

NATIVE CHILDREN'S ORDINANCE, 1911.⁽¹⁾

No. 8 of 1911.

An Ordinance to consolidate and amend the Law relating to the Provision for and Custody of Native Children.

BE 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 *Native Children's Ordinance*, 1911.⁽¹⁾ Short title

It shall come into operation on a day to be fixed by the Lieutenant-Governor by Proclamation in the *Gazette*.⁽¹⁾

2. The following Ordinances are hereby repealed:—

Repeal.

The Native Children Custody and Reformation Ordinance of 1891 (No. 2 of 1891);

The Native Children Custody and Reformation Ordinance of 1892 (No. 5 of 1892);

The Native Children Custody and Reformation Ordinance of 1907 (No. 13 of 1907).

3.—(1.) Such repeal shall not affect any act done or liability or penalty incurred under the Ordinances hereby repealed or any of them. Saving.

(2.) All mandates issued and orders made and existing under the said Ordinances or any of them at the time of such repeal shall continue to be in force and shall be deemed to have been issued and made under the provisions of this Ordinance.

4. In this Ordinance unless the contrary intention appears—

Interpretation.

“Child” means a boy or a girl

(a) that is or is commonly reputed to be the offspring of parents both or one of whom is a native within the meaning of this Ordinance and

Pap. No. 2 of 1891, s. 1.

(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.
16.5.1911	6.12.1911	1.1.1912 (Papua Govt. Gaz. of 6.12.1911)

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Pap. No. 13 of
1907, s. 1.

(b) that is in the opinion of the Lieutenant-Governor⁽²⁾ at the time when a first mandate under this Ordinance or any Ordinance hereby repealed relating to such boy or girl has been by the Lieutenant-Governor⁽²⁾ directed to be issued not over fourteen years of age.

Children
against whom
mandate may
issue.

Pap. No. 2 of
1891, s. 2.

5. A mandate under this Ordinance may be issued in regard to any child that comes within any of the following descriptions:—

- (1) A child that has been convicted of any offence against any law of the Territory whether such child has been or is so convicted before or after the coming into force of this Ordinance;
- (2) any child that is proved to the satisfaction of the Lieutenant-Governor⁽²⁾ to have committed an offence against a law of the Territory whether such alleged offence was committed before or after the coming into force of this Ordinance and whether any proceedings or no proceedings have been taken against such child on account of such alleged offence;
- (3) any child who is an orphan or is deserted by its relatives under such circumstances that in the opinion of the Lieutenant-Governor⁽²⁾ it is desirable that the child should be dealt with under the provisions of this Ordinance;
- (4) any child either of whose parents is in gaol under a sentence of imprisonment of twelve months or more and who in the opinion of the resident magistrate of the Division in which the child may be is neglected or insufficiently cared for;
- (5) any child that has been deserted by either of his parents or either of whose parents is dead provided that the resident magistrate of the Division is of opinion that the child is neglected or insufficiently cared for.

Pap. No. 13 of
1907, s. 2.

Pap. *Ib.* s. 3.

Lieutenant-
Governor may
issue mandate.

Pap. No. 2 of
1891, s. 3.

6. It shall be lawful for but not imperative on the Lieutenant-Governor⁽²⁾ in the case of any child that in his opinion comes within any of the descriptions set out in Section 5 hereof to issue or direct to be issued a mandate relating to such child. Every such mandate shall be issued in triplicate; one of such triplicates shall be kept by the person that signs the mandate one shall be filed in the office of the Government Secretary and one shall be delivered with the child to whom the mandate relates and shall be kept by the person in whose custody and care the child is in pursuance of such mandate placed. A mandate may be in Form 1 in the Schedule

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

hereto or as near thereto as the circumstances will admit and shall be signed by the Lieutenant-Governor⁽²⁾ or by a resident magistrate or by a magistrate for native matters or by a justice of the peace of the Territory.

7. A mandate may direct that the child to whom it relates shall be dealt with in any one of the following ways:—

Nature of a
mandate.
Pap. No. 2 of
1891, s. 4.

- (1) To be taken by any person authorized to do so to any station of any of the Christian missions established in the Territory and for the period during which such mandate remains in force detained at such station or at any station that may be established in the Territory by the authorities of the mission to which such first-named station belongs in the place of such station in the custody and care of the person that for the time being is in charge of such station;
- (2) To be taken by any person authorized to do so to any Government station public establishment or Government vessel in the Territory and for the period during which such mandate remains in force detained at such station or establishment or in such vessel or at any station or establishment or in any vessel that may be established or used in the place of such station establishment or vessel in the custody and care of any public officer that for the time being is in charge of such station establishment or vessel;
- (3) To be taken by any person authorized to do so to the residence of any private person in the Territory to whose care and custody the Lieutenant-Governor⁽²⁾ may with the consent of such person have entrusted the child by mandate and for the period during which such mandate remains in force detained at such residence in the custody and care of such private person.

8. When any mandate has been issued it shall with respect to the child to whom it relates have effect as follows:—

Effect of issue
of a mandate
as regards
previous offences
by child.
Pap. *Ib.* s. 5.

- (1) If the child has in the Territory been convicted of any offence and in consequence of such conviction has been sentenced to undergo any punishment such sentence shall be deemed at an end;
- (2) if the child has in the Territory been convicted of any offence but not sentenced the child shall not be sentenced;

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

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- (3) if in the Territory proceedings have been begun against the child in regard to any offence such proceedings shall not be further proceeded with;
- (4) whether the child has been sentenced or convicted or proceeded against or not no further or other proceedings criminal or civil shall ever be taken in the Territory against the child for any offence against the laws of the Territory that the child may have committed prior to the date of such mandate.

Duty of mission accepting custody of child.
Pap. No. 2 of 1891, s. 6.

9. It shall not be obligatory upon the authorities of any mission to accept the custody and care of any child in respect of whom a mandate has been issued but if the authorities of a mission accept the custody and care of any such child it shall be incumbent upon the person that for the time being is in charge of the station at which the child is under the mandate to be detained to see that the child is properly lodged fed and cared for and to instruct such child as other native children are instructed at such station. Whilst any child is detained under a mandate at any such station the person in charge of such station shall have the power and authority of a parent over such child.

Duties of officer or person custodian of child.
Pap. *Ib.* s. 7.

10. When any child has been placed in the custody and care of a public officer or of any private person it shall be the duty of such officer or person and of every officer that is the successor or substitute in office of such officer to see that the child is properly lodged as near to the residence of such officer or person as can conveniently be done and is properly fed⁽³⁾ and cared for and that such child attends regularly at a mission church or school or both if circumstances admit of the child so attending. Subject to any attendance at church or school the child may be employed at any occupation at which such officer or person deems it to be for the child's benefit that the child should be employed. Whilst any child is detained under a mandate in the custody and care of any such officer or person such officer or person shall have the power and authority of a parent over such child.

Custodian to produce child if required to do so by magistrate.
Pap. No. 5 of 1892, s. 1.

11. It shall be incumbent upon every person that has for the time being under a mandate the custody and care of a child upon receiving from a resident magistrate of the district in which such child is then by such mandate to be detained notice to produce such child to such magistrate to produce such child accordingly.

Child not to be removed from appointed residence.
Pap. *Ib.* s. 2.

12. No person that has under a mandate the custody and care of a child shall except with the permission in writing of a resident

(3) From time to time by notice published in *Papua Govt. Gaz.* the scale of rations for native boys under mandate to Government officers was specified. The last of such notices, dated 23.12.1940 and published in *Papua Govt. Gaz.* of 2.1.1941, is printed on p. 3417.

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magistrate of the district in which the place is situate where such child is then under such mandate to be detained remove such child from such specified place: Provided always that 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 such child shall not in any case be a breach of the provisions of this section.

13. If any person commits a breach of the provisions of either of the two preceding sections such person shall on conviction be liable to a penalty not exceeding Ten pounds and in default of payment be liable to be imprisoned with or without hard labour for a period not exceeding two months.

Penalty for breach of Sections 11 and 12.
Pap. No. 5 of 1892, s. 3.

14. The Lieutenant-Governor⁽²⁾ may at any time cancel any mandate.

Lieutenant-Governor may cancel mandate.
Pap. No. 2 of 1891, s. 8.

15. When any mandate relating to any child has been cancelled or has expired by effluxion of time the Lieutenant-Governor⁽²⁾ may if he sees fit to do so direct a fresh mandate which may differ in its terms from any previous mandate to be issued in respect of such child.

Fresh mandate may issue.
Pap. *Ib.* s. 9.

16. When any mandate relating to any child has from any cause whatever ceased to be in force and no fresh mandate relating to such child has been issued such child may at the discretion of the Lieutenant-Governor⁽²⁾ 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 any person authorized to do so to the place or district where the family community or tribe to which such child belongs then dwells and there be set at complete liberty. Any such order may be in Form 2 in the Schedule hereto or as near thereto as circumstances will admit of and shall be signed by the Lieutenant-Governor⁽²⁾ or by a resident magistrate or by a magistrate for native matters or by a justice of the peace of the Territory.

Child to be set at liberty when mandate ceases to be in force.
Pap. *Ib.* s. 10.

17. If any child that under a mandate or under an order made under Section 16 hereof is in the custody of any person absconds from such custody the child may be arrested without warrant by any resident magistrate or magistrate for native matters or justice of the peace or any police officer or constable and replaced in the custody of such person.

Child absconding may be taken and replaced into custody.
Pap. *Ib.* s. 11.

18. When a child is by virtue of a mandate in the custody of any person any other person that induces or assists such child to

Penalty on assisting child to abscond or harbouring child.
Pap. *Ib.* s. 12.

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

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abscond from such custody and any person who knowing that such child has absconded from such custody conceals or harbours such child shall on conviction in a summary manner be liable to a penalty not exceeding Five pounds and in default of payment be liable to be imprisoned for a period not exceeding one month.

Mandate or order to be obeyed by all persons.

Pap. No. 2 of 1891, s. 13.

19. Every mandate and every order under Section 16 hereof shall be executed and obeyed by the persons to whom it is directed and shall be obeyed by the child to whom it relates and every mandate and order shall be sufficient authority for the taking into custody the transporting and the detention of the child to whom it relates according to the exigency of such mandate or order.

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

Pap. *Ib.* s. 14.

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

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

Pap. *Ib.* s. 15.

21. If any question at any time arises respecting the authority of any person to detain a child in his custody under a mandate the production by such 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 any person authorized by this Ordinance to sign mandates authorizing him to detain a child in his custody and a statement by such person that he believes that the child whom he detains under such mandate is the child to whom such mandate relates shall in the absence of proof to the contrary be deemed sufficient evidence that such person is authorized to detain in his custody the child respecting whom the question has arisen.

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

Pap. *Ib.* s. 16.

22. No child shall be affected by a mandate or mandates after he has attained the age of eighteen years. If any question arises as to whether a child in respect of whom a mandate has issued has or has not attained the age of eighteen years the decision of the Lieutenant-Governor⁽²⁾ on the point shall be final and conclusive.

Resident magistrates to visit children in custody under mandates.

Pap. *Ib.* s. 17.

23. It shall be the duty of every resident magistrate to visit at least once in each year each child placed in his district by mandate under this Ordinance and to report to the Government Secretary on the condition and treatment of the child.

Notice of issue of mandate to be published in *Gazette*.

Pap. *Ib.* s. 18.

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

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

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SCHEDULE.

(Form 1.)

MANDATE.

(Under the Native Children's Ordinance, 1911.)

Section 6.

Papua }
to wit. }

To and to all resident magistrates magistrates for native matters justices of the peace gaolers police officers and constables in the Territory of Papua and to all others whom this mandate may concern.

Let the native [boy or girl] known by the name of and that 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 such station or at any station that may be by the said Society be established in the said Territory in place of such station in the custody and care of the person that 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 by the Government be established in the place of such (or in any vessel that may take the place of such vessel) in the custody and care of (name of officer) and of any officer that 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 such 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 .

(Form 2.)

ORDER.

(Under Section 16 of the Native Children's Ordinance, 1911.)

Section 16.

Papua }
to wit. }

To and to all resident magistrates magistrates for native matters justices of the peace gaolers police officers and constables in the Territory of Papua and to all others whom this order may concern.

Let the native [boy or girl] known by the name of and that 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 such place let [him or her] be there and then set at liberty.

Dated this day of , 19 .

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