

PART-NATIVE CHILDREN ORDINANCE 1950.<sup>(1)</sup>

No. 42 of 1950.

## An Ordinance to provide for the Maintenance and Care of Certain Children.

**B**E 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 :—

- Short title.      1. This Ordinance may be cited as the *Part-Native Children Ordinance 1950*.<sup>(1)</sup>
- Commencement.    2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice<sup>(1)</sup> in the *Gazette*.
- Repeal.            3.—(1.) The *Native (Half-Caste) Children Ordinance, 1922*<sup>(2)</sup> of the Territory of Papua is repealed.
- (2.) All mandates issued and orders made under the Ordinance repealed by this Ordinance and in force immediately before the commencement of this Ordinance shall continue in force as if issued or made under this Ordinance.
- Definitions.      4. In this Ordinance, unless the contrary intention appears—
- “ affiliation order ” means an order made under section eight of this Ordinance ;
- “ Court ” means, in relation to the Territory of Papua, a Court of Petty Sessions, and in relation to the Territory of New Guinea, a District Court ;
- “ maintain ” means to support, clothe, train and educate ;
- “ neglected part-native child ” means a part-native child who is not maintained by his father in accordance with the duty imposed upon him 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>Cult. 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. 3531-3536.

“ part-native child ” means an ex-nuptial child who—

(a) 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

(b) is the offspring of a father who is not a native and a mother who is a native ;

“ the Director ” means the Director of District Services and Native Affairs.

5.—(1.) The father of a part-native child shall maintain that child. Father of part-native child to maintain child.

(2.) If the father of a part-native child fails to maintain the child as required by this section, he shall (whether the child is or is not being maintained by or at the expense of some other person) be deemed to have neglected the child, and the child shall be deemed to be a neglected part-native child.

6. Upon complaint in writing being made that a person is the father of a part-native child and that the child is a neglected part-native child, any justice may summon that person to appear before a Court to answer the matter of the complaint. On complaint, summons to issue.

7. All complaints under the last preceding section shall be made by the Director or by an officer of the Public Service authorized in writing by the Director. Who may make complaints.

8.—(1.) Upon hearing the complaint, if the Court is satisfied— Court may make order.

(a) that the defendant is the father of the child ; and

(b) that the child is a neglected part-native child within the meaning of this Ordinance,

the Court may—

(c) adjudge the defendant to be the father of the child ; and

(d) order him to pay to the Director the sum of Fifty-two pounds per annum thenceforth in respect of the child until the child, being a boy, shall attain the age of sixteen years, or, being a girl, shall attain the age of eighteen years.

(2.) If the defendant satisfies the Court at the hearing of the complaint that he is unable to pay the full amount of Fifty-two pounds per annum in respect of the child, the Court may order him to pay to the Director such sum less as is, in the opinion of the Court, within the ability of the defendant to pay.

9.—(1.) Moneys payable to the Director under an affiliation order shall be paid in advance and by monthly, quarterly, half-yearly or yearly instalments as may be directed by the Court making the order. Moneys payable in advance, &c.

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(2.) Where no direction as to the manner in which payments under an affiliation order are to be made is given by the Court, the moneys shall be paid yearly in advance.

Service of  
order and date  
of taking effect.

**10.** Every affiliation order shall—

- (a) be served on the defendant personally or in such manner and at such place as may be prescribed, or as the Court making the order may direct; and
- (b) 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.

**11.—(1.)** The Court making an affiliation order may, by the same or a separate order, and any other Court, on complaint made by the Director or by an officer of the Public Service authorized in writing by the Director, that a person liable upon an affiliation order has made default under the order, or intends to evade compliance with the order, 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 Court may, in default of the sureties or security being found, commit the person to prison for a period not exceeding six months unless the order for sureties or security is sooner complied with.

(3.) The Court 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 Court upon being satisfied that an order to find good and sufficient sureties or security has been complied with may order the release of a person committed to prison under this section.

Order may be  
varied on  
further inquiry.

**12.—(1.)** Any Court on the complaint of a person against whom an affiliation order has been made or on the complaint of the Director or of an officer of the Public Service authorized in writing by the Director may make further inquiry into the ability of the person to pay the sum mentioned in the order or a greater sum and may decrease or increase the sum to be thenceforth paid under the order but so that the sum shall not in any case exceed the sum of Fifty-two pounds per annum in respect of any one part-native child of that person.

(2.) The fact that money previously paid to the Director by a person under an affiliation order has not been expended, or the manner or object of its expenditure shall not constitute a ground for the reduction or a defence against the increase of the sum to be paid under the order.

13. If on the hearing of a complaint under section six of this Ordinance there is no positive evidence or information, or insufficient positive evidence or information as to the age of a part-native child, the Court may, on view, determine the age of the child, and shall insert the age so determined in any affiliation order made after hearing the complaint.

Age of child may be determined on view.

14.—(1.) Upon the hearing of a complaint under section six of this Ordinance against any person alleging that he is the father of a part-native child, the Court may adjudge him to be the father 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.

(2.) If the defendant has on his oath denied the allegations in the complaint he shall not be adjudged the father unless and until the evidence of the mother is corroborated in some material particular.

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

15.—(1.) 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.

Defendant a compellable witness.

(2.) The defendant shall not be excused from giving evidence on the ground that that evidence or the answer to any question might prove or tend to prove him guilty of the matter alleged or charged against him.

16. Upon complaint made under section six of this Ordinance, notice may be given under the hand of the Director to a banker or other person having or believed to have the care, custody or control of any money or property of or belonging or payable to the person complained against not to pay or part with the possession of that money or property until the complaint shall have been heard and determined, and the money and property shall thereupon become and be attached in the hands of the person having the care, custody and control thereof who shall be compellable to give evidence on the hearing of the complaint as to all matters relating to or concerning that money or property.

Director may by notice attach property.

17.—(1.) Where the Court hearing any such complaint makes an order against the defendant, it may, by the same or a separate order, direct that the money or property attached, or such portion thereof as the Court may order, shall be paid or handed over to the Director.

Court may make order for delivery of property attached.

(2.) The person having the care, custody or control thereof shall pay or hand over the money or property accordingly, and shall be thereby discharged from all liability to the owner or any person claiming under him in respect of that money or property, and, except

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as to such portion of the money or property attached as the Court 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.

18.—(1.) Any person who has received a notice under section sixteen of this Ordinance 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 Court an order setting aside the notice with respect to the whole or any part of the property or money the subject of the notice.

(2.) 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.

Persons contravening notice or order personally liable.

19. Any person who, after the receipt of a notice under section sixteen of this Ordinance—

(a) pays or hands over any such money or property otherwise than in accordance with the order made by a Court; or

(b) neglects or refuses to comply with the order made,

shall be personally liable to pay to the Director the amount of money or the value of the property ordered to be paid or handed over, and that amount or value may be recovered before a Court in a summary way.

Application of moneys received by Director.

20. All moneys received by the Director under the provisions of this Ordinance shall be dealt with and applied by him as is prescribed.

Rights to custody unaffected.

21. Nothing contained in this Ordinance shall confer or be deemed to confer upon the father of a part-native child any right to the custody of that child which he would not have had if this Ordinance had not been made.

Administrator may mandate part-native child.

22.—(1.) The Administrator may, if in his opinion it is in the interests of a part-native child so to do, issue or direct to be issued a mandate under the *Native Children Ordinance* 1950<sup>(3)</sup> in respect of any part-native child who is, or is certified to the Administrator by the Director to be, a neglected part-native child within the meaning of this Ordinance, in all respects as if he were a child within the meaning of the *Native Children Ordinance* 1950<sup>(3)</sup> and liable to be mandated under that Ordinance.

(2.) A part-native child may be mandated under the last preceding sub-section notwithstanding that he is, or is in the opinion of the Administrator, over the age of fourteen years.

(3.) When a mandate is issued in pursuance of this section the part-native child named in the mandate shall be deemed to be mandated under the provisions of the *Native Children Ordinance*

(3) Printed in this Volume on pp. 827-833.

1950 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 under that Ordinance.

**23.** Proceedings under this Ordinance may be taken summarily Proceedings. under the provisions of the *Justices Ordinance 1912-1950*<sup>(4)</sup> of the Territory of Papua or the *District Courts Ordinance 1924-1947*<sup>(5)</sup> of the Territory of New Guinea, as the case may be.

**24.—(1.)** The Administrator in Council may make regulations<sup>(6)</sup> Regulations. 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—

(a) the manner in which any moneys received by the Director under the provisions of this Ordinance shall be expended ; and

(b) the purposes for which any such moneys shall be expended.

(2.) Any purposes prescribed under the last preceding sub-section shall be for or in connexion with the maintenance or advancement in life or otherwise for the benefit of the neglected part-native child in respect of whom the money was paid to the Director, or of some other neglected part-native child.

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(4) The *Justices Ordinance, 1912-1940* is printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. I., on pp. 885-955 ; as to subsequent amendments see the Supplementary Table printed in Part B of Volume II.

(5) The *District Courts Ordinance 1924-1938* is printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. I., pp. 1071-1149 ; as to subsequent amendments, see the footnotes to that Ordinance.

(6) No Regulations have been made before 1.1.1952.