

NATIVE (HALF-CASTE) CHILDREN ORDINANCE, 1922.⁽¹⁾

No. 12 of 1922.

An Ordinance to Provide for the Maintenance and Care of Certain 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 (Half-caste) Children Ordinance, 1922.*⁽¹⁾ Short title.

2. In this Ordinance unless the contrary intention appears— Interpretation.

“Commissioner” means the Commissioner for Native Affairs and Control.

“Half-caste child” means any illegitimate child who being a boy is under the age or apparent age of sixteen years or being a girl is under the age or apparent age of eighteen years and who whether a boy or girl is the offspring of a European father and a mother not wholly of European descent.

“Maintain” means to support clothe train and educate.

“Neglected half-caste child” means a half-caste child who is not maintained by his father in accordance with the duty imposed upon him by this Ordinance.

3.—(1.) It is the duty of the father of a half-caste child to maintain such child. Duty of father of illegitimate half-caste child.

(2.) If the father of a half-caste child fails to perform the duty imposed upon him by this section he shall (whether such child is or is not being maintained by or at the expense of some other person) be deemed to have neglected such child and such child shall be deemed to be a neglected half-caste child.

(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.
11. 9. 1922	(a)	11. 9. 1922 (<i>Ordinances etc. of Papua, 1922, p. 51</i>)

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

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On complaint
summons to
issue.

4. Upon complaint in writing being made that any person is the father of a half-caste child and that such child is a neglected half-caste child any magistrate may summon such person to appear before a magistrate to answer the matter of the complaint.

Who may
make complaints.

5. All complaints under the preceding section shall be made by the Commissioner or by some Government officer authorized by the Commissioner in writing.

Magistrate may
make order.

6.—(1.) Upon hearing the complaint if the magistrate is satisfied—

- (a) that such person is the father of such child; and
- (b) that such child is a neglected half-caste child within the meaning of this Ordinance,

he may—

- (i) adjudge him to be the father of such child; and
- (ii) order him to pay to the Commissioner the sum of Twenty-six pounds per annum thenceforth in respect of such child until being a boy he shall attain the age of sixteen years or being a girl shall attain the age of eighteen years.

Provided that if such person shall make it appear to the satisfaction of the magistrate at the hearing of the complaint that he is unable to pay the full amount of Twenty-six pounds per annum in respect of such child the magistrate may order him to pay to the Commissioner such lesser sum as in his opinion is within the ability of such person.

(2.) An order made under this section is hereinafter referred to as an affiliation order.

Moneys how
payable under
order.

7. Moneys payable to the Commissioner under any such order shall be paid in advance and by monthly quarterly half-yearly or yearly instalments as may be directed by the magistrate when making the order. In the absence of any direction the moneys shall be paid yearly in advance.

Service of
order and date
of taking effect.
Cf. S.A.
No. 641 of
1895, s. 84.

8. Every such order shall be served on the defendant personally or in such manner and at such place as may be prescribed or as the magistrate making the same may direct but the order shall take effect from the time of its pronouncement notwithstanding that the formal order may not have been signed or served.

Security may
be required for
compliance.
Cf. S.A. 1b.
s. 91.

9.—(1.) The magistrate making any affiliation order may by the same or a separate order or any magistrate on complaint made by the Commissioner or by a Government officer authorized as aforesaid that any person liable upon any affiliation order has made

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default thereunder or intends to evade compliance therewith or is about to leave the Territory may by a subsequent order require the person so liable to find good and sufficient sureties or security that he will comply with the affiliation order.

(2.) The magistrate may in default of such sureties or security being found commit such person to gaol for any period not exceeding Six months if the order for sureties or security is not sooner complied with.

Committal on default of security.
Cf. S.A. No. 641 of 1895, s. 91.

(3.) The magistrate making the order for sureties or security may determine upon the sufficiency of any proposed sureties or security and in what manner a security shall be given.

(4.) Any magistrate upon being satisfied that the security has been duly made and perfected may order the discharge of such person from gaol.

10.—(1.) Any magistrate on the complaint of any person against whom an affiliation order has been made or on the complaint of the Commissioner or of a Government officer authorized as aforesaid may make further inquiry into the ability of such person to pay the sum mentioned in the order or a greater sum and may increase or decrease the sum to be thenceforth paid under the order but so that the sum shall not in any case exceed the sum of Twenty-six pounds in respect of any one half-caste child of such person.

Order may be varied on further inquiry.
Cf. S.A. 1b. s. 92.

(2.) Neither the fact that money previously paid to the Commissioner by such person under such order has not been expended nor the manner or object of its expenditure shall be of any avail as a ground for reducing or as a defence against the increase of the sum to be paid under the order.

11. If on the hearing of a complaint under Section 4 there shall be an absence or deficiency of positive evidence or information as to the age of any half-caste child the magistrate may on view determine the age of such child and shall insert the age so determined in any affiliation order he may make after hearing the complaint.

Age of child may be determined on view.
Cf. S.A. 1b. s. 44.

12.—(1.) Upon the hearing of a complaint under Section 4 against any person alleging that he is the father of a half-caste child the magistrate may adjudge him to be the father thereof on the evidence of the mother alone without any corroboration unless and until the defendant has on his oath denied the allegations in the complaint.

Proof of paternity.
Cf. Pap. No. 22 of 1912, s. 20.

(2.) If the defendant has on his oath denied the allegations in the complaint he shall not be adjudged the father unless and until

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the evidence of the mother be corroborated in some material particular.

(3.) The cross-examination of such defendant shall be confined to the facts or alleged facts of the case then before the magistrate.

Defendant a
compellable
witness.

Cf. Pap. No. 22
of 1912, s. 21.

13. On the hearing of any such complaint the defendant shall be compellable to give evidence and may be summoned as a witness for that purpose and such defendant shall not be excused from giving evidence on the ground that the answer to any question or such evidence might prove or tend to prove him guilty of the matter alleged or charged against him.

Commissioner
may by notice
attach property.
Cf. S.A. No. 641
of 1895, s. 87.

14. Upon complaint made under Section 4 of this Ordinance notice may be given under the hand of the Commissioner to any banker or other person having or supposed to have the care custody or control of any money or property of or belonging or payable to any person complained against not to pay or part with the possession of such money or property until such complaint shall have been heard and determined and such money and property shall thereon become and be attached in the hands of the person having the care custody or control thereof who shall be compellable to give evidence on the hearing of such complaint as to all matters relating to or concerning such money or property.

Magistrate may
make order for
delivery of
property
attached.
Cf. S.A. *Ib.* s. 88.

15. The magistrate hearing any such complaint may if he makes an order against the defendant therein by the same or a separate order direct that the money or property attached or such portion thereof as he shall order shall be paid or handed over to the Commissioner and the person having the care custody or control thereof shall pay or hand over the same accordingly and shall be thereby discharged from all liability to the owner thereof or any person claiming under him in respect of the money or property so paid or handed over and (except as to such portion of the money or property attached as the magistrate may within two months from the service of the notice of attachment order to be so paid or handed over) the attachment shall be determined.

Attachment may
be set aside
or pleaded.
Cf. S.A. *Ib.*
s. 89.

16. Any person who has received any such notice may before the hearing of the complaint or the expiration of two months from the service of the notice whichever shall first happen obtain from any magistrate an order setting aside in whole or in part any notice given pursuant to Section fourteen and any such person may plead any such notice in bar to any action suit or proceeding which may be instituted against him for the recovery of any such money or property by the owner or any person claiming under him.

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17. Any person who after the receipt of such notice shall pay or hand over any such money or property otherwise than in accordance with the order made by a magistrate or who shall neglect or refuse to comply with the order made shall be personally liable to pay to the Commissioner the amount of money or the value of the property ordered to be paid or handed over and such amount or value may be recovered before a magistrate in a summary way.

Persons
contravening
notice or order
are personally
liable.
Cf. S.A. No. 641
of 1895, s. 90.

18. All moneys received by the Commissioner under the provisions of this Ordinance shall be dealt with and applied by him as may be prescribed.

Application of
moneys received
by Commissioner.

19. Nothing contained in this Ordinance shall confer or be deemed to confer upon the father of a half-caste child any right to the custody of such child which he would not have had if this Ordinance had not been passed.

Rights to
custody
unaffected.

20.—(1.) The Lieutenant-Governor⁽²⁾ may if in his opinion it is in the interests of a half-caste child so to do issue or direct to be issued a mandate under the *Native Children's Ordinance, 1911* (No. 8 of 1911) in regard to any half-caste child who is or is certified to the Lieutenant-Governor⁽²⁾ by the Commissioner to be a neglected half-caste child within the meaning of this Ordinance in all respects as if he were a child within the meaning of the Ordinance first above mentioned and liable to be mandated thereunder.

Lieutenant-
Governor may
mandate half-
caste child.

(2.) A half-caste child may be so mandated notwithstanding that he is or is in the opinion of the Lieutenant-Governor⁽²⁾ over the age of fourteen years.

(3.) When a mandate is so issued the half-caste child named therein shall be deemed to be mandated under the provisions of the *Native Children's Ordinance, 1911*, and all the provisions of that Ordinance shall apply as fully and effectually as if he had been liable to be and had been mandated thereunder.

21. The Lieutenant-Governor⁽²⁾ may make regulations⁽³⁾ not inconsistent with this Ordinance prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out and giving effect to this Ordinance and in particular for prescribing in what manner and for what purposes any moneys received by the Commissioner under the provisions of this Ordinance shall be expended. Provided that such purposes shall be for or in connexion with the maintenance or advancement in life or otherwise for the benefit of the neglected half-caste child in respect of whom the money was paid to the Commissioner or of some other neglected half-caste child.

Regulations.

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

(3) See the *Native (Half-Caste) Children Regulations, 1923*, printed on p. 3537.

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Proceedings.

22. Proceedings under this Ordinance may be taken summarily under the provisions of the *Justices Ordinance, 1912-1920*.⁽⁴⁾

(4) Now the *Justices Ordinance, 1912-1940*.