

(2) The Governor in Council may from time to time, during the continuance in force of this Act, by Proclamation continue the Act or any provision thereof in force for a further period specified therein but not exceeding five years from the date on which the Act or the provision would otherwise have ceased to be in force pursuant to the preceding subsection or, as the case may be, pursuant to a Proclamation made for the purposes of this subsection, and in such case this Act or the provision shall cease to be in force upon the expiration of the period specified in the Proclamation last duly made.

(3) A Proclamation made for the purposes of subsection (2) of this section shall be published in the Gazette and shall, as soon as practicable thereafter, be tabled by the Minister in the Legislative Assembly.

3. Arrangement of Act. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1–6);

PART II—ADMINISTRATION (ss. 7–14);

PART III—RESERVES (ss. 15–35);

PART IV—ASSISTANCE SOUGHT BY ABORIGINES (ss. 36–47);

PART V—GENERAL PROVISIONS (ss. 48–57);

SCHEDULE.

4. Repeals and savings. (1) The Acts and the enactment specified in the schedule to this Act are repealed and, in this Act, the Acts so repealed are referred to as the repealed Acts.

(2) An area that, at the date of commencement of this Act, is a reserve or is an area set apart and reserved for Aborigines for the purposes of the repealed Acts shall be deemed to have been so reserved for the purposes of this Act.

(3) A community for Aborigines under the repealed Acts that exists at the date of commencement of this Act shall be deemed to have been established under this Act.

(4) A person who, at the date of commencement of this Act, holds an appointment for the purposes of the repealed Acts, if the appointment is material to the purposes of this Act, shall, subject to the conditions of his appointment thereto, continue to hold the appointment for the purposes of this Act.

(5) An agreement made by the Director as a condition precedent to or otherwise in connexion with his granting a permit under section 36 of *The Aborigines' and Torres Strait Islanders' Affairs Act of 1965* shall be enforceable by and against any party thereto according to its terms and the making by the Director of such an agreement that provides for participation by the Director or any other person in the profits of a mining venture or mining ventures carried on in a reserve is hereby declared to be and shall be deemed to have always been a valid exercise by the Director of his powers and authorities, notwithstanding the

provisions of *The Mining Acts 1898 to 1967* or of any Act passed in amendment thereof or in substitution therefor, or of any other Act relating to mining.

The provisions of this subsection, as subsequently amended, shall continue in force until they are repealed.

(6) A management of property of an assisted Aborigine undertaken under the repealed Acts and maintained at the date of commencement of this Act shall be deemed to be a management of property under section 37 of this Act and, unless it is terminated in accordance with this Act, shall be maintained in accordance with this Act.

5. Meaning of terms. Save where the contrary appears—

“Aborigine” means a person who is a descendant of an indigenous inhabitant of the Commonwealth of Australia other than the Torres Strait Islands;

“child” includes any person to whom another stands in *loco parentis*;

“Corporation” means the corporation sole preserved, continued in existence and constituted under this Act by the name and style The Corporation of the Director of Aboriginal and Island Affairs;

“Director” means the person who holds the appointment of Director of Aboriginal and Island Affairs and includes a person temporarily discharging the functions of the Director;

“district officer” includes the Director, the Deputy Director, an assistant district officer, and any person duly acting as district officer;

“instrument” means any document, of a testamentary nature or otherwise, whereby property or any interest therein is disposed of or charged or agreed so to be;

“Minister” means the Minister for Conservation, Marine and Aboriginal Affairs or other Minister of the Crown charged with the administration of this Act and includes a person temporarily performing the duties of the Minister;

“premises” means any land and any building or part thereof;

“reserve” means any land reserved and set apart by the Governor in Council for the benefit of Aborigines under the provisions of law relating to Crown lands;

“Stipendiary Magistrate” includes any person duly acting as a Stipendiary Magistrate;

“Torres Strait Island” means an island lying north of 11 degrees South latitude that is part of the State of Queensland.

6. Abolition of status “assisted Aborigine”. On and from the date of commencement of this Act a person who immediately before that date was an assisted Aborigine shall cease to be an assisted Aborigine.

PART II—ADMINISTRATION

7. Director. (1) The Governor in Council may appoint a person to be Director of Aboriginal and Island Affairs.

(2) The Director—

- (a) may exercise such powers and shall perform such functions and duties as are conferred or imposed on him by this Act or as are necessary or expedient to effect the purposes of this Act;
- (b) may of his own motion and shall at the direction of the Minister make or cause to be made such inspections, investigations and inquiries as touch upon matters material to the administration of this Act;
- (c) shall, at least once in each year, inspect every mission conducted by a church, religious body, or secular organization for the benefit of Aborigines;
- (d) shall report fully to the Minister on every inspection, investigation, or inquiry made for the purposes of this Act.

8. Incorporation of Director. (1) The corporation sole constituted under section 10A of *The Aborigines' and Torres Strait Islanders' Affairs Act of 1965* as subsequently amended is preserved, continued in existence and constituted under this Act under the name and style The Corporation of the Director of Aboriginal and Island Affairs.

(2) The Corporation is constituted by the person who at the material time holds the appointment of Director of Aboriginal and Island Affairs and, under the name and style assigned to it by this section,—

- (a) has perpetual succession and a common seal;
- (b) is capable in law of suing and being sued, of compounding or proving in a court of competent jurisdiction all debts or sums of money due to it;
- (c) is capable in law, as trustee or as beneficial owner, of acquiring, holding, letting, leasing, alienating, conveying and otherwise dealing with property, real and personal, situated within or outside the State;
- (d) is capable in law of doing and suffering all such other things as bodies corporate may in law do and suffer.

(3) All courts, judges, justices and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to any writing and, until the contrary is proved, shall presume that it was duly affixed to the writing in question.

(4) With respect to the exercise of any of its powers and with respect to any matter arising in connexion therewith the Corporation has all the privileges, rights and remedies of the Crown.

(5) The provisions of this section, as subsequently amended, shall continue in force until they are repealed.

9. Deputy Director. (1) The Governor in Council may appoint a person to be Deputy Director of Aboriginal and Island Affairs.

(2) The Deputy Director may exercise such powers and shall perform such functions and duties as the Director from time to time directs and, when there is no Director or the Director is not available to exercise and perform his powers and functions, may exercise the powers and shall perform the functions and duties of the Director.

10. Districts and district officers. (1) A part of the State that is a Magistrates Courts District for the purposes of *The Justices Acts 1886 to 1968* shall, on and from the date of commencement of this Act, without further or other appointment, be a district called by the same name for the purposes of this Act.

(2) The Governor in Council may appoint a person to be a district officer or an assistant district officer.

A district officer or an assistant district officer may be appointed in relation to one or more districts.

(3) On and from the date of commencement of this Act unless and until the Governor in Council otherwise appoints—

(a) in relation to the Magistrates Courts District of Somerset, the manager of the Department of Aboriginal and Island Affairs at Thursday Island shall be district officer and each of the persons who hold the appointments Assistant Manager of that department at Thursday Island shall be assistant district officer;

(b) in relation to every other Magistrates Courts District, the person who is clerk of the court for the purposes of *The Justices Acts 1886 to 1968* shall be district officer in relation to the district for which he is such clerk.

(4) A district officer, in respect of his district, may exercise such powers and shall perform such functions and duties as are conferred or imposed on him by this Act or as the Director directs and, subject to the Director, shall be responsible for the administration of this Act within his district.

11. Visiting justices. (1) The Governor in Council may appoint a justice to be a visiting justice in relation to one or more reserves.

(2) At least once in every period of three months the visiting justice shall visit every reserve in relation to which he is so appointed and shall—

(a) inspect all premises in the reserve in which Aborigines are accommodated;

(b) investigate any complaints by Aborigines resident on the reserve concerning the conduct of the reserve;

(c) inspect the record of punishment inflicted on Aborigines on the reserve by any court that functions on the reserve;

(d) hear and determine summarily complaints against Aborigines on the reserve in cases where a court does not function on the reserve;

(e) report to the Director as soon as practicable after the completion of his inspection on—

- (i) the condition of all premises inspected by him on the reserve;
- (ii) sanitation on the reserve;
- (iii) the general condition of Aborigines on the reserve;
- (iv) the conduct of all persons concerned in the management of the reserve;
- (v) such other matters as the Director directs.

12. Power of delegation. (1) The Director may, either generally or otherwise as provided by the instrument of delegation, by writing delegate to any person all or any of his powers, functions and duties except this power of delegation.

(2) A power, function or duty so delegated, if exercised or performed by the delegate, shall be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation may be made subject to such terms and limitations as the Director thinks fit including a requirement that the delegate shall report to the Director upon his exercise or performance of the delegated power, function or duty.

(4) Where pursuant to this Act the exercise or performance of any power, function or duty, the subject of a delegation, is made to depend upon the opinion or belief of the Director in relation to any matter, that power, function or duty may be exercised or performed upon the opinion or belief of the delegate who is considering the exercise or performance of that power, function or duty.

(5) The Director may make such and so many delegations of the same power, function or duty and to such number of persons as he considers necessary or desirable.

(6) A delegation is revocable at the will of the Director and does not prevent the exercise of a power or the performance of a function or duty by him.

13. Conduct of inspections, etc., by Director or his delegate. (1) For the purpose of making an inspection, investigation or inquiry for the purposes of this Act the Director, his delegate, and any person whom the Director causes to make such an inspection, investigation or inquiry;

- (a) may, subject to this subsection, enter and inspect any premises;
- (b) may exercise and shall have the powers, authorities, protection and jurisdiction of a commission under *The Commissions of Inquiry Acts 1950 to 1954* and of a chairman of such a commission except such as are by those Acts confined to a chairman of such a commission who is a Judge of the Supreme Court.

Before entering any dwelling house that is in the occupation of any person, the person seeking entry for the purposes of an inspection, investigation or inquiry shall obtain the consent of the occupier thereof or obtain from a justice a warrant that authorizes such entry.

Any justice who is satisfied upon complaint made that it is desirable for the welfare of Aborigines or for the good order of a reserve or for the proper administration of this Act that any dwelling house should be entered may issue his warrant directed to the complainant authorizing him together with such persons as may act in his aid to enter the dwelling house specified in the warrant.

A warrant issued under this subsection shall, for a period of one month from the date of its issue, be sufficient authority to the person to whom it is directed and all persons acting in aid of him to enter the dwelling house specified therein and inspect the same.

(2) When the Director causes another person to make an inspection, investigation, or inquiry for the purposes of this Act that person shall, as soon as practicable after its completion, make a full report thereon to the Director.

14. Annual report by Director. As soon as practicable after the completion of each year the Director shall report in writing on the administration of this Act during the preceding year to the Minister who shall lay the report before the Legislative Assembly.

PART III—RESERVES

15. Reserves and managers. (1) Every reserve shall be conducted and regulated in accordance with this Act.

(2) The Governor in Council—

(a) may appoint a manager of a reserve;

(b) may place a reserve under the management of a religious organization.

(3) A manager of a reserve or, in the case of a reserve placed under the management of a religious organization, the person in charge of that organization within the reserve shall, without further or other appointment be an assistant district officer in relation to the reserve.

A person who is an assistant district officer by virtue of this subsection shall be subject in the administration of this Act to the Minister and the Director but to no other person concerned in the administration of this Act.

16. Communities. The Governor in Council may establish on a reserve a community for Aborigines and may appoint such officers, resident or visiting, as he thinks necessary for the well-being of the persons within the community.

In no case shall a community for Aborigines be established on a Torres Strait Island.

17. Presence on reserve restricted. (1) A person shall not be on a reserve unless he is entitled under this Act so to be.

Penalty: \$200.

(2) A person who contravenes the preceding subsection, irrespective of whether he is prosecuted in respect thereof, may be ejected (together with his belongings) from the reserve in question by or at the direction of the Aboriginal Council established for that reserve or of the Director, with such force as is reasonably necessary to effect the purpose.

(3) A person who, having been convicted of an offence against subsection (1) of this section, persists in or again commits the contravention in respect of the same reserve commits a continuing offence against this Act, may be prosecuted therefor from time to time for as long as his contravention continues, and is liable to a penalty of \$10 for each day during which his contravention continues.

18. Person entitled to be on reserve without further authority. (1) The following persons are entitled to be on a reserve for as long as the proper administration of this Act requires their presence thereon—

- (a) the Minister;
- (b) the Director and the Deputy-Director;
- (c) a person who is acting in the exercise of a power or the discharge of a function or duty conferred or imposed on him by or under this Act;
- (d) a person who is a member of the household of a person who is for the time being entitled to be on a reserve pursuant to the preceding provision (c).

(2) A person who is empowered or required by law to exercise a power or perform a function or duty and any member of the household of that person is entitled to be on a reserve for as long as the proper exercise or performance of that power, function or duty requires his presence thereon.

(3) A member of the Parliament of the State or of the Commonwealth whose electorate includes a reserve is entitled to be on the reserve

19. Entitlement to be on reserve under authority of permit. A person specified in a permit duly granted by an Aboriginal Council or the Director under this Act or a person who belongs to a class of children specified in such a permit is entitled to be on the reserve to which the permit relates—

- (a) for the limited time specified in the permit or, if no time is specified, indefinitely; or
- (b) until the permit is revoked in respect of that person,

whichever is the shorter period.

20. Application for authority to reside on reserve. (1) Any Aborigine who desires to reside on a reserve for a period exceeding one month may make application—

- (a) where the reserve is one for which an Aboriginal Council is established, to the chairman of the council;
- (b) where the reserve is one for which an Aboriginal Council is not established, to the Director,

for a permit to reside on the reserve.

(2) An application may include the applicant's spouse and children under the age of seventeen years and future children but otherwise shall relate to one person only.

21. Determination of application under s. 20. (1) A permit to reside on a reserve shall be granted to an applicant if and only if the Director is or, where the reserve is one for which an Aboriginal Council is established, the Council and the Director are satisfied—

- (a) that residence on the reserve is in the best interests of the applicant or, as the case may be, the applicant and the other persons included in the application; and
- (b) that such residence by the applicant or, as the case may be, the applicant and of such persons will not be detrimental to other residents of the reserve or to the reserve itself,

and in all other cases shall be withheld.

(2) A permit to reside on a reserve granted otherwise than in accordance with subsection (1) of this section or with section 27 of this Act shall be of no force or effect.

22. Scope and authority of permit to reside. A permit to reside on a reserve granted by an Aboriginal Council or the Director upon an application therefor duly made to it or him under section 20 of this Act—

- (a) may include within its scope not only the applicant but all or any of the persons properly included in his application;
- (b) may be granted, according as the application therefor seeks, for a limited time specified in the permit or for an indefinite period;
- (c) shall be deemed to have been granted to each person specified in the permit or belonging to a class of children specified therein.

23. Permit to visit reserve. (1) Any person, whether an Aborigine or not, who desires to be on a reserve for a period not exceeding one month may make application—

- (a) where the reserve is one for which an Aboriginal Council is established, to the chairman of the council or to the Director;
- (b) where the reserve is one for which an Aboriginal Council is not established, to the Director,

for a permit to visit the reserve.

(2) An application may include any number of persons particularized therein as seeking the permit.

24. Determination of application under s. 23. (1) A permit to visit a reserve may be granted to an applicant if the Aboriginal Council for the reserve to which the application relates or, where the application is made to the Director, the Director is satisfied that the presence on the reserve of the applicant and of the other persons (if any) included in the application will not be detrimental to the residents of the reserve or to the reserve itself.

(2) In no case shall it be obligatory on an Aboriginal Council or the Director to grant a permit to visit a reserve.

(3) A permit, if granted—

- (a) may be granted in respect of all or any of the persons particularized in the application therefor as seeking the permit;
- (b) shall be of force and effect for the limited time specified therein in relation to the reserve specified therein unless it is sooner revoked as prescribed;
- (c) shall be deemed to have been granted to each of the persons in respect of whom it is granted.

25. Summary revocation of permit. (1) The Aboriginal Council established for the reserve to which the permit relates or the Director may—

- (a) of its or his own motion, revoke a permit granted under section 24 of this Act in respect of all or any of the persons to whom it was granted;

- (b) at the request of a person to whom a permit is granted under section 21 or 24 of this Act, revoke that permit in respect of the person who makes the request and in respect of all or any other persons to whom that permit is granted and the request relates.

For the purpose of exercising the power conferred by this subsection it is immaterial that the permit in question was not granted by an Aboriginal Council or, as the case may be, the Director.

(2) A revocation of permit under this section shall be by way of written notice given to the person or persons affected by the revocation.

26. Revocation of permit by "show cause" procedure. (1) An Aboriginal Council established for a reserve to which the permit relates or the Director may in accordance with this section revoke a permit granted under section 21 of this Act.

For the purpose of exercising the powers conferred by this section it is immaterial that the permit in question was not granted by an Aboriginal Council or, as the case may be, the Director.

(2) The chairman of the Aboriginal Council concerned or the Director shall cause to be given to each person in respect of whom the council or, as the case may be, the Director seeks to revoke the permit a notice in writing requiring him to show cause at the time and place therein appointed why the permit should not be revoked in respect of him.

A copy of a notice given by the chairman of an Aboriginal Council shall be given to the Director and a copy of a notice given by the Director shall be given to the chairman of the Aboriginal Council (if any) established for the reserve to which the permit relates.

(3) If at the time and place appointed in the notice to show cause, or at any other time or place to which the matter is adjourned, cause is not shown to the satisfaction of the Aboriginal Council or, as the case may be, the Director why the permit should not be revoked in respect of any person or persons to whom the notice relates the council or, as the case may be, the Director may revoke the permit in respect of that person or those persons.

(4) A revocation of permit under this section shall be in writing and a copy thereof shall be given to the person or persons affected by the revocation.

27. Reference from refusal or revocation of permit. (1) An Aborigine aggrieved by—

- (a) the withholding by an Aboriginal Council or by the Director of a permit applied for under section 20 of this Act; or
(b) the revocation by an Aboriginal Council or by the Director under section 26 of this Act of a permit granted under section 21 of this Act,

may institute a reference therefrom by way of application to a Stipendiary Magistrate who constitutes the Magistrates Court in the district in which is situated the reserve for residence on which the permit was sought or, as the case may be, on which the aggrieved person was resident at the time of the revocation.

A reference shall be instituted within 28 days after the decision of the Aboriginal Council or, as the case may be, the Director is furnished to the person thereby aggrieved by lodging the application signed by the applicant with the clerk of the court in such district.

(2) The due institution of a reference against revocation of a permit shall have the effect of suspending the revocation until the reference is determined or otherwise disposed of in accordance with this section.

If the Stipendiary Magistrate who has jurisdiction to determine the reference is at any time satisfied upon the application of the chairman of the Aboriginal Council concerned or of the Director that a reference against revocation of a permit is not being prosecuted by the person who instituted it without sufficient reason for such default he shall strike out and thereby dispose of the reference and thereupon the revocation of the permit shall be restored to full force and effect.

(3) If upon the hearing of a reference the Stipendiary Magistrate is satisfied, having regard to the provisions of this Part of this Act, that a permit should have been granted or, as the case may be, should not have been revoked he shall order the chairman of the Aboriginal Council or, as the case requires, the Director to take all steps necessary to grant the permit that in his opinion should have been granted or, as the case may be, to restore the permit that in his opinion should not have been revoked and his order shall be given effect to accordingly but otherwise the Stipendiary Magistrate shall dismiss the reference.

(4) Neither the institution of a reference nor the decision of the Stipendiary Magistrate therein shall render unlawful any action taken prior to the institution of the reference in reliance on the absence or revocation of a permit.

28. Presence on reserves voluntary. A person who is on a reserve pursuant to a permit granted under section 21 or 24 of this Act may depart the reserve at any time, save where he is being lawfully detained for any reason, but—

- (a) where a person who resides on a reserve pursuant to a permit granted under section 21 of this Act departs the reserve the permit shall thereupon cease to be of further force or effect in relation to him unless his departure is at all times for the purpose of a temporary absence from the reserve;
- (b) where a person who is on a reserve pursuant to a permit granted under section 24 of this Act departs the reserve the permit shall thereupon cease to be of further force or effect in relation to him unless it shows on its face in respect of that person that his departure from the reserve shall not have the consequence prescribed by this paragraph (b).

29. Regulation of mining in reserves. (1) Notwithstanding the provisions of *The Mining Acts 1898 to 1967* or of any Act passed in amendment thereof or in substitution therefor or of any other Act relating to mining—

- (a) a lease that would entitle the lessee to a mining tenement situated on a reserve shall not be granted unless the trustee of the reserve or the Minister has approved;
- (b) a person who holds a miner's right or to whom an authority to prospect or other mining entitlement, other than a mining lease, is granted, whether before or after the date of commencement of this Act, is not thereby entitled to be on a reserve for any purpose of prospecting or mining, and such a right, authority or entitlement shall be construed as including a condition that it is granted subject to this section.