

# INFANTS ORDINANCE, 1912.<sup>(1)</sup>

## No. 14 of 1912.

### To amend the Law as to the Guardianship and Custody of Infants and Infants' Property and Settlements.

**B**E it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Infants Ordinance*, 1912.<sup>(1)</sup> Short title.

It shall commence on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette*.<sup>(1)</sup> Commencement.

2. "The Court" means the Central Court<sup>(2)</sup> of the Territory of Papua or a Judge thereof. Interpretation.  
Q. 55 Vic. No. 13, s. 2.

The expression "Parent" of an infant includes any person at law liable to maintain such infant or entitled to his custody and "Person" includes any scholastic or charitable institution.

3. On the death of the father of an infant and in case the father has died prior to the passing of this Ordinance then from and after the passing of this Ordinance the mother if surviving and not expressly excluded by the deed or will of the father shall be the guardian of the infant either alone when no guardian has been appointed by the father or jointly with any guardian appointed by the father. On death of father mother to be guardian alone or jointly with others.  
Q. 7b. s. 3.

When no guardian has been appointed by the father or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act the Court may if it thinks fit from time to time appoint a guardian or guardians to act jointly with the mother if she is a guardian.

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

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.7.1912	(a)	23.12.1912 (Papua Govt. Gaz. of 23.12.1912)

(a) No notice of non-disallowance has been published in Papua Govt. Gaz.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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When the mother has been expressly excluded by the father the Court may nevertheless appoint her to be a guardian to act either alone or jointly with any guardian appointed by the father or by the Court.

Mother may  
appoint guardian  
in certain cases.  
Q. 55 Vic.  
No. 13, s. 4.

4.—(1.) The mother of an infant may by deed or will appoint any person or persons to be guardian or guardians of the infant after the death of herself and the father of the infant (if the infant is then unmarried) and where guardians are appointed by both parents they shall act jointly.

(2.) The mother of an infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of the infant after her death jointly with the father of the infant and the Court after her death if it is shown to the satisfaction of the Court that the father is for any reason unfitted to be the sole guardian of his children may confirm the appointment of such guardian or guardians who shall thereupon be authorized and empowered so to act as aforesaid or may make such other order in respect of the guardianship as the Court shall think right.

(3.) In the event of guardians being unable to agree upon a question affecting the welfare of an infant any of them may apply to the Court for its direction and the Court may make such order or orders regarding the matters in difference as it thinks proper.

Powers of  
guardian.  
Q. *Ib.* s. 5.

5. Every guardian in the Territory under this Ordinance shall have all such powers over the estate and the person or over the estate (as the case may be) of an infant as a guardian appointed by will or otherwise now has under the Act 12 Charles the Second chapter twenty-four.

Court may  
make orders as  
to custody.  
Q. *Ib.* s. 5.

6. The Court may upon the application of the mother of an infant (who may apply without next friend) make such order as it thinks fit regarding the custody of the infant and the right of access to the infant of either parent having regard to the welfare of the infant and to the conduct of the parents and to the wishes as well of the mother as of the father and may alter vary or discharge such order on the application of either parent or after the death of either parent or any guardian under this Ordinance and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as the Court thinks just.

Power of Court  
to remove  
guardian.  
Q. *Ib.* s. 7.

7. The Court may in its discretion remove from his office any testamentary guardian or any guardian appointed or acting by virtue of this Ordinance and may also if the Court deems it to be for the welfare of the infant appoint another guardian in place of the guardian so removed.

8. In any case where a decree for judicial separation or a decree either *nisi* or absolute for divorce is pronounced the Court pronouncing the decree may thereby declare the parent by reason of whose misconduct the decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and in such case the parent so declared to be unfit shall not upon the death of the other parent be entitled as of right to the custody or guardianship of such children.

Guardianship in case of divorce or judicial separation.  
Q. 55 Vic. No. 13, s. 8.

9. No agreement contained in a separation deed made between the father and mother of an infant shall be held to be invalid by reason only of its providing that the father of such infant shall give up the custody or control of the infant to the mother: Provided always that no Court shall enforce any such agreement if the Court is of opinion that it will not be for the benefit of the infant or infants to give effect to it.

In case of separation deed between father and mother.  
Q. *Ib.* s. 9.

10. Where the parent of an infant applies to the Court for a writ or order for the production of the infant and the Court is of opinion that the parent has abandoned or deserted the infant or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the infant the Court may in its discretion decline to issue the writ or make the order.

Power of Court as to production of infant.  
Q. *Ib.* s. 10.

11. If at the time of the application for a writ or order for the production of the infant the infant is being or has been brought up by another person or persons the Court may in its discretion if it orders the infant to be given up to the parent further order that the parent shall pay to such other person or persons the whole of the costs properly incurred by him or them in bringing up the infant or such portion thereof as shall seem to the Court to be just and reasonable having regard to all the circumstances of the case.

Power of Court to order repayment of costs of bringing up infant.  
Q. *Ib.* s. 11.

12. Where a parent has—

- (a) Abandoned or deserted his infant or
- (b) Allowed his infant to be brought up by any other person or persons at such person or person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties

Court in making order to have regard to conduct of parent.  
Q. *Ib.* s. 12.

the Court shall not make an order for the delivery of the infant to the parent unless the parent has satisfied the Court that having regard to the welfare of the infant he is a fit person to have the custody of the infant.

13. Upon any application by the parent for the production or custody of an infant if the Court is of opinion that the parent

Power of Court as to infant's religious education.  
Q. *Ib.* s. 13.

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ought not to have the custody of the infant and that the infant is being brought up in a different religion to that in which the parent has a legal right to require that the infant should be brought up the Court shall have power to make such order as it may think fit to secure that the infant be brought up in the religion in which the parent has a legal right to require that the infant should be brought up.

Nothing in this Ordinance contained shall interfere with or affect the power of the Court to consult the wishes of the infant in considering what order ought to be made or diminish the right which any infant now possesses to the exercise of its own free choice.

### SETTLEMENTS.

Court may  
appoint trustees  
for settlement  
for the benefit  
of children in  
certain cases.

N.S.W. No. 39 of  
1899, s. 16.

14.—(1.) Whenever a verdict is recovered or a judgment entered for any amount as damages in any action of tort brought by any child by its next friend the Court may order that a settlement of the same shall be made for the benefit of such child and may appoint a trustee or trustees for such settlement.

(2.) The terms of such settlement shall be fixed by the Court or subject to its approval by some officer of the Court appointed so to do.

Marriage  
settlements  
with consent  
of Court.

Q. 31 Vic.  
No. 18  
(Equity Act),  
s. 151.

N.S.W. *Ib.* s. 12.

15. Every infant upon or in contemplation of his or her marriage with the sanction of the Court may make a valid and binding settlement or contract for a settlement of all or any part of his or her property or property over which he or she has any power of appointment whether real or personal and whether in possession reversion remainder or expectancy and every conveyance appointment and assignment of such real or personal estate or contract to make a conveyance appointment or assignment thereof executed by such infant with the approbation of the Court for the purpose of giving effect to such settlement shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

Provided always that this enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

If infant die  
under age  
appointment,  
&c., to be void.

Q. *Ib.* s. 152.  
N.S.W. *Ib.* s. 13.

16. In case any appointment under a power of appointment or any disentailing assurance shall have been executed by any infant tenant in tail under the provisions of this Ordinance and such infant shall afterwards die under age such appointment or disentailing assurance shall thereupon become absolutely void.

17. The sanction of the Court to any such settlement or contract for a settlement may be given upon petition presented by the infant or his or her guardian in a summary way without the institution of a suit and if there be no guardian the Court may require a guardian to be appointed or not as it shall think fit and the Court also may if it shall think fit require that any persons interested or appearing to be interested in the property should be served with notice of such petition.
18. Nothing in the three last preceding sections contained shall apply to any male infant under the age of twenty years or to any female infant under the age of seventeen years.
19. The Court may by order authorize and direct—
- (a) that all or any part of the dividends due or to become due in respect of any share or other interest in any company society or association established or to be established and any fund annuity or security transferable in books kept by any company society or association established or to be established transferable by deed alone or by deed accompanied by other formalities or in respect of any money payable for the discharge or redemption thereof standing in the name of any infant beneficially entitled thereto shall be paid to any guardian of such infant or if there be no guardian to any person to be named in the Order for the maintenance and education or otherwise for the benefit of such infant;
- (b) the guardian of any infant to surrender any lease to which such infant is entitled and to accept a new lease;
- (c) the guardian of any infant to accept the surrender of any lease and to grant a new lease;
- (d) the guardian of any infant to grant leases of any property of such infant for building agricultural and other purposes;
- (e) the guardian of any infant to enter into any agreement for or on behalf of such infant.
- 20.—(1.) The Chief Judicial Officer<sup>(3)</sup> may make all such general rules and orders<sup>(4)</sup> as from time to time seem necessary for regulating the practice and procedure under this Ordinance in the Central Court.<sup>(2)</sup>

How sanction of Court obtained.

Q. 31 Vic. No. 18 (Equity Act), s. 153.  
N.S.W. No. 39 of 1899, s. 14.

Not to apply to infants under certain age.

Q. *Ib.* s. 154.  
N.S.W. *Ib.* s. 15.

Court may order dividend of stock to be paid for maintenance.

Q. 31 Vic. No. 19, s. 59.

Surrender and acceptance of surrender of leases.

Q. *Ib.* s. 63.

Q. *Ib.* s. 67.

Granting of leases.

Q. *Ib.* s. 68.

Agreements.

Q. *Ib.* s. 53.

Rules of Court.

Q. 55 Vic. No. 13, s. 14.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(3) See Section 4 of the *Central Court Ordinance*, 1925.

(4) No rules or orders have been published in *Papua Govt. Gaz.*

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(2.) Until such rules and orders are made the rules and orders of the Central Court<sup>(2)</sup> in force at the commencement of this Ordinance shall apply.

Saving Clause.  
Q. 55 Vic.  
No. 13, s. 15.

21. Nothing in this Ordinance shall restrict the jurisdiction of the Central Court<sup>(2)</sup> to appoint or remove guardians or otherwise in respect of infants.

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*