the last preceding sub-section.

13. The Administrator may at any time cancel a mandate.

Administrator may cancel mandate.

14.—(1.) When a mandate relating to a child has been cancelled or has expired by effluxion of time the Administrator may, if he thinks fit, direct that a further mandate be issued in respect of that child.

Further mandate may issue.

(2.) Any such further mandate may be in the same terms as or may differ from a previous mandate.

15.—(1.) When a mandate relating to a child has from any cause ceased to be in force and no further mandate relating to the child has been issued, the child may, at the discretion of the Administrator, be set at complete liberty at the place where he happens to be when the mandate ceases to be in force or may, under an order in writing, be taken by a person authorized to do so to the place or district where the family community or tribe to which the child belongs then dwells and there be set at complete liberty.

Child to be set at liberty when mandate ceases to be in force.

(2.) An order under the last preceding sub-section shall be in or to the effect of Form 2 in the Schedule to this Ordinance and shall be signed by the Administrator, a District Officer, a Magistrate for Native Matters or a member of a Court for Native Affairs.

16. If a child in the custody of any person under a mandate or under an order made under the last preceding section absconds from that custody, the child may be arrested without warrant by any District Officer, Magistrate for Native Matters member of a Court for Native Affairs or any police officer or constable and replaced in the custody of that person.

Child absconding may be arrested and replaced in custody.

17. When a child is in the custody of a person under a mandate a person who induces or assists the child to abscond from that custody, and a person who, knowing that the child has absconded from that custody, conceals or harbours the child, shall be guilty of an offence.

Penalty for assisting child to abscond, or harbouring child.

Penalty: Five pounds and, in default of payment, imprisonment for one month.

18.—(1.) A mandate or order under section fifteen of this Ordinance shall—

Mandate or order to be obeyed by persons to whom directed.

(a) be executed and obeyed by the persons to whom it is directed, and shall be obeyed by the child to whom it relates; and

(b) be sufficient authority for the taking into custody, transporting and detention of the child to whom it relates according to the exigency of the mandate or order.

PART A : NATIVES—

(2.) Subject to section nine of this Ordinance, a person who refuses or neglects to execute or obey a mandate or order referred to in the last preceding sub-section shall be guilty of an offence.

Penalty : Ten pounds and, in default of payment, imprisonment for two months.

Custodian of child not bound to prove lawfulness of mandate, &c.

19. A mandate which is in force shall by virtue solely of its existence be a complete and lawful authority to a person entitled to act under it for acting under it, in accordance with this Ordinance, and that person shall not be bound to ascertain or prove that the mandate was lawfully or properly issued or that the child who has been placed in his custody together with a mandate as the child to whom the mandate relates, is actually the child to whom the mandate relates.

Production of mandate, &c., sufficient evidence of right to detain child.

20. If any question at any time arises respecting the authority of any person to detain a child in his custody under a mandate—

- (a) the production by that person of a mandate which appears from its date to be in force, or a copy of any such mandate certified as a true copy by a person empowered by this Ordinance to sign mandates, authorizing him to detain a child in his custody ; and
- (b) a statement by that person that he believes that the child whom he detains under the mandate is the child to whom the mandate relates,

shall, in the absence of proof to the contrary, be deemed sufficient evidence that that person is authorized to detain in his custody the child respecting whom the question has arisen.

No child over eighteen years to be affected by a mandate.

21.—(1.) Notwithstanding anything contained in this Ordinance, a child shall not be affected by a mandate after he has attained the age of eighteen years.

(2.) If any question arises as to whether a child in respect of whom a mandate has issued has attained the age of eighteen years, the decision of the Administrator on the point shall be final and conclusive.

District Officer to visit children in custody under mandates.

22. Every District Officer shall visit at least once in each year each child placed in his District by mandate under this Ordinance and report to the Government Secretary on the condition and treatment of the child.

Regulations.

23. The Administrator in Council may make regulations⁽³⁾ 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 prescribing penalties not exceeding Ten pounds and, in default of payment, imprisonment for two months for breaches of the regulations.

(3) No regulations have been made before 1. 1. 1952.

THE SCHEDULE.

FORM 1.

Section 6.

Native Children Ordinance 1950.

MANDATE.

Territory of Papua and }
New Guinea }
to wit }

To and to all District Officers, Magistrates for Native Matters, members of Courts for Native Affairs, gaolers, police officers and constables in the Territory of Papua and New Guinea and to all others whom this mandate may concern.

Let the native boy (or girl) known by the name of and who is now (give such particulars as will serve to identify the child) be taken to the mission station of the Society situate at in the said Territory and detained at that station or at any station that may be established in the said Territory in place of that station in the custody and care of the person who for the time being is in charge of any such station [or be taken to the (describe the station or the establishment) situate at in the said Territory (or the vessel) and detained at such or at any that may be established by the Administration in the place of that (or in any vessel that may take the place of that vessel) in the custody and care of (name of officer) and of any officer who shall for the time being be the successor or substitute of the said in his office of (describe office)] [or be taken to the residence of (name of person) situate at in the said Territory and detained at that residence in the custody and care of the said].

This mandate shall remain in force from the date thereof up to and inclusive of the day of 19

The reason for the issue of this mandate is that the child named therein is

The apparent age of the said child is at the date hereof years.

Dated this day of 19

Administrator.

(or as the case may be).

FORM 2.

Section 15.

Native Children Ordinance 1950.

ORDER UNDER SECTION 15.

Territory of Papua and }
New Guinea }
to wit }

To and to all District Officers, Magistrates for Native Matters, members of Courts for Native Affairs, gaolers, police officers and constables in the Territory of Papua and New Guinea and to all others whom this order may concern.

Let the native boy (or girl) known by the name of and who is now (give such particulars as will serve to identify the child) be taken and conducted by all available means to (place where the child is to be set at liberty) in the said Territory and on arrival at that place let him (or her) be there and then set at liberty.

Dated this day of 19

Administrator.

(or as the case may be.)