

NATIVE LABOUR ORDINANCE, 1941. ⁽¹⁾⁽²⁾

No. 13 of 1941.

An Ordinance to amend and consolidate the Law relating to Native Labour.

BE it ordained by the Legislative Council for the Territory of Papua, in pursuance of the powers conferred by the *Papua Act, 1905-1940*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Native Labour Ordinance, 1941.* ⁽²⁾ Short title.

It is divided into parts as follows:—

- Part I.—Preliminary.
- Part II.—Restrictions on Employment or Removal of Natives.
- Part III.—Recruiters and Recruiting.
- Part IV.—Engagement of Natives.
- Part V.—Cancellation Alteration and Determination of Contracts of Service.
- Part VI.—Permitted Removal of Natives Within the Territory.
- Part VII.—Permitted Removal of Natives Beyond the Territory.
- Part VIII.—Obligations Incurred by Persons Employing or Removing Natives.
- Part IX.—Payment and Recovery of Wages.
- Part X.—Inspection of Vessels and of Native Labourers.
- Part XI.—Suspension of Contracts of Service; Epidemics.

(1) This Ordinance is now repealed by the *Native Labour Ordinance 1946* of the Territory of Papua-New Guinea.

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

Date of reservation by Administrator.	Date on which assent of Gov.-Gen. in Council published in Papua <i>Govt. Gaz.</i>	Date on which came into operation.
24.7.1941	5.11.1941	5.11.1941 (Papua <i>Govt. Gaz.</i> of 5.11.1941)

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Part XII.—Offences.

Part XIII.—Miscellaneous.

Part XIV.—Non-Indentured Labour.

Repeal.

2.—(1.) The *Native Labour Ordinance, 1911-1933*, is hereby repealed.

(2.) All Proclamations⁽³⁾ appointments⁽³⁾ regulations⁽⁴⁾ orders⁽³⁾ and notices⁽³⁾ under the last-mentioned Ordinances shall so far as they are applicable remain in force until revoked or cancelled as if the same were made or given under this Ordinance.

Interpretation.

3. In this Ordinance unless the context otherwise indicates—

“Commissioner” means the Government Secretary and Commissioner for Native Affairs;

“Commencement of this Ordinance” means the day the Ordinance comes into force;

“Home”—The usual place of residence of a native or the place where he was recruited;

“Inspector”—A Labour Inspector;

“Administrator”—The Administrator in Council;

“Magistrate”—A Resident Magistrate or an Assistant Resident Magistrate;

“Native”—An aboriginal native of the Territory of Papua;

“Proclamation” means Proclamation by the Administrator published in the *Gazette*;

“Ship” includes any description of vessel used in navigation not propelled by oars except canoes;

“Vessel” includes any description of boat or craft except canoes owned and navigated by natives.

When native deemed to be recruited.

A native shall be deemed to be recruited when he is solicited and consents or he offers and his offer is accepted to engage for or to be employed in any form of service or to leave any place where he may then be with a view to or for the purpose of his being so engaged or employed. But the engagement of a native for employment within the meaning of Section Twenty-two of this Ordinance not under a contract of service shall not constitute the act of recruiting provided such engagement is effected by the employer of the native or a European overseer in his regular service.

(3) Particulars of Proclamations, appointments by office (but not appointments made personally by name), orders and notices continued in force by Section 2(2) are included in the relevant footnotes and Tables to this Ordinance.

(4) See footnote (24) printed on p. 3383.

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4. The provisions of this Ordinance shall not apply to an engagement of a native for employment in any capacity in the service of the Government of the Territory or a Department of the Commonwealth or to any contract made between the Government or such Department and a native or to any dealing or transaction between the Government or such Department and a native.

Contracts between the Government and natives not affected by this Ordinance.

5. Nothing in this Ordinance contained shall be deemed to dispense with the necessity of complying with the provisions of the Imperial Acts relating to shipping or of any law relating to shipping or navigation that may be in force in the Territory.

Ordinance not to affect provisions of *Merchant Shipping Act.*

6. The Administrator may from time to time appoint⁽⁵⁾ persons to be labour inspectors under this Ordinance. Such inspectors shall perform the duties imposed upon them by this Ordinance and any other duties which the Administrator for the purpose of carrying out the provisions of this Ordinance may at any time think fit to assign to them.

Appointment of inspectors.

7. The Administrator may appoint fit and proper persons to be officers by whom certain duties specified in this Ordinance may be performed. Such an officer is hereinafter designated by the term qualified officer.

Appointment of qualified officers.

8. No person shall be an inspector or qualified officer who is not a salaried officer of the Government of the Territory.

Inspectors and qualified officers to be salaried officers of the Government.

PART II.—RESTRICTIONS ON EMPLOYMENT OR REMOVAL OF NATIVES.

9. Except as permitted under this Ordinance or some other law in force in the Territory it shall not be lawful to remove a native out of the Territory. This section shall not apply to the case of an employer who removes a native out of the Territory for the purpose either of taking him to a place within the Territory where he is to perform his contract of service or of bringing him back again.

Native not to be taken out of the Territory.

Any person who acts in contravention of the provisions of this section is guilty of an offence against this Ordinance.

(5) No appointments by office made pursuant to the present Section 6 have been published in *Papua Govt. Gaz.*, but by notice dated 1.5.1900 and published in *British N.G. Govt. Gaz.* of 26.5.1900 the Lieutenant-Governor appointed "the under-mentioned Government Officers to be Officers for carrying out the provisions of 'The Native Labour Ordinance of 1900' viz:—The following officers to be *ex officio* Inspectors:—

The Resident Magistrates.
The Assistant Resident Magistrates.
The European Magistrates for Native Matters.
The Gold Wardens.
The Collector and Sub-Collector of Customs.
The Government Medical Officers.
The Commandant of Armed Native Constabulary."

As to whether this notice is still in force, see the present Section 2(2); (Section 1 of *The Native Labour Ordinance* of 1906, and Section 2 of the *Native Labour Ordinance*, 1911-1933 were in similar terms to the present Section 2(2)). From time to time by notices published in *British N.G. Govt. Gaz.* and *Papua Govt. Gaz.* appointments of individuals by name, as labour inspectors, have also been made.

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Native not entering into engagement to be returned to place whence taken.

10. Whenever any person for himself or for some principal takes a native from any place for the purpose of getting him to enter into a contract of service and the native does not enter into a contract it shall be the duty of such person and his principal (if any) to return the native to the place from which he was taken.

A failure to comply with the duty imposed by this section constitutes an offence against this Ordinance.

Women not to be employed on vessels.

11. No native woman or girl shall be carried or kept on board of any vessel except as a passenger under the provisions of Section Forty-three hereof. But nothing in this Ordinance contained shall prevent any person who is the husband of a native woman from keeping her and his children by her on board of a vessel or from removing them from any part of the Territory to any other part of the Territory or from removing them beyond the boundary of the Territory.

Any person who acts in contravention of the provisions of this section is guilty of an offence against this Ordinance.

Native on board foreign-going ship except by express authority master guilty of offence.

12. If when a vessel is about to start or has started on a voyage from any place in the Territory to some place outside the Territory a native is found on board of the vessel and the native is not on board under authority of an express provision of this Ordinance or some other law in force in the Territory the person then in charge of the vessel shall unless he can prove that he did not intend to take the native away and that the native did not intend to go away in the vessel or that the native is on board without his knowledge or consent be deemed guilty of an offence against this Ordinance.

PART III.—RECRUITERS AND RECRUITING.

Recruiter's and ship's licence. Schedule A. Schedule B.

13. Any person authorized⁽⁶⁾(7) by the Administrator may issue—

- (a) Licences in the form in Schedule A hereto called "Recruiter's Licences";⁽⁶⁾
- (b) Licences in the form in Schedule B hereto called "Ship's Licences".⁽⁷⁾

(6) No appointments, by office, made pursuant to the present Section 13(a) have been published in *Papua Govt. Gaz.* By notice made under the *Native Labour Ordinance, 1911-1933*, (and continued in force by the present Section 2(2)), dated 6.4.1939 and published in *Papua Govt. Gaz.* of 3.5.1939, the following officers were authorized to issue Recruiter's Licences: "The Resident Magistrates, and any officer who for the time being is officially acting as Resident Magistrate of the Western, Delta, Gulf, Central, Eastern, South-Eastern, North-Eastern and Northern Divisions; and the Assistant Resident Magistrates, and any officer who for the time being is officially acting as Assistant Resident Magistrate at Kairuku, Rigo, Abau, Kukumadau, Losuia, Baniara, Kokoda and Ioma." From time to time by notices published in *Papua Govt. Gaz.* appointments of individuals, by name, have also been made.

(7) No appointments, by office, made pursuant to the present Section 13(b) have been published in *Papua Govt. Gaz.* By notice made under the *Native Labour Ordinance, 1911-1933*, (and continued in force by the present Section 2(2)), dated 27.3.1916 and published in *Papua Govt. Gaz.* of 5.4.1916, the Lieutenant-Governor appointed "the Collectors of Customs at the undermentioned Ports of Entry as the persons authorised to issue licences in the form in Schedule C called 'Ships Licences' under Section 14(2) of the *Native Labour Ordinance, 1911*:—PORT MORESBY SAMARAI BONAGAI DARU to take effect as from the 1st March 1916." Under the *Native Labour Ordinance, 1911-1933* the form of Ships Licences was set out in Schedule C thereto; the form of such licences is now set out in Schedule B to the present Ordinance.

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These licences shall be for one year from the date thereof and may be renewed annually.

No ship shall be licensed that is less than six tons register.

A fee of One pound shall be paid on the issue and renewal of a recruiter's licence.

Fee for recruiter's licence.

No recruiter's licence shall be issued to a female or to any person who is not a European.

A recruiter's licence may be issued in respect of the whole or any part of the Territory and if issued in respect of a part of the Territory shall authorize the licensee to recruit natives in that part only.

Scope of licence.

14. Before a recruiter's licence is issued to any person he must give security for the due observance of the provisions of this Ordinance. Such security shall consist of a guarantee in the form of Schedule C hereto by at least one sufficient surety in the sum of Fifty pounds.

Security to be given by licensee.

Schedule C.

15.—(1.) Subject to the provisions of Subsections (2.) and (3.) of this section and of Section Ninety-seven of this Ordinance no person shall recruit natives without a recruiter's licence and if he uses a ship the ship must be licensed and be used under his immediate personal supervision and control.

Recruiter to have licence for self and ship.

(2.) An employer may without a recruiter's licence either personally or subject to any restrictions or conditions imposed by regulation from time to time by the agency of an unlicensed person recruit natives to work for himself in the capacity of domestic servants only.

How employer may recruit personally without a licence.

(3.) An employer may personally or subject to such restrictions or conditions imposed by regulation from time to time by a European overseer in his regular service and authorized in writing by him so to do recruit natives to work in any capacity for himself without a recruiter's licence either for himself or his overseer or a ship's licence.

How employer may recruit generally.

(4.) In any prosecution against any person for recruiting a native without a recruiter's licence such person shall for purposes connected with those proceedings after proof by the prosecution that the native was in fact recruited by him or by some other person on his behalf be deemed unlicensed and not to come within or be protected by the provisions of Subsections (2.) and (3.) of this section or Section Ninety-seven of this Ordinance unless he at the hearing of the case either—

In certain prosecutions a person deemed to be an unlicensed recruiter unless contrary proved.

(a) produces his recruiter's licence or furnishes other satisfactory proof of his being licensed and furnishes

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satisfactory proof that the native was recruited by him personally; or

- (b) furnishes satisfactory proof that the native was recruited under and in accordance with the provisions of one of such last-mentioned subsections or section.

Issue of licences discretionary suspension and revocation.

16. The issue of either a recruiter's licence or a ship's licence is purely discretionary and a licence may be at any time suspended by a magistrate or revoked by the Administrator but no licence shall be suspended or revoked without inquiry after due notice to the recruiter or the owner or lessee of the ship.

Unlicensed ship may be seized.

17. Any magistrate officer of Customs European member of the police force or other person authorized by the Administrator who finds an unlicensed ship being used in recruiting may cause the ship to be seized and detained until a prosecution for breach of this Ordinance has been heard and determined.

Recruits to be taken before a magistrate inspector or qualified officer.

18. A native who has been recruited shall for the purpose of entering into a contract of service be taken without unnecessary delay before the magistrate inspector or qualified officer who is either the nearest to the home of such native or the nearest from the home of the native along or in proximity to the route usually travelled towards the place of destination of such native.

If in either of such instances such magistrate inspector or qualified officer is absent from his station or if from any sufficient cause it is difficult to communicate with such magistrate (the proof of which shall be upon the person who removed the native from his home) the native may be taken to the magistrate inspector or qualified officer who is next nearest to the home of the native or next nearest along or in proximity to the route aforesaid.

A magistrate of a division may nevertheless issue a permit to any person granting him authority for a period not exceeding twelve months to take natives recruited by him in a specified district of that division before some other magistrate inspector or qualified officer to be named in such permit. Such permit may be cancelled at any time by the magistrate who granted it but only after inquiry upon due notice being given to the person to whom it was granted. The magistrate who grants the permit shall forthwith send a copy thereof to the Commissioner and to the magistrate inspector or qualified officer named therein:

Provided that the Administrator may by Proclamation⁽⁸⁾ declare that notwithstanding any of the provisions of this section all natives who may be recruited in any district specified in the Procla-

(8) No proclamation has been published in Papua Govt. Gaz.

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mation after a date to be specified therein shall for the purpose of entering into a contract of service be taken without unnecessary delay before a magistrate inspector or qualified officer stationed within the division of the Territory within which such district is situated and before no other magistrate inspector or qualified officer.

19. Any licensed recruiter or employer or European overseer in the regular service of an employer who personally or by using the services of a native assistant or a local native recruits a native shall personally take charge of and shall be responsible for the native so recruited until—

Responsibilities of recruiter.

- (a) the native is duly engaged under this Ordinance; or
- (b) the native has been returned home; or
- (c) a magistrate inspector or qualified officer has by writing under his hand absolved the recruiter or employer who took away the native from all further responsibility.

20. The provisions of Section Nineteen of this Ordinance so far as they impose any duty upon an employer or a European overseer in his regular service to personally take charge of a native from the time that he is recruited until the native is duly engaged under this Ordinance may be relaxed by regulation⁽⁹⁾ subject to such conditions and in respect of such portions of the Territory as may be prescribed.

Relaxation of certain provisions.

21. The Administrator may from time to time by Proclamation⁽¹⁰⁾ declare—

Administrator may close any locality to recruiting or to recruited labour.

- (a) that no native may be recruited for or removed to any specified place or district; or
- (b) that no native may be recruited in or removed from any specified place or district;

(9) See Regulation 44 of the *Native Labour Regulations, 1933*, printed on p. 3405.

(10) No proclamations made pursuant to Section 21 have been published in *Papua Govt. Gaz.* By Proclamation (made pursuant to Section 19 of *The Native Labour Ordinance of 1900*, which was in similar terms to the present Section 21) dated 24.1.1907 and published in *Papua Govt. Gaz.* of 2.2.1907, the Administrator declared that after 29.1.1907 "no Native whose residence is in the District described in the Schedule hereto shall be recruited or removed from his residence for the purpose of engaging him to serve as a labourer in the Northern Division. . . . Schedule—Trobriland Group Lausancay Islands Egum Group Lachlan Islands." By an Order in Council (made under the *Native Labour Ordinance, 1911-1933*) dated 7.2.1930 and published in *Papua Govt. Gaz.* of 5.3.1930, it was ordered that "No native of the Gulf or Delta Divisions shall be 'signed-on' to work as a house-boy or domestic servant out of the Division to which he belongs. Employers resident in Port Moresby who have natives of either of these Divisions in their employ as house-boys are invited to apply to have their contracts cancelled and to send them home. Employers are further earnestly advised not to employ such natives casually."

As to whether the Proclamation or the Order in Council is still in force, see the present Section 2(2): (Section 1 of *The Native Labour Ordinance of 1906*, and Section 2 of the *Native Labour Ordinance, 1911-1933*, were in similar terms to the present Section 2(2)).

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in either case during a specified period or until the Proclamation is revoked and either absolutely or subject to such conditions as he may impose.

PART IV.—ENGAGEMENT OF NATIVES.

Native except in certain cases only to work under written contract.

22. Except as provided in Part XIV. of this Ordinance no native shall be employed by any person for any period of longer continuity than twelve months or such other time as may be fixed as hereinafter provided except under written contract of service under this Ordinance. If a native is employed by a person in contravention of this section the person by whom he is employed is guilty of an offence against this Ordinance.

A native shall be deemed to be employed by a person within the meaning of this section if the native works continuously for or in the interests of a person and that person accepts or takes the benefit of the work done although there is no agreement between the two either express or implied.

The section shall not apply—

- (a) to mission teachers or to native students who are receiving instruction with a view to becoming mission teachers;
- (b) to natives exempted by the Commissioner:

Provided that notwithstanding anything hereinbefore contained the Administrator may by Order in Council⁽¹¹⁾ published in the *Gazette* extend or reduce the said period of twelve months.

Engagement of child under fourteen.

23. No native child male or female who is under the age or apparent age of fourteen years shall be recruited or employed under this Ordinance or otherwise unless—

- (a) the parents of the child or the person who by native custom has control of the child consents thereto; and
- (b) there is no school within a mile of the home of the child which he is required to attend by any regulation made under the *Native Regulation Ordinance, 1908-1930.*

Natives employed otherwise than under contract of service under this Ordinance.

24. No native employed otherwise than under written contract of service under the provisions of this Ordinance shall be employed under a written contract of service of any kind nor under any agreement restricting the right of either party thereto to determine the employment without notice.

Magistrates may refuse to sanction engagement.

25. A magistrate or inspector or a qualified officer may refuse to sanction the engagement of any native brought before him for the purpose of entering into a contract of service.

(11) No Order in Council has been published in *Papua Govt. Gaz.*

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The grounds of refusal shall in each case be stated in writing to the intending employer and shall in each case be reported to the Commissioner.

26.—(1.) Before a magistrate inspector or qualified officer consents to the engagement of a native he must obtain a statement in writing in the form in Schedule D hereto or to the like effect.

Statement by
recruiter
employer or
overseer.

(2.) In cases where a native has been recruited by means of the services of a native assistant or other native authorized by this Ordinance such statement shall be made and signed by the licensed recruiter or by the employer or European overseer in his regular service who made use of the services of such native assistant or other native.

In other cases it shall be made and signed by the recruiter employer overseer or unlicensed person as the case may be who recruited the native.

(3.) The statement shall be a true statement.

(4.) When such statement is made by a European overseer he shall produce to the magistrate inspector or qualified officer if required so to do by him a written authority signed by his employer authorizing the overseer to recruit natives for him.

27.—(1.) A contract of service by a native shall be in writing and in triplicate and shall be entered into before a magistrate an inspector or a qualified officer and shall be expressed in the form of Schedule E hereto or to the like effect.

Contract of
Service.
Schedule E.

(2.) The contract of service shall—

(a) specify the particular places or vessels at or upon which the native is to serve and one place only at which the native may be paid off:

Provided that in the case of a native engaged for mining the contract of service may specify any one or more existing goldfields or mineral fields by name and in the case of a native engaged for work connected with prospecting or testing for oil or gold or other minerals or for domestic service only may specify the whole or any part of the Territory as the place at which the native is to serve;

(b) contain an undertaking by the employer to return the native to his home as therein specified after he has been paid off before a magistrate or an inspector or a qualified officer;

(c) be signed by the employer or his agent and by the native and be attested by the officer before whom it is entered into.

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(3.) The officer before whom the contract is made shall—

- (a) hand one copy to the employer or his agent;
- (b) send one copy to the place at which the native is to be paid off and one copy to the Commissioner.

(4.) No person unless authorized by this Ordinance to do so shall alter a contract of service.

(5.) The employer's copy of a contract of service which relates to one native only shall be kept by the employer or his agent at the place where the native is actually employed thereunder.

If a contract of service is varied a note of such variation shall—

- (a) be given to the employer or his agent;
- (b) be sent to the office at which the native is to be paid off;
- (c) be sent to the Commissioner.

Term of service.

28. The term of service of a native shall not exceed three years and in the case of miners and carriers it shall not exceed eighteen months except in such parts of the Territory and under such conditions as the Administrator may order.⁽¹²⁾ The order may be limited to individuals or to the natives of certain districts. But the Administrator may by Proclamation⁽¹³⁾ declare that in the case of natives of a particular locality the term of service shall not exceed a less period to be stated in the Proclamation and thereupon no officer shall sanction the engagement of a native of that locality for a term exceeding that period.

Except with the consent of the Commissioner no native shall be signed on for two periods of three years unless he has been returned to his village at the end of the first period and an interval of at least one year has intervened during which he has not been under contract of service.

Except with the consent of the Commissioner no native shall be engaged or re-engaged under successive contracts of service for a longer aggregate period than four years computed from the time he was last in his village not being then under contract of service:

Provided that such last-mentioned consent shall not be withheld in the case of the re-engagement of a native as a household servant clerk storehand or artisan unless it appears to the Commissioner that there is a special reason why it should be withheld.

Term of service to begin from day native signs on.

29. A native's term of service shall commence on the day on which he enters into the contract of service and except as provided in this Ordinance the employer shall not be entitled to discharge the native during the term against his will.

(12) No order has been published in *Papua Govt. Gaz.*

(13) No Proclamation has been published in *Papua Govt. Gaz.*

30. The officer before whom the contract of service is entered into shall insert therein a provision as to the place at which wages are to be paid:

Wages to be paid at specified place.

Provided that payments on account of wages may be made at other places and the officer before whom such payment is made shall—

- (a) hand a written note thereof to the employer or his agent;
- (b) send a written note thereof to the place of final payment named in the contract and also to the Commissioner. Such note shall upon receipt be attached to the relative contract:

Provided further that the amount payable in advance may be restricted by Order in Council⁽¹⁴⁾ published in the *Gazette*.

31. The employer or his agent when seeking to engage a native may (subject to such conditions as may be prescribed) be permitted to prepare and present to the proper officer in respect of such native the statement in writing referred to in Section Twenty-six and the contract of service in triplicate.

When employer to prepare contract, etc.

32. A magistrate or an inspector or a qualified officer shall not sanction the engagement of a native until he has satisfied himself—

Magistrate must satisfy himself on certain points before he sanctions engagements.

- (a) that fair remuneration is offered and will be duly paid;
- (b) that the native is willing to enter into the contract of service;
- (c) that there is no reason to suspect that the native will be unfairly treated;
- (d) that there is no reason to suspect that the native will not on the expiration of the contract of service be returned to his home by the employer.

The officer may in any case refuse to sanction the engagement unless upon the guarantee of at least one sufficient surety in such sum as he may consider reasonable that the employer will carry out the terms of the contract of service and will comply with the provisions of this Ordinance.

The guarantee may be in either of the Forms 1 or 2 of Schedule F hereto or to the like effect. The use of Form 2 in Schedule F may be required restricted and controlled by regulation.

In lieu of providing a guarantee for the payment of wages of a native an employer may deposit with the officer before whom the contract of service is entered into the native's return passage money and three months' wages in advance.

Instead of giving guarantee for payment of wages wages may be paid in advance.

(14) No Order in Council has been published in *Papua Govt. Gaz.*

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Thereafter the wages shall be paid to an officer of the division in which the native is employed monthly in advance. Non-payment of wages shall be sufficient ground for the cancellation of the contract of service.

Upon deposit of the wages a written note thereof shall be handed to the employer or his agent and a written note sent to the place of payment named in the contract and to the Commissioner. Such note shall be attached by the Commissioner to the relative contract and likewise at the place of payment and any such note shall be a full and proper authority at the place of payment to pay the native at the expiration of the contract the money from funds under the control of the native labour officer at such place.

The return fare shall remain at the place of deposit and be available for the purpose for which it was deposited or for return to the employer if such passage has been otherwise paid.

Notwithstanding anything hereinbefore contained the Administrator may make regulations prescribing special conditions as to payment or deposit of wages or otherwise to be inserted in all or any contracts of service by magistrates inspectors and qualified officers.

Relief of surety
to a guarantee.

33.—(1.) A surety named in any guarantee taken in pursuance of the last preceding section may upon application to such magistrate and in such manner as may be prescribed be relieved by the order of the magistrate from his liability under the guarantee. An order under this subsection shall be made only upon the grounds and subject to the conditions prescribed.

(2.) When a surety is so relieved from his liability the employer named in the contract of service referred to in the guarantee shall forthwith enter into and file with the magistrate a fresh guarantee with at least one sufficient surety in such sum as the magistrate shall consider reasonable that the employer will carry out the then unfulfilled terms of the contract of service and will comply with the provisions of this Ordinance.

(3.) Such fresh guarantee may be in the form of Form 1 of Schedule F to this Ordinance or to the like effect.

(4.) The failure of the employer to give such fresh guarantee shall be a sufficient ground for the cancellation of the contract of service and the same may be cancelled by the magistrate without any further or other proceeding under this Ordinance.

Re-engagement
of native.

34.—(1.) If a native after serving the term of his contract of service wishes to re-engage he may subject to the provisions of Subsection (2.) of this section enter into a fresh contract of service

before a magistrate inspector or qualified officer with the same or another employer :

Provided that no such native shall without the written consent of the Commissioner be permitted to re-engage under contract of service until he has been paid the wages in full due to him under the previously expired contract of service in accordance with its terms.

(2.) The Administrator may by Proclamation⁽¹⁵⁾ forbid the re-engagement of any native—

Re-engagement
when forbidden.

(a) recruited in or belonging to any district specified in the Proclamation ; or

(b) for work in any district specified in the Proclamation either absolutely or except under such conditions as are specified in the Proclamation and thereupon no such native shall re-engage or be re-engaged contrary to such Proclamation.

35. If a native under contract of service dies or deserts the employer of the native shall immediately report the death or desertion to the nearest magistrate or inspector in the form and with the particulars required by the Commissioner.

Employer to
report death or
desertion of
native servant.

36.—(1.) A native with his consent may be transferred by one licensed recruiter to another with but not without the written sanction of a magistrate but such sanction shall not be given unless the statement referred to in Section Twenty-six hereof is made by the first-named recruiter whereupon the written sanction if given shall be endorsed thereon.

Transfer and
hiring out of
natives.

(2.) A native under contract of service may with but not without the consent of the native and the written sanction of a magistrate be either transferred or hired out by one employer to another but the Administrator may by Proclamation⁽¹⁶⁾ declare that natives whose homes are in certain districts shall not be transferred.

(3.) Where a native under contract of service is transferred all liability with respect to the native shall cease as regards the transferor and shall attach to the transferee who shall thereupon be considered as the employer. The liability of the guarantor shall also cease but the magistrate shall refuse to sanction a transfer unless upon the guarantee of at least one sufficient surety as provided in Section Thirty-two.

(4.) When a native is hired out the magistrate may impose such conditions as he may think fit as to security for compliance

(15) No proclamation has been published in *Papua Govt. Gaz.*

(16) No proclamation has been published in *Papua Govt. Gaz.*

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with the terms of the contract and the provisions of this Ordinance and otherwise and unless the magistrate expressly releases them the original employer and his guarantor shall be liable under their guarantee for the payment of wages due to the native and for the return of the native to his home.

PART V.—CANCELLATION ALTERATION AND DETERMINATION OF
CONTRACTS OF SERVICE.

Magistrate may
cancel contract
on inquiry or
vary by consent.

37.—(1.) A contract of service may be cancelled by a magistrate—

- (a) after inquiry held by him upon due notice thereof to the parties concerned; or
- (b) upon and after the dismissal of any complaint for an offence under this Ordinance or the regulations made by an employer against any native under the contract of service to him without notice to the parties concerned; or
- (c) upon and after the conviction of an employer or any European employee of his upon a complaint for an offence under this Ordinance or the regulations made by a native under contract of service with the employer; or
- (d) upon and after the conviction of the employer or any European employee of his upon a complaint for assault by him upon the native engaged under the contract of service.

When considering the question of cancellation of a contract of service in the circumstances set out in Paragraphs (b) (c) or (d) of this subsection the magistrate may act upon the evidence taken at the hearing of the complaint alone or upon that evidence together with such other information that may be placed before him at any adjournment of the question of cancellation granted by him.

(2.) When a contract of service is cancelled as aforesaid the magistrate shall determine what wages (if any) shall be paid to the native. Any native whose contract is so cancelled shall unless he enters into a fresh contract of service be returned to his home by the employer. The wages that may be paid to a native under this section shall not exceed the amount that would have been payable if the native had completed his term of service.

(3.) The magistrate shall by the first opportunity report such cancellation to the Commissioner.

(4.) A magistrate may with the consent of the parties concerned vary the contract except with respect to the payment at the place stipulated in the original contract the extension of the term of a contract and the obligation to return the native to his home at its expiration.

(5.) The Commissioner may with the consent of the parties concerned vary a contract of service in respect of the place stipulated for payment of wages the extension of the term of a contract and the obligation to return a native to his home.

38. A magistrate may at any time on the complaint of any of the parties concerned cancel the contract or except as provided in the preceding section of this Ordinance vary its terms in so far as any party is concerned. If a contract is cancelled in so far as any particular native is concerned that native shall be deemed duly discharged but the cancellation shall not release the employer from the obligation of returning the native to his home. A complaint under this section shall be a complaint within the meaning of the *Justices Ordinance, 1912-1940*, and shall be dealt with under that Ordinance.

Magistrate may cancel or alter agreement by legal process.

When a contract of service is cancelled the magistrate shall determine what wages (if any) shall be paid to the native.

The following shall be sufficient grounds for cancellation under the provisions of this section:—

- (a) Incompetency or inefficiency of the labourer;
- (b) That the labourer is exerting a bad influence upon his fellow workers;
- (c) That the labourer is endangering the interests of his employer by disobedience;
- (d) That the labourer is acting in such a way as seriously to damage or endanger the interests of his employer.

39. Whenever—

- (a) a contract of service is cancelled or varied;
- (b) a contract of service is in any way affected by conviction or order of a magistrate;
- (c) a native under contract of service is transferred or hired out by one employer to another;
- (d) the death or desertion of a native is reported; or
- (e) payment of wages or on account of wages is made to a native under contract of service

Endorsements on contracts of service, etc.

the officer responsible for or recording such event shall—

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- (i) give written notice thereof to the employer or his agent;
- (ii) send like notice thereof to the place of payment named in the contract of service and to the Commissioner where such notice shall be attached to the relative contract.

Death of employer ends agreement.

40.—(1.) The death of a sole employer shall put an end to a contract of service but when there is more than one employer only the death of all of them shall have that effect.

Continuance of contract after death of sole employer. Conditions.

(2.) Notwithstanding the provisions of the preceding subsection of this section a native under contract of service may agree to continue under the contract after the death of the sole employer and thereupon if the Commissioner and the guarantor of the wages consent in writing or another guarantor is obtained for the balance of the term the contract shall be deemed to continue valid and the European for the time being in charge of such native shall except as to wages be deemed liable for the obligations of the employer.

The written consent of such European to undertake such obligations shall be sent forthwith to the Commissioner and a copy thereof purporting to be under the hand of the said Commissioner shall be deemed conclusive evidence of the facts therein contained.

(3.) Upon the grant of probate or administration of the estate of the deceased employer if the native under contract of service and the guarantor do not within thirty days of such grant consent to the further continuance of the contract such contract shall be deemed immediately at an end but if they consent the contract shall continue subject to the approval of the Commissioner with the personal representative as the employer for the balance of the term.

(4.) No contract shall by virtue of the foregoing provisions be continued beyond the term originally agreed and no contract shall be continued longer than four months after the death of the sole employer by virtue of the provisions of Subsection (2.) of this section.

Contract of service entered into during currency of preceding contract to be void. Penalties.

41.—(1.) If a native labourer who is already under contract of service enters into another contract of service with another employer the latter contract of service is void and the native labourer is liable to imprisonment with hard labour for a period not exceeding six months and the employer if he knew at the time that the native labourer was already under contract of service is also liable to imprisonment with hard labour for a period not exceeding six months.

(2.) A recruiter who recruits a native knowing at the time that he is already under contract of service shall be liable to imprisonment with hard labour for a period not exceeding six months.

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This section shall be retrospective as regards the avoidance of the contract but not otherwise.

PART VI.—PERMITTED REMOVAL OF NATIVES WITHIN THE TERRITORY.

42. A magistrate or an inspector or a qualified officer may grant a permit to allow the wife and children of a native who has entered into a contract of service to accompany him or to allow a native and his wife and children to be removed from their homes to any place in the Territory for the purpose of education or the advancement of religious teaching. Such permit may be as nearly in the form in Schedule G hereto as circumstances admit and shall be at least in duplicate.

Permit to remove natives within Territory.

Schedule G.

43. Subject to this Ordinance and the regulations any vessel may carry as a bona fide passenger any native from any part of the Territory to any other part of the Territory.

Vessels may carry natives as passengers.

PART VII.—PERMITTED REMOVAL OF NATIVES BEYOND THE TERRITORY.

44. The Commissioner or any magistrate may at his discretion grant a permit to allow any person to remove beyond the boundaries of the Territory any native employed by such person under a contract of service for any of the following purposes:—

Permits to remove natives beyond the Territory.

- (a) For fishing in the Gulf of Papua;
- (b) To proceed as a boatman or seaman to any port in Queensland or to the Territory of New Guinea;
- (c) To proceed as a seaman for a single voyage from the Territory to one or more of the following places and from thence back again to the Territory:—
 - (i) Any port or ports in Australia;
 - (ii) Dutch New Guinea;
 - (iii) Any island or islands in the Western Pacific which the Administrator may from time to time by Proclamation⁽¹⁷⁾ declare to be within the scope of this subsection:

(17) No proclamation made pursuant to the present Section 44 has been published in Papua *Govt. Gaz.* Particulars of two proclamations made pursuant to Section 38 of the repealed *Native Labour Ordinance, 1911-1933* (which was in similar terms to the present Section 44) are set out in the following Table. As to whether these proclamations are still in force, see the present Section 2(2). Note, however, that the repealed Section 38 was in terms similar to the present Section 44, that these proclamations added to the places or purposes therein set out, and that the Section was re-enacted, without including the places or purposes added by these proclamations.

Date on which proclamation made.	Date on which published in Papua <i>Govt. Gaz.</i>	Subject matter of proclamation.
1.7.1912	3.7.1912	Declaring that "a native may be removed under a permit to Torres Straits for the purposes of Fishing for Pearl Shell and Bêche-de-mer"
27.2.1939	1.3.1939	Declaring that "the removal of a native as a seaman for a single voyage to Singapore and from thence back again to the Territory to be a purpose for which a Permit may be issued"

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Provided that the Administrator may from time to time by Proclamation⁽¹⁷⁾ published in the *Gazette* add to cancel reduce or vary the places or purposes mentioned in this section to or for which a native may be removed under a permit.

Nature and form of permit.

45. Every permit granted under the last preceding section may be in the form of Schedule H hereto or to the like effect and shall be at least in duplicate and shall contain the following particulars:—

- (a) The name and place of residence of every native who may under it be taken beyond the boundaries of the Territory the duration of the period for which the permit shall be in force the nature of the service or occupation in which the native is to be employed during that period and the place in the Territory to which he shall be returned.
- (b) The name of the employer and situation of his residence or place of business (if any) within the Territory and the name of the vessel in which the native is to be employed beyond the Territory.
- (c) The nature of the security that has been given that the conditions of the permit shall be complied with by the employer.

Security to be taken on issue of permit.

46. Such a permit shall not be granted by the Commissioner or a magistrate without first obtaining security to his satisfaction that the person to whom the permit is granted will not transfer any native removed under it to any other person or allow him to be employed on any vessel save that mentioned in the permit and that he will bring him back to the Territory and will observe every other condition expressed in the permit.

Security to be given on taking native out of the Territory.

47. The Commissioner or a magistrate may grant such a permit upon security being given by bond to his satisfaction by the employer or permittee with one or more sureties in the following sums according to the number of natives included in such permit namely:—

For each native	..	..	..	£100; or
For 10 natives or less	..	..	..	£250
For 20 natives or less	..	..	..	£500
For 30 natives or less	..	..	..	£750
For over 30 natives	..	..	..	£1,000

Person to whom permit is issued to return the native within the time specified.

48. If a person to whom such a permit has been issued does not return the native within the time specified in the permit he shall be deemed to have broken the conditions of the permit within the

(17) See footnote (17) printed on p. 3365.

Native Labour Ordinance, 1941.

meaning of Section Forty-five and his security shall be liable to forfeiture accordingly.

49.—(1.) The Commissioner or (in cases of emergency only) a magistrate may at his discretion grant a permit to any person who has a bona fide residence in the Territory to remove a native as a personal attendant—

Permits to remove natives beyond the Territory as personal attendants.

- (a) to any part of the Commonwealth of Australia; or
- (b) to any place in the South Pacific Ocean declared by Proclamation⁽¹⁸⁾ published in the *Gazette* to be a place to which a native may be so removed as a personal attendant.

(2.) When a magistrate grants a permit under this section he shall immediately report the fact and the emergency giving rise thereto to the Commissioner.

50. Permits under the last preceding section shall be to the effect of the form in Schedule I hereto and shall be at least in duplicate. Before issuing a permit the officer shall insist upon first obtaining security to his satisfaction but in no case less than One hundred pounds for each native that the person desiring the permit to be granted to him will only take the native to the place or places authorized by the permit and bring him back to some specified place in the Territory before the expiration of a term to be stated in the permit.

Form of permit. Security.

A permit shall not be issued to remove a child in respect of whom a mandate has been issued under the *Native Children's Ordinance, 1911.*

51. The Commissioner may at his discretion grant a permit to any person who has a bona fide residence in the Territory to send a native for educational purposes—

Permits to send natives beyond the Territory for educational purposes.

- (a) to any part of the Commonwealth of Australia; or
- (b) to any place situated in the South Pacific or Indian Oceans declared by Proclamation⁽¹⁹⁾ published in the *Gazette* to be a place to which a native may be sent for such purposes.

(18) No proclamation has been published in *Papua Govt. Gaz.*

(19) No proclamation made pursuant to the present Section 51 has been published in *Papua Govt. Gaz.* Particulars of two proclamations made pursuant to Section 44A of the repealed *Native Labour Ordinance, 1911-1933* (which was in similar terms to the present Section 51) are set out in the following Table. As to whether these proclamations are still in force, see the present Section 2(2). Note, however, that the repealed Section 44A was in terms similar to the present Section 44, that these proclamations declared the places to which natives may be sent for educational purposes, and that the Section was re-enacted without including the places set out in these proclamations.

Date on which proclamation made.	Date on which published in <i>Papua Govt. Gaz.</i>	Places to which natives may be sent for educational purposes.
31. 1. 1928	1. 2. 1928	Madagascar
5. 3. 1937	7. 4. 1937	New Britain

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Form of permit security and arrangements for transfer of native.

52. Permits under the last preceding section shall be to the effect of the form in Schedule J hereto and shall be at least in duplicate. Before issuing a permit the Commissioner may require that security to his satisfaction be given that the person desiring the permit to be granted to him will only send the native to the place or places authorized by the permit and cause him to be returned to some specified place in the Territory before the expiration of a term to be stated in the permit.

Before issuing a permit the Commissioner shall be satisfied that proper arrangements have been made for the transfer of the native to the place or places authorized by the permit by the person desiring the permit and that proper arrangements will be made for the return of the native to the Territory from the place or places authorized by the permit and that sufficient care will be taken of the native during such transfer and return.

A permit shall not be issued to remove a child in respect of whom a mandate has been issued under the *Native Children's Ordinance, 1911*.

Permits may contain conditions.

53. The officer granting a permit under any of the preceding sections may insert therein any reasonable conditions that he considers necessary or desirable and may also specify therein the place or places within which the native may be kept and any place or places at which the native may be taken ashore or at which he shall not be allowed to land.

Permits may be cancelled.

54. A permit may at any time be cancelled in whole or in part by the Commissioner or by the magistrate who granted it. Whereupon it shall be a duty to return the native whence he was removed as speedily as practicable or in the case of partial cancellation to act in such manner as to comply with the alteration in the condition of the permit cancelled.

PART VIII.—OBLIGATIONS INCURRED BY PERSONS EMPLOYING OR REMOVING NATIVES.

Obligations incurred by persons removing natives.

55.—(1.) When a native who is not merely a bona fide passenger under Section Forty-three is taken away by any person from any place in the Territory for any purpose whatever the following duties are imposed upon the person who took the native away and upon any person who expressly or by implication accepted the charge or care of him namely:—

- (a) When the purpose for which the native was taken away has been accomplished to return him to his home;
- (b) From the time when the native was taken away until he is returned to the place from whence he was taken to

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supply him with good and sufficient water food medicine shelter sleeping quarters clothing and bedding and (if necessary) the means of preparing food:

Provided that in the case of a native under contract of service any of the matters specified in Paragraph (b) of this subsection may be regulated by the contract.

Any person who fails to comply with any of the duties imposed on him by this section shall be guilty of an offence against this Ordinance.

(2.) When a native is recruited and taken away from any place by— Obligations shifted in certain cases.

- (a) a native assistant or a local native under the provisions of Section Ninety-six of this Ordinance; or
- (b) any unlicensed person who is a native under the provisions of Subsection (2.) of Section Fifteen of this Ordinance

the native so taken away shall for the purposes of Subsection (1.) of this section be deemed to have been taken away from the place he was so recruited^(19A) by the employer the European overseer in the regular service of the employer or the licensed recruiter as the case may be who made use of the services of such native assistant local native or unlicensed person.

(3.) If the master of a vessel upon which a native has been placed with such master's consent by any person in order that the native may be returned to his home shall fail or neglect to return the native thereto without unnecessary delay such failure or neglect shall be deemed the failure or neglect of such person: Neglect of master of vessel deemed neglect of employer, etc.

Provided that he may and is hereby empowered to recover from the master of the vessel the amount of expenses fine and costs or any of them which he has incurred or paid under the provision of this and the next succeeding section by reason of such failure or neglect.

56. The employer shall return the native home at the expiration of the term of service without unnecessary delay. If he fails to do so he is guilty of an offence against this Ordinance. Return of native without unnecessary delay.

57. Whenever under this Ordinance it is the duty of any person to return a native to any place it shall be his duty to return with the native any trade-box or other goods which the native may have in his possession and if that person fails or neglects to return the native and his goods without unnecessary delay a magistrate or an inspector may cause them to be returned and may recover reasonable expenses of doing so from the person whose duty it was to return them. Government may return natives in certain cases at the employer's expense.

(19A) The words "place he was so recruited" appeared in the original Ordinance. *Semle*, "place where he was so recruited" was intended.

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The expenses may be recovered in manner provided in Section Fifty-nine.

Any proceeding under this section shall not absolve any person from his liability under the last preceding section.

Duty to return native home when absolved.

58. The obligation to return a native home shall not apply when—

- (a) the native refuses or neglects to return home proof whereof shall lie upon the person charged with the obligation;
- (b) when the native is in custody except for an offence under this Ordinance.

Government may fulfil obligations at expense of responsible party.

59. If any person in respect of any native neglects to fulfil any obligation imposed upon him by the provisions of this Ordinance the regulations thereunder or by the terms of a contract of service the Commissioner or any magistrate may take charge of the native and maintain him and return him to his home.

All moneys and expenses reasonably paid or incurred in so maintaining or returning the native as aforesaid may in the first instance be paid by the Crown and thereafter may be proceeded for and recovered from the person so neglecting to fulfil his obligations by action or upon the complaint of any European officer of the Government in a summary manner under the provisions of the *Justices Ordinance, 1912-1940*, and may if the person is dead be recovered by action out of his estate.

Proceedings under this section shall not absolve any person from liability incurred by him in respect of any offence against this Ordinance.

PART IX.—PAYMENT AND RECOVERY OF WAGES.

Wages of native to accrue from day to day.

60. The wages of a native shall be deemed to have been earned and to have become due to him day by day commencing from the day on which he entered into the contract of service but except as provided in this Ordinance the employer shall not during the term of service be bound to pay wages at less than monthly periods.

Wages when native in Government hospital.

No wages shall be payable to a native for any time that he is the inmate of a Government hospital unless his admission thereto is due to an injury or illness caused by the act or default of his employer or his European employee or arises out of and in the course of the employment of the native.

Wages must be paid in the presence of a magistrate.

61. All wages due to natives engaged under the provisions of this Ordinance shall be paid in the presence of a magistrate or

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inspector or a qualified officer and no payment of wages made otherwise than in the presence of a magistrate or inspector or a qualified officer shall be valid.

62. Wages shall be paid at the place and at the rate stated in the contract of service and if that contract states that the whole of the wages are to be paid at any particular place the whole shall be paid at that place except as otherwise provided in this Ordinance.

Wages to be paid as stated in contract.

No payment made otherwise than as stated in the contract shall be valid even with the consent of the native.

63. The entire amount of the wages earned by or payable to any native engaged under the provisions of this Ordinance subject to any deductions expressly permitted thereby shall be actually paid to him in coin or notes which are by any law of the Commonwealth or of the Territory a legal tender in the Territory.

Wages to be paid in coin or bank-notes.

64. The magistrate inspector or qualified officer in whose presence the wages due to a native at the expiration or other determination of his contract of service have been paid may if he thinks necessary for the protection of the native take the wages into his custody and if he does so he shall inform the Commissioner and shall deal with the wages as directed by him.

Retention of wages by magistrate, etc.

65. No native engaged other than under written contract of service under the provisions of this Ordinance shall be paid the wages due to him at greater intervals than the Administrator may by regulation⁽²⁰⁾ published in the *Gazette* prescribe.

Maximum period for payment of wages to natives engaged other than under contract of service.

66.—(1.) Wages due to a native may be proceeded for and recovered—

Wages how recoverable.

(a) by the native; or

(b) in the name of the native by the Commissioner a labour inspector or qualified officer acting on behalf of the native

in any Court of competent jurisdiction.

(2.) No Court fees shall be payable by a plaintiff in any such proceeding.

67.—(1.) All moneys due by any employer for wages in respect of a native under contract of service shall be a preferential charge on the property of the employer and shall rank over and above all mortgages encumbrances charges and liens and any other debts howsoever secured:

Preferential charge for moneys due by employer.

(20) No regulations have been made.

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Provided that nothing herein contained shall be deemed in respect of any guarantee given after the commencement of this Ordinance to defeat any secured debt prior in time to such guarantee.

(2.) The preferential charge aforesaid shall subsist notwithstanding any transfer or devolution of the property to which it extends until the moneys aforesaid have been actually paid and the taking of any other security for those moneys or part thereof shall not affect the preferential charge but the preferential charge shall not attach to personal chattels in the hands of bona fide purchasers without notice.

(3.) All moneys constituting a preferential charge shall bear interest from the day upon which the same became due and payable at the rate of Four pounds per centum per annum and the amount of every judgment together with the costs of recovery of the same shall bear interest at the said rate from the day of the date of the judgment.

(4.) Charges created by this section may be enforced at the suit of the Commissioner.

Certain debts of employer to his surety to be a preferential charge.

68.—(1.) All moneys due by an employer to his surety in respect of moneys paid by the surety under a guarantee given under this Ordinance shall be a preferential charge on the property of the employer and shall rank subject to a like proviso as in the preceding section contained over and above all mortgages encumbrances charges and liens and any other debts however secured except debts due by the employer for wages in respect of a native under a contract of service.

(2.) The provisions of Subsections (2.) and (3.) of the last preceding section shall apply to the preferential charge created by Subsection (1.) of this section.

Wages and effects of deceased natives how to be dealt with.

69. Wages due or property belonging to a deceased native employee may be handed over to any magistrate inspector or qualified officer. All magistrates inspectors and qualified officers are empowered to demand and receive and take legal proceedings in their own names to recover wages due or property belonging to a deceased native employee.

PART X.—INSPECTION OF VESSELS AND OF NATIVE LABOURERS.

Vessel not to carry more than two persons to the ton.

70. If a vessel carries more persons than in the proportion of two persons for each complete ton of her gross registered tonnage with the addition of the tonnage measurement represented by any space deducted for the master seamen and apprentices and any of

the persons so carried is a native the person who at the time is in charge of the vessel shall be guilty of an offence against this Ordinance unless he can show that he could not prevent the act that constitutes the offence. For the purpose of this section the registered tonnage of a vessel that is not actually registered shall be deemed to be the tonnage at which she would be estimated for the purpose of registration.

When a vessel carries cargo a reduction in the number of persons who may be carried shall be made as follows:—

In the case of a vessel of not more than ten tons a reduction of two persons for every ton of cargo carried.

In the case of a vessel of more than ten tons and not more than twenty-five tons a reduction of one person for every ton of cargo carried.

In the case of a vessel of more than twenty-five tons no reduction shall be made.

71. If a magistrate has reasonable grounds for believing that a vessel is not fit to carry natives he may give written notice to that effect to the person in charge of the vessel and thereupon until the notice is withdrawn if any native is carried on the vessel the person who at the time is in charge of the vessel shall be guilty of an offence against this Ordinance and the person who at the time is the owner of the vessel shall also be guilty of an offence against this Ordinance unless he can show that he could not prevent the act that constitutes the offence.

Unseaworthy vessels.

It shall be the duty of the magistrate either before or as soon as may be after giving the notice to inspect the vessel personally or cause it to be inspected by some competent person and if at any time he is satisfied either by personal inspection or otherwise that the vessel is fit to carry natives he shall withdraw the notice immediately. The magistrate shall in each case report his action and the reasons therefor to the Commissioner at the earliest opportunity.

72. Any magistrate or inspector or any officer specially appointed by the Administrator may enter at all reasonable hours any premises on which any native is employed or which are or have recently been occupied by natives whether the native is employed under the provisions of this Ordinance or otherwise.

Magistrate, etc., may inspect premises.

73. Any magistrate or inspector or person specially authorized in writing by the Administrator may board and inspect any vessel carrying or recruiting natives and may require the production of any document that relates to the carrying recruiting or employment of natives whether such natives be at the time on board or not and may examine any person on board as to any fact the knowledge of

Inspection of vessel carrying natives.

NATIVES—

which is material to the due execution of the duty of such magistrate inspector or authorized person.

Magistrate, etc.,
may inspect
native labourers.

74. Any magistrate or inspector or officer specially appointed by the Administrator may at all reasonable hours inspect any native that is in the service of any person and may question such native and such person or any person who has charge of the native in regard to any matter which in the opinion of the officer affects the welfare of the native. Any person so questioned by an officer is bound to answer any question put to him in regard to such matters. Any person who hinders an officer in inspecting any such native or refuses to answer any such question as aforesaid or wilfully makes a false answer to any such question is guilty of an offence against this Ordinance.

Prohibition of
employment of
natives.

75.—(1.) If at any time it is made to appear to the Administrator or he has cause to believe that for any cause it is desirable in the interests of natives that an employer or his agent should be prohibited from employing natives or having charge of them the Administrator may order that such employer or agent as the case may be be prohibited from employing or having charge of any natives whether such natives are employed under contract of service under this Ordinance or not.

(2.) Such order may be general with respect to all natives and all occupations or may be limited to natives of any class or either sex or to any kind of occupation.

(3.) When any such order is made any employer or agent who disobeys the terms of any such order applicable to him shall be guilty of a breach of this Ordinance.

(4.) Before making any such order as aforesaid the Administrator may first call upon the employer or agent to show cause why any such order should not be made.

Power of
magistrate to
destroy buildings
and to proclaim
infected areas.

76. It shall be lawful for a magistrate—

(a) to burn or otherwise destroy any building which is or has been occupied by natives or in which natives are or have been employed if in his opinion the building or any part thereof is in such a filthy or unwholesome condition that the health of any native labourer is likely to be endangered by working or residing therein;

(b) to proclaim any piece of ground an infected area if he has reasonable ground for supposing that it would be prejudicial to the health of natives to work or reside within it.

A piece of ground may be proclaimed an infected area by posting a notice to that effect in some conspicuous place within it and thereupon no native shall work or reside within the area and if any native does work or reside within it his employer shall be guilty of an offence against this Ordinance.

But a magistrate shall not exercise the powers conferred by this section without inquiry upon due notice to be posted in some conspicuous place upon the building or within the piece of ground in question.

The magistrate shall in each case report his action and his reasons therefor to the Commissioner at the earliest opportunity.

77. Any person who hinders or obstructs a magistrate or inspector or authorized person aforesaid acting under any of the powers conferred upon him by this Ordinance or without lawful excuse refuses to produce or withholds any document aforesaid when specifically or generally called for or declines to give or withholds any information lawfully required by the magistrate inspector or authorized person is guilty of an offence against this Ordinance.

Hindering inspection an offence.

78. Any person who with intent to evade any of the provisions of this Ordinance makes a fictitious sale or a fictitious hire of a vessel to any other person or a fictitious sale or lease of any premises to any person is guilty of an offence against this Ordinance.

Fictitious sales, etc., of vessels or premises an offence.

PART XI.—SUSPENSION OF CONTRACTS OF SERVICE; EPIDEMICS.

79. In the case of an existing or apprehended epidemic it shall be lawful for the Administrator by Proclamation⁽²¹⁾ in the *Gazette* to declare that the contracts of service of all or any of the native labourers in any locality shall be suspended either for a fixed time or until further order (to be made by the Administrator by notice in the *Gazette*) and either from the date of the Proclamation or from a date to be named therein. The period during which the contracts are suspended is hereinafter called the period of suspension.

In case of existing or apprehended epidemic contracts of service may be suspended.

80. An employer shall not be under liability to pay wages during the period of suspension and except as hereinafter provided all other rights and liabilities of the parties to the contract of service shall cease during that period but the time during which a contract is suspended shall count as part of the time necessary to complete the period of service under the contract.

Rights and liabilities of parties during suspension.

(21) No proclamation has been published in Papua *Govt. Gaz.*

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When the period of suspension comes to an end whether by effluxion of time or otherwise the rights and liabilities of the parties to the contract revive.

Labourers to be under control of superintendent.

81. During the period of suspension all labourers affected by the Proclamation shall be under the control of an officer appointed for the purpose. If no officer is appointed they shall be under the control of the nearest magistrate. The officer under whose control the labourers are is hereinafter called the superintendent. He shall have general authority over all Government officers employed in connection with the labourers except the Government medical officer and his medical staff.

Labourers to obey orders of superintendent and Government Officer.

82. The labourers shall proceed to such place or places as may from time to time be specified by the superintendent and shall remain there until permitted by him to leave. They shall obey all orders which may be given to them by any Government officer with reference to the construction of buildings roads and latrines and digging of trenches the carriage of stores and building and other material the cleansing of any place in which any such labourers are collected or to which they are likely to be removed attendance at hospital and any other matters which may appear desirable for the welfare of such labourers or any other labourers to whom the Proclamation may apply. The labourers will not receive any wages for any such work but if they are employed on other work they shall be entitled to wages at a rate to be fixed from time to time by the superintendent.

The employers shall continue liable to provide the labourers with rations but an employer may discharge this liability by a money payment in advance at the rate of Sixpence a day for each labourer or such other rate as may be fixed by regulation. A refusal or failure on the part of an employer to provide rations or to discharge his liability by money payment as aforesaid shall be a sufficient reason for refusing in future to sanction the engagement or hiring of a native labourer by the employer or the transfer of a native labourer to him.

Return of labourer to employer. Cancellation of contract.

83. It shall be lawful for the superintendent (with the consent of the Government medical officer if there be one present) at any time during the period of suspension to permit a labourer to return to his employer to complete his contract of service subject to any conditions which he (with the consent of the Government medical officer if there be one present) may impose and thereupon the period of suspension shall so far as regards that labourer and his employer be at an end. During a period of suspension no contract of service shall be cancelled except with the consent of the superintendent and the Government medical officer if there be one present and subject to such conditions as they may impose.

84. The Administrator may make regulations⁽²²⁾ for the purpose of regulating the rate of payment for rations and of providing for the return of labourers to employers or to their homes at the expiration of a period of suspension or otherwise and generally for carrying out the purposes of this part of this Ordinance. The regulations may be of general application or may be made from time to time to meet the exigencies of a particular case. They may provide as penalty for a breach of any of them a fine not exceeding Fifty pounds and imprisonment with or without hard labour not exceeding six months. On publication in the *Gazette* the regulations shall have the force of law.

Regulations.

Provision as to penalties.

85. Nothing done under this part of this Ordinance or the regulations thereunder shall be taken to discharge or to lessen the liability of any of the parties to any contract of guarantee entered into or hereafter to be entered into under any Ordinance relating to native labour.

Liability of guarantor to continue.

PART XII.—OFFENCES.

86. A male native who has entered into a contract of service under this Ordinance and who neglects without reasonable cause to perform any work which under the contract it is his duty to perform is liable to be imprisoned with or without hard labour for a period not exceeding fourteen days or in the alternative to a fine not exceeding his pay for fourteen days.

Neglect of duty.

A female native who has entered into such a contract of service as a domestic servant and who neglects without reasonable cause to perform any work which under the contract it is her duty to perform is liable to a fine not exceeding her pay for fourteen days which shall be deducted from her wages but she shall not be liable to be imprisoned for such neglect not^(22A) for default in payment of the fine.

Neglect of duty by female native.

87.—(1.) Any native under contract of service who without the authority of his employer sells barter or otherwise parts with any article of food forming any ration or part of any ration (excepting tobacco) or any blanket or mosquito-net supplied under this Ordinance or the regulations thereunder shall be liable to a penalty not exceeding Ten shillings and in default of payment to imprisonment for a period not exceeding one month and the magistrate may order that the value of the article of food blanket or mosquito-net be deducted from his wages and it shall be deducted accordingly.

Barter or sale of food or articles supplied.

(2.) Any person who takes from any such native any article of food blanket or mosquito-net as aforesaid shall be liable to a penalty

(22) No regulations have been made providing for these matters.

(22A) The word "not" appeared in the original Ordinance. *Semle*, "nor" was intended.

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not exceeding One pound and in default of payment to imprisonment with or without hard labour for a period not exceeding two months.

Desertion.

88. A male native who has entered into a contract of service under this Ordinance and who without reasonable cause—

- (a) neglects to enter the service of the person whom he has agreed to serve; or
- (b) deserts from his service; or
- (c) absents himself from his service

is liable to a fine not exceeding Ten shillings or to imprisonment with or without hard labour not exceeding three months or to both such fine and imprisonment.

If a complaint is made under this section before a justice of the peace he may under Section Fifty-two of the *Justices Ordinance*, 1912-1940, issue a warrant in the first instance to apprehend the defendant.

A female native who has entered into such a contract of service as a domestic servant and who is guilty of any offence set forth in Paragraphs (a) (b) or (c) of this section is liable to a fine not exceeding her pay for three months which shall be deducted from her wages but she shall not be liable to be imprisoned for such desertion nor for default in payment of the fine.

Native not entitled to wages during desertion.

89. If a native is convicted of an offence under the last section he shall not be entitled to any wages for the time he was absent from his service but the Court that convicts him may if it thinks fit upon application of the employer make an order that the time he was away from his service shall not be counted in reckoning the time which he must serve in order to complete his service. This section shall extend to a female native.

Native who has deserted may be returned to employer.

90. When a native has been convicted of desertion the Court that convicts him may for the purpose of compelling him to complete his service make an order then and there that he shall forthwith or after he has served any term of imprisonment that the Court has imposed upon him be taken into custody and handed over to his employer or the agent of his employer at some place within the Territory.

If the order is to be executed forthwith no sentence of imprisonment shall be imposed upon the native to whom the order applies under the conviction upon which the order is based.

Order to be carried out at employer's expense.

91. An order to hand over a native under the last section shall be carried out under a warrant signed by a magistrate in the form of Schedule K hereto or to the like effect.

Native Labour Ordinance, 1941.

The expense of carrying out the order shall be paid by the employer in advance but the employer may be permitted to give sufficient security in lieu of payment in advance.

If the employer does not pay the expenses or give sufficient security when permitted to do so the magistrate may cancel the warrant.

92. When a native is handed over to his employer or to an agent of his employer under Section Ninety-one the time that elapsed between the date of his desertion and the date upon which he was handed over to the employer or agent shall not be counted in reckoning the time which he must serve in order to complete his service.

Period of desertion not to count as service.

93. A person to whom a native has been hired out shall during the currency of the hiring-out agreement be considered for the purposes of this part of the Ordinance as an employer to whom the native has been duly engaged by contract of service under this Ordinance.

Hirer to be deemed employer.

94. If in any proceedings before any Court any money is ordered to be paid by a native who is under contract of service whether by way of compensation or fine or costs or otherwise the amount thereof shall unless the Court otherwise orders be levied by deduction from the native's wages when he is paid off:

Native's fines to be deducted from wages.

Provided that notwithstanding anything elsewhere contained in this Ordinance when a Court otherwise orders as aforesaid the contract of service shall with the consent of the native and the employer be deemed varied to permit the payment of the money out of any wages due under the contract at the time the Court makes the order.

95. No wages shall be payable to a native for any time that he is in custody either for an offence under this Ordinance or otherwise and no time during which he is in custody shall be counted in reckoning the time which he must serve in order to complete his service.

No wages while in custody.

96. Any person who by fraud falsehood intimidation coercion or misrepresentation induces a native to engage himself as a labourer or to leave his place of residence or any place at which he may then be with a view to or for the purpose of engaging himself as a labourer is guilty of an offence against this Ordinance.

Persons engaging labourers by fraud, etc.

97.—(1.) Any employer or a European overseer in his regular service in recruiting a native for the employer's service only or a licensed recruiter may subject to any restrictions or conditions im-

Employers' and licensed recruiters' native assistant.

NATIVES—

posed by regulation from time to time make use of the services of a native assistant to obtain recruits if and whilst such native assistant has entered into and remains under a contract of service with such employer or licensed recruiter for that special purpose or for that special purpose amongst others but not otherwise.

Local native assistants.

(2.) An employer or a European overseer in his regular service in recruiting a native for the employer's service only or a licensed recruiter may subject to any restrictions or conditions imposed by regulation from time to time make use of the services of any local native in recruiting a native provided that the place where the native is so recruited is not more than ten miles from—

(a) the village of the local native whose services are used; and

(b) some point on the sea coast at which the employer or licensed recruiter shall be at the time of such recruiting.

Licensed recruiter's liability for acts of native assistant.

(3.) The licensed recruiter and his guarantor under their security and guarantee or the employer as the case may be shall be liable for any illegal act committed by such native assistant or local native in the same way and to the same extent as if the licensed recruiter or employer had himself committed the illegal act.

Native assistant not to hold permit under Arms, Liquor and Opium Prohibition Ordinance, 1911-1935.

(4.) No person shall make use of the services of any native who holds an Arms Permit under the *Arms, Liquor and Opium Prohibition Ordinance, 1911-1935*, in any capacity under Subsections (1.) and (2.) of this section to obtain recruits.

(5.) The Administrator may from time to time by Proclamation⁽²³⁾ suspend the operation of any of the provisions of this section in relation to the whole Territory or any part thereof.

Domestic servants recruited by employer, etc.

98.—(1.) When an employer by the agency of an unlicensed person recruits a native to work for himself in the capacity of a domestic servant such native shall not be permitted to enter into a contract for employment other than for domestic work with the employer and in the event of the transfer of such native from the employer to any other person the transfer shall not affect the nature of the employment.

(2.) Such employer shall be liable for any illegal act committed by the unlicensed person in the same way and to the same extent as if the employer had himself committed the illegal act.

(23) No proclamation made pursuant to Section 97 has been published in *Papua Govt. Gaz.* By proclamation, dated 29.10.1923 and published in *Papua Govt. Gaz.* of 7.11.1923, made pursuant to Section 82 of the repealed *Native Labour Ordinance, 1911-1933* (which was in similar terms to the present Section 97) the operation of Section 82(2)—which was in terms similar to the present Section 97(2)—was suspended in the "Northern Division". As to whether this proclamation is still in force, see the present Section 2(2). Note, however, that what is suspended is the operation of a section now repealed, and that the section was re-enacted without reference to the proclamation suspending its operation in part of the Territory.

Native Labour Ordinance, 1941.

99. An employer shall be liable for any illegal act committed by any European overseer authorized by him to recruit natives for him in the same way and to the same extent as if the employer had himself committed the illegal act. Employer liable for acts of overseer.
100. No native under contract of service shall be required to perform any work for which he is physically unfit. Physically unfit native not to be worked.
101. A person who induces or encourages a native who has entered into a contract of service to desert from that service is guilty of an offence against this Ordinance. Persons inducing native to desert.
102. Any person who knowingly aids or assists any native under contract of service to desert from the service of his employer shall be liable to a penalty not exceeding Twenty pounds or to imprisonment with hard labour for a period not exceeding three months. Penalty for assisting deserter.
103. Any person who by act or omission contravenes any of the provisions of this Ordinance or of any Proclamation made and published under the authority thereof is guilty of an offence against this Ordinance. Offences not specially provided for.
104. A person who is guilty of an offence against this Ordinance or a breach of the regulations for which no specified punishment is provided is liable to a fine not exceeding Fifty pounds or to imprisonment with or without hard labour for a period not exceeding six months. Punishment of offences where none has been specified.
105. Proceedings in respect of a breach of or offence against this Ordinance or the regulations may be taken summarily before a magistrate. Procedure in case of offence.

PART XIII.—MISCELLANEOUS.

106. A breach of a guarantee given in pursuance of the provisions of this Ordinance in the form or to the effect of Schedules C or F shall be deemed to be a breach of duty within the meaning of the *Justices Ordinance, 1912-1940*, and proceedings may be taken in respect thereof by a Government officer in a Court of Petty Sessions at any place and at any time within three years from the commission of the breach. Procedure on breach of guarantee.
- The principal and his sureties may be proceeded against either jointly or severally and no release or compromise with the principal shall release any of his sureties.
107. When the breach does not consist in the neglect to pay moneys the exact amount of which can be ascertained from evidence the Court may order the payment to the Crown of all or any portion Penalty for breach of guarantee.

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of the sum mentioned in the guarantee. If the sum mentioned in the guarantee has been deposited the Crown may at any time appropriate as much of it as is necessary for the purpose of satisfying any judgment or order of the Court given or made in proceedings taken with respect to a breach of the guarantee.

Contracts by native during period of service to be void.

108. No action shall be brought upon any contract express or implied made by a native while under contract of service but all contracts so made as aforesaid shall be absolutely void.

No fee for warrants, etc., in respect of offences under the Ordinance.

109. No fees shall be charged for complaints warrants or any other process issued in respect of offences under this Ordinance where a native is either complainant or defendant.

Decision of medical officer to be conclusive on question of physical fitness.

110. The decision of a Government medical officer upon the physical fitness or unfitness of a native who wishes to enter into a contract of service or has entered into such a contract shall be regarded as conclusive.

Duplicates of certain documents to be filed in Courts of Petty Sessions.

111. A duplicate of every permit granted under this Ordinance shall be filed for record in the Native Labour Office or the principal office of the Court of Petty Sessions of the Court district in which the native affected by such document has or had his usual place of residence.

Proof of certain matters.

112.—(1.) Whenever in any proceedings under this Ordinance or the regulations it shall be necessary to prove that a native is or was under contract of service any copy of the original contract of service certified by the Commissioner or by a magistrate to be correct or by a qualified officer issuing the same shall be prima facie evidence that the native mentioned therein is or was under contract as therein stated.

(2.) In any proceedings for the recovery of any moneys due under this Ordinance or the regulations it shall be sufficient to show that the native was duly under contract of service.

(3.) In any proceedings under this Ordinance or the regulations any endorsement on or any notice or copy of notice annexed to any contract of service made or given or purporting to be made or given under the provisions of this Ordinance in relation to any of the matters referred to in Paragraphs (a) (b) (c) and (e) of Section Thirty-nine of this Ordinance shall be prima facie evidence of the facts stated therein.

Gazette notice proof of certain appointment.

113. In any proceedings in any Court the appointment of any magistrate inspector qualified officer or other officer in the service of the Government may be proved by the production of the *Gazette* containing the notice of such appointment.

Native Labour Ordinance, 1941.

114. All books contracts of service registers and licences which are required to be kept by or are issued under the provisions of this Ordinance or the regulations shall be produced upon demand at all reasonable times to the Commissioner or to any magistrate inspector or qualified officer and shall when ordered by any Court be produced in any proceedings in such Court under this Ordinance or the regulations.

Production of books, etc.

115. The Administrator may make regulations⁽²⁴⁾ prescribing the fees to be charged employers under the provisions of this Ordinance in respect of the several matters hereinafter set out:—

Fees to be prescribed.

- (a) For every native on entering into a contract of service;
- (b) Statement, Form D, for each native named therein;
- (c) Permit, Form G, for each native named therein;
- (d) Permit, Form H, for each native named therein;
- (e) Permit, Form I, for each native named therein;
- (f) Guarantee for every ten or less than ten natives referred to therein;
- (g) For every copy of contract of service in lieu of employer's copy lost or destroyed;
- (h) For every variation of a contract of service.

116. A native labourer who is employed in feeding machinery shall not wear a shirt or long-sleeved singlet or any protection to the hand except a glove. An employer who allows a native labourer to commit a breach of the provisions of this section shall be guilty of an offence against this Ordinance.

Natives feeding machinery not to wear shirts, etc.

117. An employer of native labour shall cause all boilers in use and all machinery the breakdown of which might cause injury or loss of life used by him to be inspected and certified as being in good order at least once a year by some person approved by the Administrator. An employer who does not comply with this section shall be guilty of an offence against this Ordinance.

Boilers to be inspected.

The Administrator may fix the fees to be charged for such inspection and certificate.

118. An employer who employs natives to the number of ten or more shall keep or cause to be kept at the headquarters of himself or his manager at each and every place where such natives to the number aforesaid are employed a copy of this Ordinance and of any Ordinance amending the same and of all regulations made thereunder respectively and shall whensoever required so to do produce the same at all reasonable times at such place to the Commissioner magistrate inspector or labour inspector.

Employers and managers to keep copy of Ordinance and regulations.

(24) No regulations have been made pursuant to Section 115. See, however, the *Native Labour Regulations, 1933* (made under the repealed *Native Labour Ordinance, 1911-1933*, and continued in force by the present Section 2(2)), printed on p. 3394.

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Medical care,
etc., of natives.

119. Every native under contract of service who shall require medical care or treatment shall be provided therewith by his employer or in such cases as may be prescribed by regulation shall be sent by his employer to a Government hospital for treatment.

Hospital fees
when payable.

120. An employer shall pay such hospital fees as may be prescribed by regulation in respect of any native in his employ who is admitted for treatment into or who is an out-patient of any Government hospital.

Inquiries may
be ordered.

121.—(1.) The Administrator may order an inquiry to be held before him or before any public officer named in the order in regard to any matter which in the opinion of the Administrator affects or relates to the recruiting engagement or the contract of service of a native or the welfare of a native under any contract of service.

Attendance of
native at inquiry.

(2.) Upon any such order being made the Commissioner or Chief Inspector of Native Affairs or (if the inquiry is to be held before a public officer) the public officer may by notice in writing under his hand require the employer or other person for the time being having the charge or care of any native to procure the attendance of the native at the inquiry in accordance with the notice or to deliver such native into the custody of any person named therein for that purpose and such employer or other person shall comply with such notice.

Expenses of
attendance.

(3.) Any reasonable expenses that an employer may be put to in complying with such notice by reason of wages maintenance and transport of any such native shall be borne by the Government or paid by the Government to the employer unless the Administrator shall otherwise order.

Service of
summons on
complaint in
certain cases.

122. Service of a summons issued upon a complaint for an offence against the provisions of this Ordinance or of the regulations thereunder in which a company is a defendant or of a notice of any inquiry which may be held under this Ordinance in which a company is concerned shall be deemed good service if it is effected—

- (a) in the manner required by the *Companies Ordinance, 1912-1926*; or
- (b) upon the manager or person in charge of the plantation mine or place of business of the company or upon the master of the vessel of the company at or upon which the offence is alleged to have occurred.

Regulations.

123. In addition to and without limiting any power hereinbefore conferred upon the Administrator to make regulations as

Native Labour Ordinance, 1941.

to any special matter (which power shall in every case be implied for the purposes of any section of this Ordinance in which regulations are referred to) the Administrator may make regulations⁽²⁵⁾—

(1) Prescribing—

- (a) the water food shelter sleeping quarters clothing and bedding;
- (b) the cooking eating washing and sanitary accommodation and arrangements;
- (c) the hospital accommodation and equipment medical care medicines medical appliances and accessories;
- (d) the rations and articles other than of food and medicine to be allowed to and provided for natives by—
 - (i) the employers of natives;
 - (ii) those who took natives from their homes;
 - (iii) those who expressly or by implication accepted the charge or care of natives;
 - (iv) those who return natives to their homes; and
 - (v) owners and masters of vessels used for carrying natives.

(2) Requiring the licensing of vessels used in the carriage or transport of natives.

(3) For securing the notification by any persons of the existence of any infectious disease among natives and for preventing the spread of such disease and for controlling restricting or prohibiting the removal or transport of such natives and of natives who have been in contact with them.

(4) Prescribing the treatment to be applied to natives by their employers and by those who expressly or by implication accepted the charge or care of them for the prevention or cure or as a precaution against the spread of hookworm (*ankylostomiasis*).

(5) Restricting to specified hours of the day the presence in towns or outside their dwellings or sleeping quarters in towns of all natives or any class of natives.

(6) Prescribing the conditions upon which the wife or wife and children of a recruited native or native under contract of service will be permitted to accompany him.

(7) Prescribing—

- (a) the time natives are to work;
- (b) the loads natives are to carry;

⁽²⁵⁾ No regulations have been made under the present Ordinance. See the *Native Labour Regulations, 1933* (made under the repealed *Native Labour Ordinance, 1911-1933*, and continued in force by the present Section 2(2)), printed on p. 3394.

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- (c) the books and registers to be kept and the returns to be made by the employers of natives and by owners and masters of vessels used in the transport or carriage of natives;
 - (d) the medical examination of native labourers and the fees to be paid by employers therefor;
 - (e) all matters which the Administrator may deem necessary regarding the treatment of natives; and
 - (f) all matters which are necessary and convenient to be prescribed for giving effect to the provisions of this Ordinance.
- (8) Varying the form of any of the Schedules to this Ordinance.

Unless the context otherwise indicates or requires the word "natives" in this section includes natives who have been recruited natives who are under contract of service natives who are awaiting return or in the course of being returned to their homes on the expiration of their contracts of service and the wives and children (if any) of such natives who accompany them.

Penalty for
breach of
regulations.

124. Such regulations may impose for any breach thereof a fine not exceeding Fifty pounds and in default of payment imprisonment with or without hard labour for any period not exceeding six months.

PART XIV.—NON-INDENTURED LABOUR.

Interpretation.

125. In this part unless the contrary intention appears:—

"Employer" means any employer of a native under the provisions of this part of the Ordinance;

"Native" means any aboriginal native of the Territory of Papua who is not under a written contract of service under the provisions of this Ordinance and who—

(a) being a male is of the age or apparent age of not less than sixteen years and whose village is situated not more than twenty miles computed according to the nearest road or route ordinarily used in travelling from the place of his employment under this part; or

(b) being a female is of the age or apparent age of not less than sixteen years and whose village is not more than four miles computed according to the nearest road or route ordinarily used in travelling from the place of her employment under this part.

Native Labour Ordinance, 1941.

126. Notwithstanding the provisions of Section Twenty-two of this Ordinance any person may subject to the provisions of this part employ under the provisions of this part any native who is willing to be so employed:

Employment under this part.

Provided that this section shall not apply to any person who under the provisions of this Ordinance or any other Ordinance relating to native labour is for the time being prohibited from recruiting employing or having charge of natives.

Proviso.

127. The employment of a native under this part may be determined at any time without notice by either the employer or the native and no contract or agreement express or implied between them to the contrary shall have any force or effect.

Termination of employment.

128. No female native shall be employed under this part in any occupation of a heavy or burdensome nature.

Work of female.

129. The Administrator may by Proclamation ⁽²⁶⁾ published in the *Gazette* suspend the operation of this part of this Ordinance or of any of the provisions thereof either for a period specified in the Proclamation or during the continuance thereof and either in relation to the whole Territory or to any part thereof.

Suspension or limitation of operation.

130. No person shall employ a native under the provisions of this part who is not a native within the meaning of this part.

Wrongly employing under this part.

Penalty: Twenty pounds.

131.—(1.) The Commissioner or any inspector of his Department or any magistrate or any officer appointed by the Administrator may at all reasonable hours enter upon any place where natives are employed or he has reason to believe are employed under this part and may inspect and question any native upon such place and may question any person in whose service or in whose charge the native appears to be in regard to any matter which in the opinion of the Commissioner inspector magistrate or officer as the case may be concerns the employment or welfare of the native.

Power of Commissioner, etc. to inspect and question.

(2.) No person shall hinder inspection under the provisions of this section and no person shall if liable to answer questions under the provisions of this section refuse so to do or wilfully give false or misleading answers thereto.

Penalty: Twenty pounds.

(26) No proclamation has been published in *Papua Govt. Gaz.*

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Regulations.

132. The Administrator in addition to and without limiting the powers to make regulations hereinbefore contained may make regulations⁽²⁷⁾ prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying into effect this part of this Ordinance and in particular for the following:—

- (a) Matters of detail as to food water shelter sleeping quarters clothing bedding hospital accommodation medical care and medicine to be allowed or provided for natives employed under this part;
- (b) Keeping of books and records by the employer of a native under this part containing the time natives are to work the time natives have worked the wages paid to natives and such other detail as may be expedient;
- (c) All other matters regarding the care and treatment of natives.

SCHEDULES.

Schedule A. Section 13.

SCHEDULE A.

RECRUITER'S LICENCE.

Under Section 13 of the *Native Labour Ordinance*, 1941.

Issued to _____, of _____
Place: _____ Date: _____ (Signed)

This Licence is good for one year and may be renewed.

Schedule B. Section 13.

SCHEDULE B.

SHIP'S LICENCE.

Issued under Section 13 of the *Native Labour Ordinance*, 1941.

Name of Ship: _____
Tons: _____
Name of Master: _____
Place: _____ Date: _____ (Signed)

This Licence is good for one year and may be renewed.

Schedule C. Section 14.

SCHEDULE C.

GUARANTEE BY RECRUITER.

Under Section 14 of the *Native Labour Ordinance*, 1941.

Whereas _____, of _____, has applied for a recruiting licence, and it is necessary that the said _____ should give security before such a licence can issue to him: Now, therefore, we, the said _____ and _____, of _____, hereby bind ourselves jointly and severally

(27) No regulations have been made pursuant to Section 132. See, however, the *Native Labour Regulations*, 1933 (made under the repealed *Native Labour Ordinance*, 1911-1933, and continued in force by the present Section 2(2)), printed on p. 3394.

Native Labour Ordinance, 1941.

to the Crown in the sum of Fifty pounds (£50) as security for the due observance by the said _____ and his representatives of the provisions of the *Native Labour Ordinance, 1941*, that apply to persons to whom recruiting licences have been issued. And we declare that the non-observance by the said _____ or by any of his representatives of any of the aforesaid provisions shall be deemed to be a breach by us of this guarantee. And we declare that this guarantee shall apply to and cover any recruiting licence or licences that may be at any time issued to the said _____

Dated at _____ this _____ day of _____, 19____.

Signed by the said _____ in the presence of _____ }

SCHEDULE D.

Schedule D.
Section 26.

STATEMENT.

Under Section 26 of the *Native Labour Ordinance, 1941.*

I, _____, of _____, in the Territory of Papua state as follows:—

The Schedule hereto contains true particulars of the names of certain natives recruited [by me or by _____, a native assistant in my employ, or by _____ an unlicensed person acting as my agent or by me, a European overseer in the regular employment of _____ and under his written authority] and of the date on and place at which they were recruited and of the particulars of the names of their villages and of the employment for which they were recruited.

SCHEDULE.

Name of Native.	Native's Village and Division.	Period for which Engaged.	Rate of Pay.	At what to be Employed.	Place where to be Employed.	Date on which Recruited.	Place where Recruited.

Dated at _____ this _____ day of _____, 19____.

(Signed)
 Licensed Recruiter (or)
 Employer (or)
 European Overseer for

SCHEDULE E.

Schedule E.
Section 27.

PAPUA.

CONTRACT OF SERVICE NO. _____ *

Under Section 27 of the *Native Labour Ordinance, 1941.*

Statement No. : _____ Date Recruited: _____ † Name of Recruiter: _____
 Name of Employer: _____ Residence: _____ Occupation: _____

Name of Guarantor or nature of Security taken: _____

Form of Guarantee, Schedule G, Form: _____

‡ Office of Lodgement of Guarantee: _____

‡ Distinguishing No. of Guarantee, No. : _____

Name of Interpreter: _____

No. of Original Contract of Service: (if a Re-engagement). *Fees on Receipt No.*

NATIVES—

Native's Name.	Native's Signature.	Home of Native (Village and District).	Period for which Native Engaged.	Rate of Wages to be paid Native per Month and periods when Wages are Payable.	Nature of Occupation Native to be Employed at.	Places at or Vessels on which Native to Serve.	One Place only at which Native may be Paid off.

The above-named employer hereby undertakes to return the above-named native to his home, as above specified, immediately after the said native has been duly paid off for his services under this Contract.

Dated at this day of , 19
Employer or Agent.

The amount of £ has been deposited with me on account of the above Contract. Receipt No.

Signed by the said Employer and by the said native in my presence
Magistrate, Inspector or Qualified Officer.

* Number of Contract of Service and Name of Station Issuing.

† Show also in this line by which of the particular methods under Sections 15 or 97 of the Ordinance the native was recruited.

‡ To be inserted when Guarantee is in Form 2 of Schedule F.

Schedule F.
Form 1.
Section 32.

SCHEDULE F.

FORM 1.

GUARANTEE.

Under Section 32 of the *Native Labour Ordinance, 1941.*

Whereas on the day of , 19 , a Contract of Service was [or Contracts of Service were] entered into between , of and a certain native [or certain natives] named therein, being Contract of Service No. [or Contracts of Service Nos. to , both inclusive]:

Therefore, we, the said and , of , hereby bind ourselves jointly and severally to the Crown in the sum of as security for the due observance by the said and his representatives of the conditions of such contract [or contracts] and of the provisions of the *Native Labour Ordinance, 1941*, in so far as such provisions govern the relations between the said and the said . And we declare that the non-observance by the said or any of his representatives of any of the aforesaid matters shall be deemed to be a breach by us of this guarantee.

Dated at this day of , 19
Signed by the said in the presence of

Schedule F.
Form 2.
Section 32.

FORM 2.

GUARANTEE.

Under Section 32 of the *Native Labour Ordinance, 1941.*

Office of Lodgment:
Distinguishing No.:

Whereas [intended recruiter] intends to recruit natives for [intended employer's name] of [employer's address] herein called the employer.

Native Labour Ordinance, 1941.

Now, therefore, we, the said employer and [*guarantor's name*] of [*guarantor's address*] hereby bind ourselves jointly and severally to the Crown in the sum of _____ in respect of each of such natives who may be so recruited as security for the due observance by the said employer and his representatives of the conditions of the Contract of Service which may hereafter be entered into by each of such natives with the said employer under the above-mentioned Ordinance, and of the provisions of the said Ordinance in so far as the said provisions govern the relations between the said employer and such natives respectively. And we declare that the non-observance by the said employer or any of his representatives of any of the aforesaid matters shall be deemed to be a breach by us of this guarantee. And we further declare that the Contracts of Service which shall hereafter be entered into between the employer and any natives which shall have reference made therein to the above-mentioned office of lodgement and distinguishing number, and that the natives named in such contracts respectively shall be and be deemed to be for all purposes of this guarantee, the Contracts of Service for the due performance of which, and the natives in respect of whom this guarantee is given.

Dated at _____ this _____ day of _____, 19 _____.

Signed by the said Employer }
 and by the said _____ }
 in the presence of _____ }
 Resident Magistrate (or) Assistant Resident Magistrate.

SCHEDULE G.

Schedule G.
Section 42.

PERMIT.

Under Section 42 of the *Native Labour Ordinance, 1941.*

Name of Person to whom Permit is Issued.	Name of Native.	Residence of Native.	Name of Vessel in which Native is to be Removed.	Place to which Native is to be Removed.	Purpose for which Native is to be Removed.

Dated at _____ this _____ day of _____, 19 _____.

Signature of Officer:
Title:

SCHEDULE H.

Schedule H.
Section 45.

PERMIT.

Under Section 45 of the *Native Labour Ordinance, 1941.*

Name of Employer.	Residence or Place of Business of Employer.	Name of Native.	Residence of Native.	Nature of Occupation at which native is to be Employed.	Name of Vessel.	Nature of Security Taken.

The native shall be returned by the employer to _____, in the said Territory.

NATIVES—

SPECIAL CONDITIONS.

[Set out conditions, if any.]

This Permit shall be in force up to and inclusive of the _____ day of _____, 19 _____.

Dated at _____ this _____ day of _____, 19 _____.

Signature of Officer:

Title:

Schedule I.
Section 50.

SCHEDULE I.

PERMIT.

Under Section 50 of the *Native Labour Ordinance*, 1941.

Name of Person to whom Permit is Issued.	Name of Native.	Residence of Native.	Name of Vessel in which Native to be Removed.	Place Without the Territory Native is to Reside in.	Purpose for which Native to be Removed.

SPECIAL CONDITIONS.

[Set out conditions, if any.]

This Permit shall be in force up to and inclusive of the _____ day of _____, 19 _____.

Dated at _____ this _____ day of _____, 19 _____.

Signature of Officer:

Title:

Schedule J.
Section 52.

SCHEDULE J.

PERMIT.

Under Section 52 of the *Native Labour Ordinance*, 1941.

Name of Person to whom Permit is Issued.	Name of Native.	Residence of Native.	Name of Vessel in which Native is to Leave the Territory.	Place or Places Without the Territory Native is to be Sent for the Purpose of Education.

SPECIAL CONDITIONS.

[Set out conditions, if any.]

This Permit shall be in force up to and inclusive of the _____ day of _____, 19 _____.

Dated at _____ this _____ day of _____, 19 _____.

(Signed) Commissioner.

Native Labour Ordinance, 1941.

SCHEDULE K.

Schedule K.
Section 91.

ORDER.

Under Section 91 of the *Native Labour Ordinance, 1941.*

In the Court of Petty Sessions for }
the District. }

TO ALL GAOLERS, POLICE OFFICERS AND CONSTABLES.

Whereas , of , did, on the day of
, 19 , enter into the service of for the period of :
And whereas the said was, on the day of
, 19 , convicted of deserting from such service: You
are therefore hereby ordered to take the said into custody and to
convey him in custody to and there deliver him over to .

Dated at this day of , 19 .
(Signed) Resident Magistrate.