

WESTERN AUSTRALIA.



ANNO QUINTO

EDWARDI SEPTIMI REGIS,

XIV.

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No. 14 of 1905.

AN ACT to make provision for the better protection and care of the Aboriginal inhabitants of Western Australia.

[Reserved, 23rd December, 1905.]

BE it enacted by the King's Most Excellent Majesty; by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the *Aborigines Act, 1905*, and shall come into operation on a day to be fixed by proclamation. Short title.

2. In this Act, unless the context otherwise requires,— Interpretation.

“ Aboriginal institution ” means and includes any mission, reformatory, orphanage, school, home, station, reserve, or other institution for the benefit, protection, or care of the aboriginal or half-caste inhabitants of the State, and in receipt of any annual or other subsidy or grant from the Government.

“ Chief Protector ” means the Chief Protector of Aborigines appointed under this Act.

“ Department ” means the Aborigines Department.

“ District ”

Q., 1897, No. 17, s. 3.

“District” means a magisterial district.

“Half-caste” means any person being the offspring of an aboriginal mother and other than an aboriginal father: Provided that the term “half-caste,” wherever it occurs in this Act, elsewhere than in section three, shall, unless the context otherwise requires, be construed to exclude every half-caste who, under the provisions of the said section, is deemed to be an aboriginal, but shall not apply to quadroons.

“Minister” means the responsible Minister of the Crown charged with the administration of this Act.

“Police officer” means any constable or officer of police.

“Prescribed” means prescribed by this Act or regulations;

“Protector” means a protector of aborigines appointed under this Act, and includes the Chief Protector;

“Regulations” means the regulations for the time being in force under this Act.

“Reserve” means a reserve for aborigines proclaimed under this Act;

“Superintendent” means a superintendent appointed under this Act for any reserve.

Persons deemed to be aborigines.

See Q., 1897, No. 17, s. 4.

Q., 1902, No. 1, s. 2.

**3.** Every person who is—

(a.) an aboriginal inhabitant of Australia; or

(b.) a half-caste who lives with an aboriginal as wife or husband; or

(c.) a half-caste who, otherwise than as wife or husband, habitually lives or associates with aborigines; or

(d.) a half-caste child whose age apparently does not exceed sixteen years,

shall be deemed an aboriginal within the meaning of this Act, and of every Act passed before or after this Act, unless the contrary is expressed.

In this section the term half-caste includes any person born of an aboriginal parent on either side, and the child of any such person.

The Aborigines Department.

61 Vict., No. 5, s. 5.

**4.** There shall be a department under the Minister to be called the Aborigines Department, and to be charged with the duty of promoting the welfare of the aborigines, providing them with food, clothing, medicine and medical attendance, when they would otherwise be destitute, providing for the education of aboriginal children, and generally assisting in the preservation and well-being of the aborigines.

Sum to be placed at the disposal of the department.

See 61 Vict., No. 5, s. 6.

**5.** The Colonial Treasurer shall, in every year, place at the disposal of the department, out of the Consolidated Revenue Fund, a sum of ten thousand pounds, and such further moneys as may be provided by Parliament, to be applied to the purposes of the department.

If

If in any year the whole of the said annual sum is not expended, the unexpended balance shall be retained by the department, and expended in the performance of the duties thereof in any subsequent year.

**6.** It shall be the duty of the department—

- (1.) To apportion, distribute, and apply, as may seem most fit, the moneys by this Act placed at its disposal ;
- (2.) To distribute blankets, clothes, and other relief to the aborigines, at the discretion of the department ;
- (3.) To provide for the custody, maintenance, and education of the children of aborigines ;
- (4.) To provide, as far as practicable, for the supply of medical attendance, medicines, rations, and shelter to sick, aged, and infirm aborigines ;
- (5.) To manage and regulate the use of all reserves set apart for the benefit of aborigines ;
- (6.) To exercise a general supervision and care over all matters affecting the interests and welfare of the aborigines, and to protect them against injustice, imposition, and fraud.

Duties of department.

See 61 Vict., No. 5, s. 7.

**7.** The Governor shall appoint a Chief Protector of Aborigines, and the Minister may from time to time appoint and dismiss fit and proper persons to be protectors, who shall, within the districts respectively assigned to them, have and exercise the powers and duties prescribed.

Protectors may be appointed.

See 61 Vict., No. 5, s. 4 ;

Q., 1897, No. 17, s. 6.

The Chief Protector shall, under the Minister, be responsible for the administration of the department and the execution of this Act throughout the State.

**8.** The Chief Protector shall be the legal guardian of every aboriginal and half-caste child until such child attains the age of sixteen years.

Chief Protector to be guardian.

**9.** Any person who, without the authority, in writing, of a protector, removes or causes to be removed any aboriginal, or a male half-caste under the age of sixteen years, or a female half-caste from one district to another, or to any place beyond the State, shall be guilty of an offence against this Act.

Prohibition of removal of aborigines. See Q., 1897, No. 17, s. 17.

Before such authority is given the person desiring such removal shall enter into a recognisance with a surety or sureties, at the discretion of the protector, in a sum which the protector considers sufficient to defray the expense of the return of such aboriginal or half-caste to the place from which such aboriginal or half-caste is to be removed.

See Q. 1902, No. 1, s. 7.

Every

Every such recognisance shall be in the prescribed form, and shall be taken in duplicate by a protector or police officer, who shall forthwith forward one of the duplicates to the Chief Protector.

A recognisance may be renewed from time to time at the discretion of the Chief Protector.

The protector may, in his discretion, dispense with such recognisance in any particular case.

**Reserves.**

See Q., 1897, No. 17, ss. 7 and 8.

**10.** The Governor may, by proclamation,—

- (1.) Declare any Crown lands to be reserves for aborigines, not exceeding in any one magisterial district an area of two thousand acres;
- (2.) Alter the boundaries of a reserve;
- (3.) Abolish a reserve.

**Superintendents of reserves.**

See Q., 1897, No. 17, s. 7.

**Aborigines may be removed to reserves.**

See Q., 1897, No. 17, s. 9.

**11.** The Governor may appoint fit and proper persons to be superintendents of reserves.

**12.** The Minister may cause any aboriginal to be removed to and kept within the boundaries of a reserve, or to be removed from one reserve or district to another reserve or district, and kept therein.

Any aboriginal who shall refuse to be so removed to or kept within such reserve or district shall be guilty of an offence against this Act.

In every prosecution under this section an averment contained in the complaint that the Minister directed the defendant to be removed to or kept within a reserve or district shall be deemed to be proved in the absence of proof to the contrary.

**Exceptions.**

See Q., 1897, No. 17, s. 10.

**13.** Every aboriginal—

- (a.) who is lawfully employed by any person; or
- (b.) who is the holder of a permit to be absent from a reserve;
- or
- (c.) who is a female lawfully married to and residing with a husband who is not himself an aboriginal; or
- (d.) for whom, in the opinion of the Minister, satisfactory provision is otherwise made,

shall be exempted from the provisions of the last preceding section.

**Persons who are prohibited from entering a reserve.**

See Q., 1897, No. 17, s. 11.

**14.** It shall not be lawful for any person other than an aboriginal to enter or remain, or be within the boundaries of a reserve for any purpose whatsoever, unless he is a superintendent or a person acting under his direction, or a person authorised in that behalf under the regulations.

**Penalty for unlawfully going upon or removing aboriginal from reserve.**

See Q., 1897, No. 17, s. 11.

**15.** Any person who, without lawful authority or excuse,—

- (a.) goes or remains upon a reserve; or
- (b.) removes an aboriginal, or causes, assists, entices, or persuades an aboriginal to remove from a reserve;

shall be guilty of an offence against this Act.

The proof of such lawful authority or excuse shall be upon the person charged.

**16.** Every existing indenture of apprenticeship made under the provisions of the Aborigines Protection Act, 1886, shall, at the expiration of six months from the commencement of this Act, by force of this Act, become cancelled and annulled.

Existing apprenticeships determined.

**17.** It shall not be lawful to employ any aboriginal, or a male half-caste under the age of fourteen years, or a female half-caste, except under permit or permit and agreement.

Aborigines not to be employed without permit.

See Q., 1897, No. 17, ss. 12, 14.

**18.** Every permit—

- (1.) Shall be granted or refused by a protector;
- (2.) May be granted for any period not exceeding twelve months for employment on land, or not exceeding eight months for employment on any ship or boat;
- (3.) May from time to time be renewed;
- (4.) May contain such conditions as the protector considers fit and proper;
- (5.) May, if the protector thinks fit, be granted as a general permit to employ aborigines;
- (6.) May be cancelled at any time by a protector.

Form and duration of permit.

See Q., 1897, No. 17, s. 13, and 1902, No. 1, s. 5.

Such cancellation shall not entitle any employer to claim or recover compensation for the loss of the service of any aboriginal, or to maintain any action in respect of any loss or damage that may be occasioned by such cancellation:

Provided that, on the death of a holder of a permit, the permit shall continue in force for four months thereafter, and shall be deemed to have been granted to his legal personal representative:

Provided also that, whenever a permit shall be granted to any person being the agent of any other person, and the agency shall determine, the permit shall continue in force for four months thereafter, and shall be deemed to be granted to the principal.

**19.** No permit shall be granted allowing any male aboriginal or half-caste under the age of sixteen years, or any female aboriginal or female half-caste to be employed on board of, or in connection with, any ship or boat; and it shall not be lawful to suffer any such aboriginal or half-caste to be upon any ship or boat without the authority in writing of a protector.

Youths and females not allowed on ships.

See Q., 1902, No. 1, s. 10.

**20.** No permit shall be granted allowing any aboriginal or half-caste to be employed on board of or in connection with any ship trading with or voyaging to any place outside the State.

No permit for employment on ocean-going vessels.

**21.** Any person who, contrary to this Act, employs any aboriginal, or a male half-caste under the age of fourteen years, or a female half-caste, or permits or suffers any aboriginal, or a male half-caste under the age of fourteen years, or a female half-caste, to be upon any house, ship, boat, or premises in his occupation or under his control, shall be guilty of an offence against this Act.

Penalty for unlawfully employing or harbouring aborigines.

See Q., 1897, No. 17, s. 14; and Q., 1902, No. 1, s. 4.

**22.**

## Agreements.

See 50 Vict., No. 25,  
s. 18, and Q., 1897,  
No. 17, s. 15.

**22.** (1.) No agreement with an aboriginal, or with a male half-caste under the age of sixteen years, or with a female half-caste, for any service or employment, shall be of any force or validity as against such aboriginal or half-caste unless such agreement—

- (a.) Is witnessed and truly dated by a justice of the peace, a protector, a police officer, or other person authorised by the Minister to attest agreements.
- (b.) Is indorsed by such witness with a certificate that the agreement was fully explained by him to the aboriginal or half-caste, and that he appeared fully to understand the same, to be a free and voluntary agent, and physically fit for the work specified;
- (c.) Is signed or marked by the employer and by the aboriginal or half-caste;
- (d.) Specifies the nature of the service or employment, the period of the service, and conforms in every respect with the particulars specified in the permit;
- (e.) Stipulates for the supply by the employer to the aboriginal or half-caste of substantial, good, and sufficient rations, clothing, and blankets, and also medicines and medical attendance when practicable and necessary; and
- (f.) When the employment is on or in connection with any ship or boat, stipulates that before the expiration of the service agreed upon, the employer shall convey the aboriginal or half-caste, or cause him to be conveyed, to the place or district to which he belongs, which shall be specified in the agreement.

(2.) Where an aboriginal or half-caste proposing to become party to such agreement has, within twelve months of the date of the agreement, been engaged in the pearl-shell fishery, or in any industry which necessitates the conveyance of the aboriginal or half-caste by sea to the scene of such industry, the witness shall satisfy himself, before attesting the agreement, that, during the currency of the engagement of such aboriginal or half-caste, the person who last employed him conveyed him back to the place or district to which he belonged.

Duplicate of agreement to be sent to protector.

**23.** Every agreement under this Act shall be made and indorsed in duplicate, and one of the duplicates shall be filed in the office of the protector. If a justice of the peace or police officer is the attesting witness, he shall forthwith forward one of the duplicates to the protector.

Penalty for false attestation.

See 50 Vict., No. 25, s. 18.

**24.** Any justice of the peace, protector, or police officer who attests any agreement to which any aboriginal or half-caste purports to be a party contrary to the provisions of this Act, or untruly dates any

any such agreement, or indorses thereon any such certificate as aforesaid contrary to the fact, shall forfeit and pay the sum of fifty pounds, together with full costs of suit, to any person who shall first sue for the same in any court of competent jurisdiction.

**25.** Any aboriginal who, without reasonable cause, shall neglect or refuse to enter upon or commence his service, or shall absent himself from his service, or shall refuse or neglect to work in the capacity in which he has been engaged, or shall desert or quit his work without the consent of his employer, or shall commit any other breach of his agreement, shall be guilty of an offence against this Act.

Penalty for breach of agreement by aboriginal.  
55 Vict., No. 25, s. 2.

**26.** Any employer of an aboriginal who shall commit any breach of an agreement under this Act shall be guilty of an offence against this Act.

Penalty for breach of agreement by employer.

**27.** Every aboriginal, every male half-caste under the age of sixteen years, and every female half-caste, employed by any person shall be under the supervision of a protector or police officer.

Aborigines in employment to be subject to supervision.  
See Q., 1897, No. 17, s. 16.

**28.** Every employer shall—

- (1.) Produce to a protector or police officer, on demand, the permit, or permit and agreement as the case may be, under which any aboriginal or half-caste is employed; and
- (2.) Allow a protector or police officer to have access to any aboriginal or half-caste employed, or to any house, ship, boat, or premises where such aboriginal or half-caste may happen to be, at all reasonable times, for such inspection and inquiry as he may deem necessary.

Permit to be produced and access to be given.  
See Q., 1897, No. 17, s. 16.

**29.** An agreement may be cancelled at any time by a protector; and such cancellation shall not entitle an employer to claim or recover compensation for the loss of service of the aboriginal or half-caste, or to maintain any action in respect of any loss or damage occasioned thereby.

Agreements may be cancelled.

**30.** The employer of any aboriginal or half-caste engaged under an agreement made under this Act shall grant to the aboriginal or half-caste, at his request, at some time during the term of service, leave to absent himself from his work or service under such agreement—

Leave of absence.  
50 Vict., No. 25, s. 22.

- (1.) For not less than fourteen days, if the agreement is for a term of three months and not exceeding six months;
- (2.) For not less than thirty days, if the agreement is for a term exceeding six months.

**31.**

Penalty for neglect to convey aboriginal back to place agreed upon.

See 50 Vict., No. 25, s. 9.

**31.** Any master of a ship or vessel or other person who shall neglect or refuse to convey or cause to be conveyed any aboriginal or half-caste who has been party to any agreement with him back, before the expiration of such agreement, to the place or district to which such aboriginal or half-caste belongs, shall be guilty of an offence against this Act.

51 Vict., No. 18, s. 4.

Any person convicted of such offence may be ordered, at his own expense, to convey such aboriginal or half-caste back to the place or district to which he belongs, by such route as to the justices shall seem fit, or may be required to pay such sum as to the justices shall seem fit for the purpose of paying for the conveyance of such aboriginal or half-caste, and such sum shall, for all purposes, be and be deemed to be added to the fine imposed so as to become a part thereof.

Death of employed aborigines.

See Q., 1902, No. 1, s. 11.

**32.** If an aboriginal or half-caste dies during the period of his employment, the employer, forthwith after the death, or if the deceased was employed on board of any ship, vessel, or boat, forthwith after the arrival of such ship, vessel, or boat at any port in Western Australia, shall transmit to the Chief Protector notice in writing of such death under the hand of the employer, and containing such particulars as will enable the deceased to be identified.

Protector to manage property of aborigines.

Q. 1902, No. 1, s. 13.

**33.** The Chief Protector may undertake the general care, protection, and management of the property of any aboriginal or half-caste, and may—

- (1.) Take possession of, retain, sell, or dispose of any such property, whether real or personal ;
- (2.) In his own name sue for, recover, or receive any money or other property due or belonging to or held in trust for the benefit of an aboriginal or half-caste, or damages for any conversion of or injury to any such property ;
- (3.) Exercise in the name of an aboriginal or half-caste any power which the aboriginal or half-caste might exercise for his own benefit ;
- (4.) In the name and on behalf of an aboriginal or half-caste, appoint any person to act as attorney or agent for any purpose connected with the property of the aboriginal or half-caste :

Provided that the powers conferred by this section shall not be exercised without the consent of the aboriginal or half-caste, except so far as may be necessary to provide for the due preservation of such property.

The Chief Protector shall keep proper records and accounts of all moneys and other property, and the proceeds thereof received or dealt



dealt with by him under the provisions of this section, and shall, for such purpose, be deemed to be a public accountant within the meaning of the Audit Act, 1904.

**34.** (1.) Whenever a half-caste child whose age does not exceed fourteen years is being maintained in an aboriginal institution or at the cost of the Government, a protector may, with the approval of the Minister, apply to a justice of the peace for a summons to be served on the alleged father of such child for the purpose of obtaining contribution to the support of the child.

Father liable to contribute to support of half-caste child.

See Q., 1902, No. 1, s. 19.

(2.) On the return of such summons, any two justices of the peace shall proceed to hear the matter of the complaint, and if the paternity of the defendant and his ability to contribute to the support of such child are proved to the satisfaction of the justices, they may order the defendant to pay such weekly sum (not exceeding ten shillings) for the maintenance of the child as such justices think fit:

Provided that no man shall be taken to be the father of any such child upon the oath of the mother only.

(3.) Any two justices of the peace, on the complaint of any such father or of a protector, while the first or any subsequent order continues in force, may make further inquiry into such father's ability to contribute as aforesaid, and may remit or lessen the amount of the weekly payment that has been adjudged by the last preceding order, or may increase the same, if they see cause so to do, so that the amount shall not in any case exceed the weekly sum hereinbefore mentioned.

(4.) Whenever, after the making of any such order as aforesaid, it is made to appear to any justice of the peace, by a complaint in writing and upon oath, that any weekly sum to be paid in pursuance thereof has not been paid, or that any father named in such order is about to leave Western Australia, or remove from his usual place of residence, without having first notified his intention to the clerk of petty sessions at the court where the order was made, or without having made due provision for the payment of such weekly sum, such justice may, by warrant, cause such father to be brought before him or some other justice to answer the complaint.

(5.) On the return of such warrant the justice of the peace shall proceed to hear the matter of the complaint, and if the same is proved to be true shall proceed to levy or enforce payment of the said weekly sums by distress or imprisonment for any period not exceeding three months.

(6.) All contributions and enforced payments under this section towards the support of a half-caste child shall be paid and expended as the Colonial Treasurer may direct.

**35.** (1.) Any aboriginal in custody under sentence of imprisonment may, by order of the Governor, be employed outside the limits of a prison in such suitable labour in the service of the State

Aboriginal prisoners may be employed outside prison.