

NATIVE ADMINISTRATION ORDINANCE 1940.*

1699

An Ordinance to make further provision for the Administration of Justice and the Regulation of Native Matters.

1. This Ordinance may be cited as the *Native Administration Ordinance* 1940.* Short title and citation.

2 This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *Gazette*.† Commencement.

3. In this Ordinance, unless the contrary intention appears— Definitions.
“Native” means any person who is—

- (a) an aboriginal native of Australia or of any of the islands adjacent or belonging thereto;
- (b) a half-caste who lives with an aboriginal native as wife or husband;
- (c) a half-caste who, otherwise than as the wife or husband of such an aboriginal native, habitually lives or associates with such aboriginal natives;
- (d) a half-caste male child whose age does not apparently exceed twenty-one years;
- (e) a female half-caste not legally married to a person who is substantially of European origin or descent and living with her husband; or
- (f) a male half-caste whose age exceeds twenty-one years and who, in the opinion of the Director of Native Affairs, is incapable of managing his own affairs and is declared by the Director to be subject to this Ordinance;

“Director of Native Affairs” means the Director of Native Affairs appointed under the *Aboriginals Ordinance* 1918-1939;

“Institution” means an aboriginal institution within the meaning of section three of the *Aboriginals Ordinance* 1918-1939;

“Reserve” means a reserve within the meaning of section three of the *Aboriginals Ordinance* 1918-1939.

* No. 14, 1940; notified in *Commonwealth Gazette* on 22nd August, 1940.

† No date had been fixed up to 1st January, 1961.

Magistrates for
Native Matters.

4—(1.) The Administrator may, by writing under his hand, appoint any person to be a Magistrate for Native Matters.

(2.) The duties, powers and jurisdiction of Magistrates for Native Matters shall be as prescribed.

Courts for
Native Matters.

5.—(1.) The Administrator may, by notice in the *Gazette*, establish and abolish Courts for Native Matters.

(2.) A Court for Native Matters shall consist of one or more Magistrates for Native Matters.

(3.) A Court for Native Matters shall be held at such times and places as the Court appoints.

(4.) Subject to this Ordinance, the jurisdiction, powers, practice and procedure of Courts for Native Matters shall be as prescribed.

Court of
Appeal for
Native Matters.

6.—(1.) The Administrator may, by notice in the *Gazette*, constitute the Supreme Court a Court of Appeal from a Court for Native Matters.

(2.) The cases in which an appeal may be brought, the grounds upon which an appeal will lie, the practice and procedure in appeals, and all other matters relating to appeals shall be as prescribed by Rules of the Supreme Court.

(3.) The Supreme Court may order any amendment to be made at any stage of the proceedings and no appeal from any such order shall be allowed unless it appears to the Court that some substantial injustice and hardship would otherwise be caused to the appellant.

Punishment of
juvenile
offenders.

7.—(1.) Notwithstanding the provisions of any law to the contrary, a Court for Native Matters, in lieu of any other punishment which it may lawfully impose on a male native whose age does not, in the opinion of the Court, exceed sixteen years, who has been convicted of any offence, may order that that native shall be once privately caned.

(2.) The number of strokes which a Court for Native Matters may order under this section shall not exceed eight.

(3.) Any sentence of caning ordered under this section shall be carried out with a light cane not more than one-half inch in diameter.

(4.) A person sentenced under this section to a caning may be detained in a prison or some other convenient place for such time as is necessary to carry the sentence into effect.

8 Nothing in this Ordinance or the Regulations made thereunder shall be taken to confer upon any Court for Native Matters any authority excepting as between natives and over natives.

Limits of
jurisdiction of
Courts for
Native Matters.

9. The Minister may make regulations, not inconsistent with this Ordinance—

Regulations.

- (a) prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance;
- (b) prescribing all matters relating to the affairs of natives or the good government, health or well-being of natives and, in particular—
 - (i) the jurisdiction, powers, practice and procedure of Courts for Native Matters in civil and criminal matters;
 - (ii) the establishment and government of native gaols and reformatories on reserves;
 - (iii) the appointment of Native Authorities;
 - (iv) the powers and duties of Native Authorities and the enforcement of native authority;
 - (v) the maintenance of discipline and good order in institutions and on reserves;
 - (vi) the duties of inmates of institutions and reserves regarding the cleanliness and development of the institutions and reserves, and the preservation and protection of property thereon;
 - (vii) marriage and divorce;
 - (viii) the succession to property in case of intestacy;
 - (ix) the testamentary disposition of property;
 - (x) the disposal of the dead;
 - (xi) the rights to real and personal property;
 - (xii) the cultivation of the soil;
 - (xiii) the observance of native customs; and
 - (xiv) the exemption of any person from the provisions of this Ordinance and any Regulations made thereunder; and
- (c) prescribing penalties for any contravention of the Regulations not in any case exceeding a fine of Fifteen pounds or imprisonment (with or without hard labour) for any period not exceeding six months or both.