

NATIVE ADMINISTRATION.

No. 14 of 1905.

(As amended by No. 42 of 1911,* No. 8 of 1931,† and No. 43 of 1936.‡)

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

Amended by
No. 43 of
1936, s. 3.

[Reserved, 23rd December, 1905.]

[Royal assent proclaimed, 27th April, 1906.]

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 *Native Administration Act, 1905-1936*, and shall come into operation on a day to be fixed by proclamation.§

Short title.
Amended by
No. 43 of
1936, s. 35.

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

Interpreta-
tion.

“Native institution” means and includes any mission, reformatory, orphanage, school, home, station, reserve, or other institution for the benefit, protection, or care of the native inhabitants of the State declared by proclamation to be a native institution for the purposes of this Act.

Amended by
No. 43 of
1936, s. 2
and s. 3.

“Commissioner” means the Commissioner of Native Affairs appointed under this Act.

Amended by
No. 43 of
1936, s. 3.

“Department” means the Department of Native Affairs.

Amended by
No. 43 of
1936, s. 3.

* Assented to 16th February, 1911. † “Firearms and Guns Act, 1931,”
proclaimed to commence 1st January, 1932. ‡ Assented to 11th December, 1936.
‡ Proclaimed to commence 30th April, 1906. See *Government Gazette*, 27th April,
1906.

Native Administration.

Amended by
No. 43 of
1936, s. 2.

“District” means any portion of the State declared by proclamation to be a district for the purpose of this Act.

Inserted by
No. 43 of
1936, s. 2.

“Inspector” means an inspector appointed under this Act.

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

Inserted by
No. 43 of
1936, s. 2.
See 14 of
1905, s. 3.

“Native” means—

- (a) any person of the full blood descended from the original inhabitants of Australia;
- (b) subject to the exceptions stated in this definition any person of less than full blood who is descended from the original inhabitants of Australia or from their full blood descendants, excepting however any person who is—
 - (i) a quadroon under twenty-one years of age who neither associates with or lives substantially after the manner of the class of persons mentioned in paragraph (a) in this definition unless such quadroon is ordered by a magistrate to be classed as a native under this Act;
 - (ii) a quadroon over twenty-one years of age, unless that person is by order of a magistrate ordered to be classed as a native under this Act, or requests that he be classed as a native under this Act; and
 - (iii) a person of less than quadroon blood who was born prior to the 31st day of December, 1936, unless such person expressly applies to be brought under this Act and the Minister consents.

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

“Prescribed” means prescribed by this Act or regulations.

Amended by
No. 43 of
1936, s. 3.

“Protector” means a protector of natives appointed under this Act, and includes the Commissioner.

“Quadroon” means a person who is descended from the full blood original inhabitants of Australia or their full blood descendants but who is only one-fourth of the original full blood.

Inserted by No. 43 of 1936, s. 2.

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

“Reserve” means a reserve for natives proclaimed under this Act.

Amended by No. 43 of 1936, s. 3.

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

3. (1.) Any quadroon over twenty-one years of age may—

Persons of quadroon or less than quadroon blood may in certain cases come under the Act.

(a) on application being made by the Commissioner in the prescribed manner to a magistrate be ordered to be classed as a native under this Act; or

New section inserted by No. 43 of 1936, s. 5.

(b) on his application and with the consent of the Minister be classed as a native under this Act.

See 14 of 1905, s. 3.

(2.) Any person who was born prior to the 31st day of December, 1936, and who is of less than quadroon blood may apply to the Minister to be classed as a native, and may be classed as a native if the Minister consents.

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

The Department of Native Affairs. 61 Vict., No. 5, s. 5.

Amended by No. 43 of 1936, s. 3.

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.

Sum to be placed at the disposal of the department.

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

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.

Duties of
department.

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

Amended by
No. 43 of
1936, s. 3.

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 natives, at the discretion of the department;
 - (3) To provide for the custody, maintenance, and education of the children of natives;
 - (4) To provide, as far as practicable for the supply of medical attendance, medicines, rations, and shelter to sick, aged, and infirm natives;
 - (5) To manage and regulate the use of all reserves set apart for the benefit of natives;
 - (6) To exercise a general supervision and care over all matters affecting the interests and welfare of the natives, and to protect them against injustice, imposition, and fraud.

Protectors
may be
appointed.

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

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

Amended by
No. 43 of
1936, s. 3.

7. The Governor shall appoint a Commissioner of Native Affairs, 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.

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

Added by No.
42 of 1911,
s. 2.

Amended by
No. 43 of
1936, s. 3.

The Governor may appoint any person to be the deputy of the Commissioner, and in that capacity to exercise and discharge all or any of the powers and functions of the Commissioner, whether that officer be absent from or present in the State. But such appointment shall not affect the exercise or discharge by the Commissioner himself of any power or function.

Travelling
inspectors.

Inserted by
No. 43 of
1936, s. 6.

The Governor may appoint such persons as he may think fit to be travelling inspectors, whose duty it shall be in regard to the territories assigned to them to inspect and report to the Commissioner on—

- (a) the condition of the natives generally; and
- (b) the management and conduct of native institutions periodically.

8. The Commissioner shall be the legal guardian of every native child notwithstanding that the child has a parent or other relative living, until such child attains the age of twenty-one years.

Commissioner to be guardian. Amended by No. 42 of 1911, s. 3, and No. 43 of 1936, ss. 3 and 7.

9. Any person who without the authority, in writing, of a protector, removes or causes any native to be removed 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 natives.

Amended by No. 43 of 1936, ss. 3 and 8.

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

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

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 native to the place from which such native is to be removed.

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 Commissioner.

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

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

Provided that this section shall not apply to any male person over twenty-one years of age who is of half blood or less than half blood descent from the original full blood inhabitants of Australia or from their full blood descendants, where such person does not live after the manner of the original full blood inhabitants or their full blood descendants.

Inserted by No. 43 of 1936, s. 8.

10. The Governor may, by proclamation,—

Reserves.

(1) declare any Crown lands to be reserves for natives: provided that not more than two thousand acres of land held under lease or license from the Crown shall be the subject of proclamation hereunder in any one Magisterial district.

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

Amended by No. 42 of 1911, s. 4, and No. 43 of 1936, s. 3.

(2) alter the boundaries of a reserve;

(3) abolish a reserve.

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

Superintendents of reserves.

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

Natives may be removed to reserves.
See Q., 1897, No 17, s. 9.
Amended by No. 43 of 1936, ss. 3 and 9.

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

Any native who shall refuse to be so removed to or kept within such reserve, district, institution, or hospital 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, district, institution, or hospital shall be deemed to be proved in the absence of proof to the contrary.

Exceptions.
See Q., 1897, No. 17, s. 10.
Amended by No. 43 of 1936, s. 3.

13. Every native—

- (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 a native; 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.
Amended by No. 43 of 1936, ss. 3 and 10.

14. It shall not be lawful for any person other than a native 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 an inspector or a protector or a person authorised in that behalf under the regulations.

Penalty for unlawfully going upon or removing native from reserve.
See Q., 1897, No. 17, s. 11.
Amended by No. 43 of 1936, ss. 3 and 11.

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

- (a) goes or remains within the boundaries or confines of a reserve or native institution; or
- (b) removes a native, or causes, assists, entices, or persuades a native to remove from a reserve or native institution; or
- (c) transports or assists a native in or after his removal or escape therefrom,

shall be guilty of an offence against this Act.

Inserted by No. 43 of 1936, s. 11.

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

Any person guilty of an offence under the provisions of this section shall be liable—

Inserted by No. 43 of 1936, s. 11.

- (a) in the case of a first offence, to a penalty not exceeding fifty pounds or to imprisonment with hard labour for six months, or both;
- (b) in the case of a second offence, to a penalty not exceeding one hundred pounds or to imprisonment with hard labour for twelve months, or both;
- (c) in the case of a third or subsequent offence, to a penalty not exceeding two hundred pounds or to imprisonment with hard labour for two years, or both.

16. (a) The Commissioner may authorise some suitable person or persons to examine any natives with a view to ascertaining if they are afflicted with disease.

Compulsory examination of diseased natives, etc.

(b) Any person or persons so authorised may use such means as may be necessary to compel any native to undergo examination accordingly and to submit to such treatment as may be necessary in the circumstances.

Inserted by No. 43 of 1936, s. 12.

(c) Any native who refuses to submit himself to examination or treatment, or who obstructs any person acting under any such authority commits an offence against this Act.

17. 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.

Formerly s. 16, 1913 reprint.

18. (1.) It shall not be lawful to employ any native, except under permit or permit and agreement:

Natives not to be employed without permit.

Provided that this section shall not apply to any male person over twenty-one years of age who is of half blood or less than half blood descent from the original full blood inhabitants of Australia or from their full blood descendants, where such person does not live after the manner of the original full blood inhabitants or their full blood descendants.

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

Amended by No. 43 of 1936, ss. 3 and 13.

Formerly s. 17, 1913 reprint.

Inserted by
No. 43 of
1936, s. 13.

(2.) In this section "to employ" means not only to employ as a servant, but also includes the act of engagement under a contract to perform work or services, notwithstanding that the relationship is not that of master and servant.

Inserted by
No. 43 of
1936, s. 13.

(3.) Every agreement or permit and agreement shall be in accordance with the prescribed form.

Form and
duration of
permit.

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

Amended by
No. 43 of
1936, ss. 3
and 14.

Formerly s.
18, 1913 re-
print.

19. Every permit—

- (1) shall be granted or refused by a protector or inspector;
- (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 or inspector considers fit and proper;
- (5) may, if the protector or inspector thinks fit, be granted as a general permit to employ natives;
- (6) may be cancelled at any time by a protector or inspector.

Such cancellation shall not entitle any employer to claim or recover compensation for the loss of the service of any native, 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.

Added by No.
42 of 1911,
s. 3.

Provided also that no protector or inspector shall, without permission of the Commissioner, grant any permit to himself, or to any person who is his principal or agent, or by whom he is employed or whom he employs.

Provided also that no permit granted by the Commissioner shall be cancelled except by the Commissioner or the Minister.

Provided further, that any person aggrieved by the refusal to grant, or by a cancellation of a permit, may appeal to a magistrate in the magisterial district in which the permit was formerly exercised. Such appeal shall be in accordance with regulations, which may define the time for appealing and the procedure to be followed.

For the purpose of this proviso an application for a permit shall be deemed to have been refused unless it is granted within three months after the time when application is made for the permit to the Commissioner.

Inserted by
No. 43 of
1936, s. 14.

20. No permit shall be granted allowing any male native under the age of sixteen years or any female native to be employed on board of or in connection with any ship or boat.

Youths and females not allowed on ships.
See Q., 1902, No. 1, s. 10.
Amended by No. 42 of 1911, s. 6, and No. 43 of 1936, s. 15.
Formerly s. 19, 1913 re-print.

21. No permit shall be granted allowing any native 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.
Amended by No. 43 of 1936, s. 3.
Formerly s. 20, 1913 re-print.

22. Any person who without the authority in writing of a protector or inspector, or without the authority of a permit under this Act, permits or suffers any native to be upon or in any house, ship, boat, camp, or other place in his occupation shall be guilty of an offence under this Act:

Penalty for unlawfully employing or harbouring natives.
See Q., 1897, No. 17, s. 14; and Q., 1902, No. 1, s. 4.
Inserted by No. 42 of 1911, s. 7, and amended by No. 43 of 1936, s. 16.
Formerly s. 21, 1913 re-print.

Provided that this section shall not apply to any native who is a male person over twenty-one years of age who is of half blood or less than half blood descent from the original full blood inhabitants of Australia or from their full blood descendants, where such person does not live after the manner of the original full blood inhabitants or their full blood descendants.

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

Amended by
No. 43 of
1936, ss. 3
and 17.

Formerly s.
22, 1913 re-
print.

23. (1.) No agreement with a native for any service or employment shall be of any force or validity as against such native 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 native, 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 native;
- (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 native 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 native, or cause him to be conveyed, to the place or district to which he belongs, which shall be specified in the agreement.

(2.) Where a native 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 native 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 native, the person who last employed him conveyed him back to the place or district to which he belonged.

(3.) Provided that this section shall not apply to any male person over twenty-one years of age who is of half blood or less than half blood descent from the original

Inserted by
No. 43 of
1936, s. 17.

full blood inhabitants of Australia or from their full blood descendants, where such person does not live after the manner of the original full blood inhabitants or their full blood descendants.

24. 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.

Duplicate of agreement to be sent to protector.
Formerly s. 23, 1913 re-print.

25. Any justice of the peace, protector, or police officer who attests any agreement to which any native purports to be a party contrary to the provisions of this Act, or untruly dates 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.

Penalty for false attestation.
See 50 Vict., No. 25, s. 18.
Amended by No. 43 of 1936, s. 3.
Formerly s. 24, 1913 re-print.

26. Any native 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 native.
55 Vict., No. 25, s. 2.
Amended by No. 43 of 1936, s. 3.
Formerly s. 25, 1913 re-print.

27. Any employer of a native 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.
Amended by No. 43 of 1936, s. 3.
Formerly s. 26, 1913 re-print.

28. Every native employed by any person shall be under the supervision of a protector or police officer.

Natives in employment to be subject to supervision.
See Q., 1897, No. 17, s. 16.
Amended by No. 43 of 1936, ss. 3 and 18.
Formerly s. 27, 1913 re-print.