

Heading amended by 14, 1939, s. 42.

Inspection by protector, etc. 1048, 1911, s. 27.

Amended by 14, 1939, ss. 6, 25, 42.

Employment of Aborigines.

27. Every person shall allow any member of the board, protector, or member of the police force to have access to any aborigine employed by such person, and to enter any house, vessel, boat, or premises where such aborigine is or is employed, at all reasonable times, for the purposes of inspection and inquiry.

Enticing to leave employment. 1048, 1911, s. 28.

Amended by 14, 1939, ss. 6, 42.

Death in employment. 1048, 1911, s. 29.

Amended by 14, 1939, ss. 6, 26, 42.

28. Any person who entices or persuades any aborigine to leave his or her lawful employment shall be guilty of an offence against this Act.

29. If an aborigine dies whilst in the service of any person, such person shall forthwith, after the death, or, if the deceased was employed on any vessel or boat, forthwith after the arrival of such vessel or boat at any port in the State, transmit to the nearest protector, if practicable, or, if not, then to the board, notice of the death in writing signed by such person; and shall forward to such protector or to the board any wages due to the deceased, and any moneys in the possession of the deceased at the time of his death.

Heading amended by 14, 1939, s. 42.

Property in blankets, etc., issued to aborigines. 1048, 1911, s. 30.

Amended by 14, 1939, ss. 27, 42.

Blankets, Etc., supplied to Aborigines.

30. (1) All blankets, bedding, clothing, and other articles or property issued by or under the direction of the board to any aborigine or aborigines shall be and remain the property of His Majesty.

(2) Any aborigine receiving any such blanket or other article or property who sells or otherwise disposes of the same without the sanction of the board, and any person who, without such sanction, takes, whether by purchase or otherwise, or is found in possession of, any such blanket or other article or property, shall be guilty of an offence against this Act.

Aboriginal Camps and Prohibited Areas.

Aborigines camping in townships. 1048, 1911, s. 31.

Amended by 14, 1939, ss. 6, 28, 42.

31. (1) If at any time the board or a protector thinks it necessary so to do, the board or protector may order and cause any aborigines who are camped, or are about to camp, within the limits of or near any municipality, town, or township, to remove their camp or proposed camp to such distance from such municipality, town, or township as the board or protector directs; and all members of the police force shall assist the board or protector in carrying out the provision of this section.

(2) Any aborigine who neglects or refuses to obey such order shall be guilty of an offence against this Act.

32. (1) Any justice or member of the police force may order any aborigine found loitering in any municipality, town, or township, or being therein and not decently clothed, forthwith to leave such municipality, town, or township.

Loitering in townships.
1048, 1911, s. 32.
Amended by 14, 1939, ss. 6, 42.

(2) Any aborigine who neglects or refuses to obey such order shall be guilty of an offence against this Act.

33. (1) The Governor may by proclamation, whenever in the interest of aborigines he thinks fit, declare any municipality, town, township, or other place to be an area in which it shall not be lawful for aborigines, not in lawful employment, to be or remain.

Prohibited areas.
1048, 1911, s. 23.
Subsec. (1) amended by 14, 1939, ss. 6, 42.

(1a) The Governor may by proclamation revoke or vary any such proclamation.

Inserted by 14, 1939, s. 29 (a).

(2) Every aborigine who, after warning, given in writing or verbally, enters or is found within such area without the permission in writing of a member of the board, protector or member of the police force shall be guilty of an offence against this Act.

Amended by 14, 1939, ss. 29 (b), 42.

Female Aborigines in Male Attire.

34. If any female aborigine is found dressed in male attire and in the company of any male person other than an aborigine, she and the person in whose company she is so found shall each be guilty of an offence against this Act.

Heading amended by 14, 1939, s. 42.
Female aborigines in male attire.
1048, 1911, s. 34.

Amended by 14, 1939, ss. 6, 42.

Offences against Female Aborigines.

34a. Any male person, other than an aborigine, who, not being lawfully married to the female aborigine (proof whereof shall lie upon the person charged)—

Penalties for offences against female aborigines.

(a) habitually consorts with a female aborigine ; or

(b) keeps a female aborigine as his mistress ; or

(c) has carnal knowledge of a female aborigine,

shall be guilty of an offence against this Act.

Inserted by 14, 1939, s. 30.

Curatorship of Aborigines' Estates

35. (1) The board may undertake the general care, protection, and management of the property of any aborigine, and may—

Heading amended by 14, 1939, s. 42.

(a) take possession of, retain, sell, or dispose of any such property, whether real or personal, and on any sale or disposition as aforesaid a valid title to the property shall pass :

Appointment of board as curator of aborigines' estates.

1048, 1911, s. 35.

Amended by 14, 1939, ss. 6, 31, 42.

- (b) in its corporate name sue for, recover, or receive any money or other property due or belonging to or held in trust for the benefit of any aborigine, or damages for any conversion of or injury to any such property :
- (c) exercise, in the name of any aborigine, any power which the aborigine might exercise for his own benefit :
- (d) in the name and on behalf of an aborigine, appoint any person to act as attorney or agent for any purpose connected with the property of such aborigine :

Provided that the powers conferred by this section shall not be exercised without the consent of the aborigine or unless upon the order of a special magistrate, which order a special magistrate may make in any case in which he is of opinion that for the protection of or to conserve the interests of the aborigine the order should be made.

(2) The board shall keep proper records and accounts of all moneys and other property, and the proceeds thereof, received or dealt with by the board under the provisions of this section ; and such accounts shall be audited by the Auditor-General who shall have and exercise, in respect of such records, accounts, moneys, and other property, and the persons dealing therewith, the same powers as are vested in the Auditor-General in respect of the public revenue by the Audit Act, 1921.

Heading amended by 14, 1939, s. 6.

Contribution to maintenance of aboriginal child. 1048, 1911, s. 36.

Amended by 14, 1939, ss. 6, 32.

Maintenance of Aboriginal Children.

36. (1) Whenever an aboriginal child who is not of the full blood descended from the original inhabitants of Australia and whose age does not exceed eighteen years is being maintained at any aboriginal institution, or at the cost of the Government of the State, the secretary or a protector may apply to a justice for a summons to be served on the alleged father of such child to show cause why he should not contribute towards the support of such child.

(2) On the return of such summons any court of summary jurisdiction 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 the child are proved to the satisfaction of the court, the court may order the defendant to pay such weekly sum, not exceeding ten shillings, for the maintenance of such child as the court think fit : Provided that no person shall be taken to be the father of such child unless the evidence of the mother be corroborated in some material particular.

(3) Any court of summary jurisdiction, on the complaint of any such father or of the secretary or 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 to do so, but so that the amount shall not in any case exceed the weekly sum of ten shillings.

(4) Whenever, after the making of such order as aforesaid, it is made to appear to any justice, by a complaint in writing and upon oath, that any weekly sum or sums to be paid in pursuance of such order has or have not been paid, or that the father named in such order is about to leave the State, or to remove from his usual place of residence, without having first notified his intention to the protector for the district in which such usual place of residence is situated, or to the board, or without having made due provision for the payment of such weekly sums, such justice may, by warrant under his hand, cause such father to be brought before a court of summary jurisdiction to answer the complaint.

(5) On the return of such warrant the court shall proceed to hear the matter of the complaint, and, if the same is to the satisfaction of the court shown to be true, shall proceed to levy or enforce payment of the weekly sums then due by distress or imprisonment for any term not exceeding three months, and may also order such father to make such provision for the payment of all such weekly sums thereafter to become due as the court deems sufficient.

(6) If after such order to make provision has been made such father leaves, or attempts to leave the State, or removes, or attempts to remove, from his usual place of residence, without having made such provision, he shall be guilty of an offence against this Act.

(7) All contributions and enforced payments under this section towards the support of an aboriginal child shall be paid and expended as the Treasurer of the State directs.

Training and Control of Aboriginal Children.

37. In the next three succeeding sections "aboriginal child" means every person who is under the age of eighteen years, and who—

- (a) is an aborigine ; and
- (b) in the opinion of the board, ought to be dealt with under the next three succeeding sections.

N

Application of sections 38 to 40 to children. Substituted by 14, 1939, s. 6.

Power of board to place aboriginal child under control of Children's Welfare and Public Relief Board.

1565, 1923, s. 6.

Amended by 14, 1939, s. 33.

38. (1) The board may, with the approval of the Children's Welfare and Public Relief Board constituted under the Maintenance Act, 1926, commit any aboriginal child to any institution within the meaning of the Maintenance Act, 1926, under the control of the Children's Welfare and Public Relief Board, to be there detained or otherwise dealt with under the said Act until such child attains the age of eighteen years.

(2) Such approval and commitment shall be in writing in the form of the transfer of control contained in the second schedule, or in a form to the like effect.

Effect of execution of transfer of control.

1565, 1923, s. 7.

Amended by 14, 1939, s. 34.

39. (1) Upon the execution of the said transfer of control with respect to any aboriginal child, such child shall become a State child within the meaning of the Maintenance Act, 1926, and all the provisions of the said Act shall apply to and in respect of such child as if such child were a neglected child committed under the said Act to the institution specified in the said transfer, and as if the said transfer were the mandate issued under the said Act for the taking of such child to such institution and for the detention of such child until such child attains the age of eighteen years, subject to the said Act.

(2) Nothing in this Act shall be so construed as to derogate from the power of the Governor, upon the recommendation of the Children's Welfare and Public Relief Board, to order that the period of supervision of any female aboriginal child shall be extended until such child attains the age of twenty-one years, or for any shorter period.

Condition before transfer.

1565, 1923, s. 8

Amended by 14, 1939, s. 35.

40. Unless the board otherwise directs with respect to any particular aboriginal child, the provisions of sections 37, 38, and 39 shall apply only to—

(a) legitimate aboriginal children who have either—

(i.) obtained a qualifying certificate within the meaning of the Education Act, 1915; or

(ii.) attained the age of fourteen years; and

(b) illegitimate aboriginal children who, irrespective of their age are, in the opinion of the board and the Children's Welfare and Public Relief Board, neglected or otherwise proper persons to be dealt with under this Act.

Attendance at school.

Inserted by 14, 1939, s. 36.

40a. (1) This section shall apply to every aboriginal child above the age of fourteen years and under the age of sixteen years, who resides at any aboriginal institution.

(2) The parent of every child to whom this section applies who fails to cause the child to attend at a school on every occasion when the school is open for instruction shall be guilty of an offence against this Act and liable to a penalty not exceeding five shillings unless the superintendent of the institution certifies in writing that—

- (a) the child had obtained suitable employment and was engaged in that employment during the occasion when the child was absent ; or
- (b) the child failed to attend because of sickness, infirmity, or any other similar reason ; or
- (c) the child's absence was justified by any other reason ; or
- (d) the child was absent with the consent of the superintendent.

(3) The provisions of this section are in addition to and not in substitution for any provisions of the Education Act, 1915-1935.

Accounts of Department.

41. (1) The secretary shall cause accounts to be kept of all moneys received and expended by, and all assets and liabilities of the board, and such other accounts and records (if any) as are prescribed.

Accounts of the board and audit.
1048, 1911, s. 37.

Amended by 14, 1939, s. 37.

(2) The accounts of the board shall once at least in every year, and also whenever the Governor directs, be audited by the Auditor-General.

(3) The Auditor-General shall, in respect of such accounts and audit, have all the powers conferred on him by the Audit Act, 1921.

Regulations.

42. (1) The Governor may on the recommendation of the board make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are contemplated, required, or permitted to be prescribed, or which may be necessary or convenient to be prescribed for the effectual carrying out of this Act, including regulations for the following, amongst other purposes :—

Power of Governor to make regulations.
1048, 1911, s. 38.

Amended by 14, 1939, ss. 6, 38, 42.

- 1. Prescribing the duties of protectors and superintendents, and any other persons appointed or employed under this Act :

S. 42. BRAY v. MILERA (1935) S.A.S.R. 210. Regulations empowering the chief protector, in certain cases, to prohibit an aborigine from being within an institution held valid.

Paras. Ia.
and Ib. inserted
by 14, 1939,
s. 38 (b).

- ia. Regulating the meetings and proceedings of the board :
- ib. Prescribing the time and manner of making appeals under section 11a. and any other matter relating to such appeals :
- ii. Providing for the care, custody, and education of the children of aborigines :
- iii. Enabling any aboriginal child to be sent to and detained in an aboriginal institution or industrial school :
- iv. For the control, care, and education of aborigines in aboriginal institutions and for the supervision of such institutions :
- v. Prescribing the conditions on which aboriginal children may be apprenticed to or placed in service with suitable people :
- vi. Prohibiting the apprenticing or placing in service of aboriginal children to or with persons of specified trades, or businesses, or races :
- vii. Prescribing the conditions on which any aboriginal prisoner may be placed under the custody of any officer or servant of the State, and for the employment of aboriginal prisoners undergoing sentences of imprisonment, with or without hard labour :
- viii. Providing for the control of aborigines residing upon a reserve, and for apportioning amongst them, or for their benefit, the net produce of their labour :
- ix. For the maintenance of discipline and good order upon a reserve :
- x. Authorising entry upon a reserve by specified persons or classes of persons for specified objects, and the conditions under which such persons may enter or remain on a reserve, and providing for the revocation of such authority in any cases :
- xi. For the control of the receipt and payment of money, the keeping of accounts and records, expenditure of money, and all matters pertaining to the accounts and records of the board :
- xii. Regulating the exercise and discharge of all or any of the powers, duties, and functions of the board :
- xiii. Imposing, and authorising a protector to inflict, summary punishment by way of imprisonment, not exceeding fourteen days, upon aborigines living upon a reserve or within the district under his

charge, who, in the judgment of such protector, are guilty of any crime, serious misconduct, neglect of duty, gross insubordination, or wilful breach of any regulation.

(2) Regulations so made may impose penalties for the breach of the same or other regulations, not exceeding for any one offence the sum of twenty-five pounds, or imprisonment for any term not exceeding three months.

Obstructing Officers.

43. Any person who obstructs or hinders any member of the board, the secretary, any protector, superintendent, member of the police force, medical practitioner, surgeon in charge of a lock-hospital, or other person in the exercise or execution of any power or duty under this Act, or in carrying out any provision of this Act, shall be guilty of an offence against this Act.

Obstructing officers.
1048, 1911, s. 40.
Amended by 14, 1939, n. 89.

Legal Proceedings and Penalties.

44. Any member of the police force may arrest without warrant any person whom he has just cause to suspect of having committed or being about to commit any offence against this Act.

Arrest.
1048, 1911, s. 41.

45. It shall not be obligatory upon any member of the police force to serve any summons, or to execute any warrant of arrest, against an aborigine in respect of any offence against this Act beyond a distance of fifty miles from the place where such summons or warrant was issued, except when specially so directed by a special magistrate.

Service of summons, etc.
1048, 1911, s. 42.
Amended by 14, 1939, n. 6, 42.

46. At the hearing of any proceedings in respect of an offence against this Act the court may permit any person to address the court and examine and cross-examine witnesses on behalf of any aborigine.

Person appearing on behalf of aborigines.
1048, 1911, s. 43.
Amended by 14, 1939, ss. 6, 42.

47. In any proceedings for an offence against this Act, the allegation in the complaint that any person named or referred to therein is an aborigine, or is of or under an age specified therein, or the reference in the complaint to such person as an aborigine, or as being of or under an age specified therein, shall be sufficient evidence of the truth of such allegation or reference, unless the contrary is shown to the satisfaction of the court.

Presumption as to person being aborigine.
1048, 1911, s. 44.
Amended by 14, 1939, n. 6, 42.

Power of tribunal to determine on own opinion whether aborigine, and as to age.

1048, 1911, s. 45.

Amended by 14, 1939, ss. 6, 42.

48. In any legal proceedings or inquiry, whether under this Act or otherwise, if the court, judge, coroner, special magistrate, justice, or justices do not consider that there is sufficient evidence to determine the question whether a person concerned in or in any way connected with the proceedings or inquiry is or is not an aborigine, or whether, being or being determined to be an aborigine, such person is or is not of or under a specified age, such court, judge, coroner, special magistrate, justice, or justices, having seen such person, may determine the question according to his or their own opinion.

Penalty for offences against Act.

1048, 1911, s. 46.

49. Any person who in any way contravenes any provision of this Act, whether by act or omission, shall be guilty of an offence against this Act, and any person convicted of an offence against this Act shall, except in cases where a different penalty is specifically provided, be liable to a penalty not exceeding fifty pounds, or to imprisonment for any period not exceeding six months.

Proceedings for offences.

1048, 1911, s. 47.

50. All proceedings for offences against this Act shall be disposed of summarily.

Moneys to be provided by Parliament.

1048, 1911, s. 50.

51. The moneys required for any purpose of this Act shall be paid out of moneys provided by Parliament for the purposes of this Act.

Repeal of regulations.

Inserted by 14, 1939, s. 40.

52. The regulations relating to the Advisory Council of Aborigines made under The Aborigines Act, 1911, on the twenty-fourth day of January, nineteen hundred and eighteen, the sixth day of May, nineteen hundred and twenty-five, and the eighth day of March, nineteen hundred and thirty-three, are hereby repealed.

s. 48. AMESBURY v. COPELAND (1928) S.A.S.R. 485. Person determined by the court to be an aborigine upon examination by the court.

THE FIRST SCHEDULE.

Section 2.

Acts Repealed.

Number of Act.	Short Title.
No. 1048 of 1911	The Aborigines Act, 1911
No. 1565 of 1923	Aborigines (Training of Children) Act, 1923

THE SECOND SCHEDULE.

Section 38.
Amended by
14, 1989, s. 41.

TRANSFER OF CONTROL OF ABORIGINAL CHILD FROM THE ABORIGINES PROTECTION BOARD TO THE CHILDREN'S WELFARE AND PUBLIC RELIEF BOARD.

To _____, Esquire, Commissioner of Police, and all constables in the State of South Australia, and to the Superintendent (*or Matron*) of the Industrial School at Magill [*or other institution, as the case may be*], in the said State :

Whereas the Aborigines Protection Board is desirous of committing _____, a child of whom he is the legal guardian, to the institution hereafter mentioned, being an institution under the control of the Children's Welfare and Public Relief Board, constituted under the Maintenance Act, 1926, to be there detained or otherwise dealt with as a neglected child under the said Act, until the said child attains the age of eighteen years : And whereas the Children's Welfare and Public Relief Board has approved of the said child being committed as aforesaid, and whereas the said child is of the age of _____ years and _____ months, and of the _____ religion : Now therefore the Aborigines Protection Board with the approval of the said Children's Welfare and Public Relief Board (which approval the said board hereby gives) do hereby commit the said child to the Industrial School at Magill [*or other institution*], to be there detained or otherwise dealt with as a neglected child under the Maintenance Act, 1926, until he (*or she*) attains the age of eighteen years :

These are therefore to require you, to whom this transfer of control is directed, to take the said child to the said institution and there to deliver him (*or her*) to the Superintendent (*or Matron*) thereof, together with the duplicate of this transfer, and the said Superintendent (*or Matron*) is hereby required to receive the said child into the said school, there to be detained or otherwise dealt with as if such child were a neglected child under the Maintenance Act, 1926, until he (*or she*) attains the age of eighteen years, unless he (*or she*) shall in the meantime be discharged in due course of law.

In witness whereof the seal of the Aborigines Protection Board has been hereunto affixed and the seal of the Children's Welfare and Public Relief Board has been hereunto affixed.

The seal of the Aborigines Protection Board was here-
unto affixed on the _____ day of _____
193 in the presence of _____ (L.S.)
.....Chairman (*or Deputy Chairman*).
.....Member of the Board.

The seal of the Children's Welfare and Public Relief Board was hereunto affixed on the _____ day of _____
193 in the presence of _____ (L.S.)
.....Chairman.
.....Member of the Board.

Acts of the Parliament of South Australia [electronic resource]

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