

NATIVE WELFARE.

3° Elizabeth II. No. LXIV.

No. 64 of 1954.

**AN ACT to amend the Native Administration Act,
1905-1947.**

[Assented to 30th December, 1954.]

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

Short title
and citation.

1. (1) This Act may be cited as the *Native Welfare Act, 1954*.

(2) In this Act the Native Administration Act, 1905-1947—

Act No. 14 of 1905 as reprinted with amendments to and including Act No. 4 of 1941 incorporated pursuant to the provisions of the Amendments Incorporation Act, 1938, and further amended by Act No. 42 of 1947,

is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Native Welfare Act, 1905-1954.

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. The long title to the principal Act is amended by substituting for the words, "better protection and care", the word, "welfare". Long title
amended.

4. Section two of the principal Act is amended— S. 2
amended.

(a) by substituting for the words, "and includes any" in line one of the interpretation, "Native institution", the indefinite article, "a";

(b) by substituting for the word, "Affairs" in line two of the interpretation, "Commissioner" the word "Welfare";

(c) by substituting for the word "Affairs" in line two of the interpretation, "Department" the word, "Welfare";

(d) by deleting the interpretation, "District";

(e) by deleting the interpretation, "Inspector";

(f) by deleting the interpretation, "Minister";

(g) by deleting the interpretation, "Police officer";

(h) by deleting the interpretation, "Prescribed";

(i) by deleting the interpretation, "Regulations"; and

(j) by substituting for the capital letter, "R" in the word, "Reserve" in the interpretation, "Reserve" the small letter, "r".

S. 4
amended.

5. Section four of the principal Act is amended by substituting for the word, "Affairs" in line two the word, "Welfare".

"Depart-
ment" and
"Protector."

6. The principal Act is amended by substituting for the small letter, "d" wherever it appears in the word, "department", the capital letter, "D", and by substituting for the small letter "p" wherever it appears in the word, "protector", the capital letter, "P".

S. 5
amended.
Cf. No. 8 of
1925.

7. Section five of the principal Act is amended by substituting for the words, "Colonial Treasurer" in line one the words, "Treasurer of the State".

S. 6
amended.

8. Section six of the principal Act is amended by—

- (a) substituting for the indefinite article, "a" in line one of paragraph (6) the word, "such";
- (b) inserting in paragraph (6) after the word "natives" the words, "as the Minister in his discretion considers most fit to assist in their economic and social assimilation by the community of the State"; and
- (c) substituting for the paragraph designations (1) to (6) both inclusive the paragraph designations, (a), (b), (c), (d), (e) and (f) respectively.

S. 6A
added.

9. The principal Act is amended by adding after section six the following section:—

6A. (1) The Minister,

- (a) may acquire land with or without improvements mentioned in paragraph (b) of this subsection, whether by purchase, exchange, lease, or otherwise, for the purpose of sale or lease in accordance with the provisions of this section;

Authority to
acquire,
improve, and
dispose of
land to
natives.
Cf. No. 13 of
1943, N.S.W.,
s. 3 (a).

- (b) may effect to or upon the land such improvements, including clearing, drainage, fencing, sowing, and the provision of live stock, machinery, houses, and buildings, and, until sold or leased, the maintenance and repair of the improvements including those already effected to or upon the land at the time of the acquisition, as the Minister thinks fit; and
- (c) may lease the land with the improvements to a native, at such rental for such term and upon such covenants and conditions as the Minister thinks fit; or
- (d) may sell the land with the improvements to a native
- (i) for cash; or
 - (ii) under contract of sale upon such terms and conditions as the Minister thinks fit, including, if the Minister thinks fit, a condition that upon payment by the purchaser of a sum specified in the contract in part payment of the purchase price and upon execution by the purchaser of such securities as the Minister thinks fit to secure the payment of the balance of the purchase price and interest on that balance remaining unpaid from time to time, at such rate as the Minister thinks fit, the Minister shall cause the fee simple in the land to be transferred or conveyed, and the ownership of such of the improvements as comprise live stock, machinery, or other chattels, to be vested in the purchaser, subject to the securities.

(2) The provisions of the Land Act, 1933, and the regulations under that Act, capable of being applied with or without adaptation for the purpose of giving effect to subsection (1) of this section, may be applied with or without adaptation for that purpose.

(3) Notwithstanding the provisions of subsection (2) of this section, the Governor may make such regulations as he thinks necessary or convenient for the purpose of giving effect to subsection (1) of this section.

10. Section seven of the principal Act is amended by—

S. 7
amended.

- (a) adding before the words, "The Governor" in line one the figure, "1" in brackets thus—(1);
- (b) substituting for the word, "Affairs" in line two the word, "Welfare";
- (c) substituting for the word "districts" in line four the words, "parts of the State";
- (d) adding after the word, "them" in line five the words, "by the Minister";
- (e) adding after the word, "prescribed" in line six the words, "and the Governor may appoint such other persons to such other offices as he considers necessary or convenient for effectually carrying out the provisions of this Act";
- (f) adding before the words, "The Commissioner" in line seven the figure, "2" in brackets thus—(2);
- (g) deleting the words in lines ten to twenty-three both inclusive; and

(h) adding the following subsections:—

(3) (a) The Commissioner may, in relation to a matter or class of matter, delegate, in accordance with the regulations, all or any of his powers and functions under this Act, except this power of delegation, so that the powers and functions delegated may be exercised by the delegate in the whole or a part of the State in accordance with the delegation.

(b) A delegation under this subsection is revokable at the will of the Commissioner and does not prevent the exercise by the Commissioner or the Minister of their respective powers and functions under this Act.

(c) Where, by the provisions of this Act,

the exercise of a power, or the discharge of a function by the Commissioner; or

the effective operation of a provision of this Act,

is dependent

upon the Commissioner being of a certain state of mind, whether it be that he thinks certain matters fit, or is of a certain opinion, or is satisfied as to certain matters, or otherwise

and the Commissioner has, under this subsection, delegated the exercise of the power or the discharge of the function to a delegate, the delegate, if he is of that state of mind, may exercise the power or discharge the function, and the provision of the Act becomes effectively operative, as if his state of mind were that of the Commissioner.

(4) The occupant of the office under the Native Administration Act, 1905-1947, of Commissioner of Native Affairs when the Native Welfare Act, 1954, comes into operation becomes the occupant of the office of Commissioner of Native Welfare; and the occupants under the former Act of offices of inspector when the latter Act comes into operation become occupants of offices of Protector.

(5) The provisions of this section do not render the provisions of the Public Service Act, 1904, the Superannuation and Family Benefits Act, 1938, or the Government Employees (Promotions Appeal Board) Act, 1945, applicable to a person, if they did not apply to him on the coming into operation of the Native Welfare Act, 1954, nor affect the application of those provisions or any of them to him if they applied to him before the coming into operation of that Act.

S. 8
amended

11. Section eight of the principal Act is amended by adding after the word, "years" in line four the words, "except while the child is a ward according to the interpretation given to that expression by section four of the Child Welfare Act, 1947; and the Commissioner may, from time to time direct what person is to have the custody of a native child of whom he is the legal guardian, and his direction has effect according to its tenor".

Cf. No. 66 of
1947, as
amended.
S. 4.

S. 9
amended.

12. Section nine of the principal Act is amended by—

- (a) deleting the words, "from one district to another, or" in line three; and
- (b) deleting the words in lines twenty to twenty-six both inclusive.

13. Section ten of the principal Act is amended ^{S. 10} by—_{amended.}

- (a) adding after the word, “line” being the last word in subsection (3) the word, “; or” and the following paragraph:—
 - (e) where the Minister is of opinion that it is necessary or desirable for the purposes of the education, employment, or welfare, of a native that he be issued with a permit to travel south of the boundary line and issues the permit under subsection (7) of this section;
- (b) substituting for the words, “any member of the police force” in lines five and six of subsection (6) the words, “a member of the Police Force of the State”; and
- (c) adding after subsection (6) the following subsections:—

(7) (a) The Minister may issue to a native a permit for the purposes mentioned in paragraph (e) of subsection (3) of this section.

(b) In issuing the permit to the native the Minister may impose as conditions of the permit such conditions as he thinks fit including a condition that the native shall submit himself to medical examination by such medical practitioner or medical practitioners as the Minister from time to time nominates at such place or places and at such times as the Minister from time to time specifies.

(c) If the native does not comply with a condition so imposed he commits an offence.

Penalty: One hundred pounds or six months' imprisonment.

(d) The Minister may cancel the native's permit at any time for any reason without giving the reason, and may direct the native to return at the native's expense within a time specified by the Minister to a place north of the boundary line and on cancellation of his permit the native is deemed, for the purposes of subsection (6) of this section, to be south of the boundary line in contravention of the provisions of subsection (3) of this section.

(8) (a) Where under this section the Minister directs or requires a native to return, or directs or requires the holder of a permit issued under this section to cause a native to be removed, to a place north of the boundary line, by a specified day, the native or holder of the permit, as the case may be, so directed or required commits an offence if he does not comply with the direction or requisition.

Penalty: One hundred pounds or six months' imprisonment.

(b) Where in a complaint made in respect of an offence mentioned in paragraph (a) of this subsection there is an averment that the Minister has directed or required the defendant, being a native, to return, or, being a permit holder, to cause a native to be removed, to a place north of the boundary line, by a specified day, and that the direction or requisition has not been complied with, Courts and persons acting judicially shall presume the averment proved in the absence of proof to the contrary.

S. 13
repealed.

14. Section thirteen of the principal Act is repealed.

S. 14
repealed.

15. Section fourteen of the principal Act is repealed.

16. Section fifteen of the principal Act is amended by substituting for the words, "shall not be lawful" in line one the words, "is an offence against this Act". S. 15
amended.

17. Section sixteen of the principal Act is amended by— S. 16
amended.

- (a) adding before the word, "Any" in line one the figure, "1" in brackets thus—(1);
- (b) adding before the word, "Any" in line thirteen the figure, "2" in brackets thus—(2); and
- (c) adding after the word, "both" being the last word in the section the following subsections:—

(3) A complaint under the Justices Act, 1902, in respect of an offence mentioned in this section is not valid unless authorised by a Protector. Cf. No. 11 of
1902 as
amended.
Ss. 4 and 42
as to
complaints.

(4) Where in a complaint made in respect of an offence mentioned in this section there is an averment that the complaint is made with the authorisation of a Protector, Courts and persons acting judicially shall presume the averment proved in absence of proof to the contrary.

18. Section seventeen of the principal Act is repealed. S. 17
repealed.

19. Section eighteen of the principal Act is repealed. S. 18
repealed.

20. Section nineteen of the principal Act is repealed. S. 19
repealed.

21. Section twenty of the principal Act is repealed. S. 20
repealed.

S. 21
amended.

22. Section twenty-one of the principal Act is amended by—

- (a) substituting for the words, “No permit shall be granted allowing” in line one the words, “It is an offence to employ, engage or permit”;
- (b) substituting for the words, “to be employed” in line three the words, “to serve”; and
- (c) adding after the word, “boat” in line four the words, “without the written consent of the Commissioner”.

S. 22
repealed.

23. Section twenty-two of the principal Act is repealed.

S. 23
repealed.

24. Section twenty-three of the principal Act is repealed.

S. 24
repealed.

25. Section twenty-four of the principal Act is repealed.

S. 25
repealed.

26. Section twenty-five of the principal Act is repealed.

S. 26
repealed.

27. Section twenty-six of the principal Act is repealed.

S. 27
repealed

28. Section twenty-seven of the principal Act is repealed.

S. 28
repealed.

29. Section twenty-eight of the principal Act is repealed.

S. 29
amended.

30. Section twenty-nine of the principal Act is amended by—

- (a) adding after the word, “employed” in line one the words, “as an employee or engaged as an independent contractor”; and

- (b) substituting for the words, "a protector or police officer" in line two the words, "the Commissioner".

31. Section thirty of the principal Act is amended S. 30 amended.
by—

- (a) substituting for the words and for the subsection designations, "(1)" and "(2)" in lines one to eight both inclusive the words, "A person who employs as an employee or engages as an independent contractor a native, shall allow the Commissioner or a person authorised to do so by the Commissioner, to"; and
- (b) substituting for the words, "any native employed" in line nine and for the words, "such native" in lines ten and eleven the words, "the native".

32. Section thirty-one of the principal Act is S. 31 repealed.
repealed.

33. Section thirty-two of the principal Act is S. 32 repealed.
repealed.

34. Section thirty-three of the principal Act is S. 33 repealed and re-enacted.
repealed and re-enacted as follows:—

33. (1) Where a person engages a native, whether as an employee or an independent contractor, under such circumstances that the native is required to carry out services at a place more than fifty miles from that where the native was engaged, the person, at his own expense, shall provide, when the native has completed the services, for the return of the native to the place where he was engaged.

(2) A contravention of subsection (1) of this section is an offence.

(3) A court of summary jurisdiction, whether it imposes or does not impose a penalty upon an offender,

(a) may order him to provide for the return of the native to the place where he was engaged, by such route and manner as the court thinks fit and orders; and

(b) may, if the court thinks fit, order the offender to pay to the clerk of the court, such sum as it considers proper for, and to be applied in, payment of the cost of the return of the native to that place.

(4) A complaint under the Justices Act, 1902, in respect of an offence mentioned in this section is not valid unless authorised by a Protector.

(5) Where in a complaint made in respect of an offence mentioned in this section there is an averment that the complaint is made with the authorisation of a Protector, Courts and persons acting judicially shall presume the averment proved in absence of proof to the contrary.

S. 34
amended.

35. Section thirty-four of the principal Act is amended by—

(a) substituting for the words, “of his employment, the employer,” in lines one and two the words, “for which he has been engaged, whether as an employee or as an independent contractor, to carry out services for a person, that person,”;

(b) substituting for the word, “employed” in line three the words, “, in connection with the carrying out of the services,”; and

(c) substituting for the words, “the employer” in line seven the words, “that person”.

36. Section thirty-five of the principal Act is ^{S. 35} amended by—

- (a) adding before the word, “The” in line one the figure, “1” in brackets thus—(1);
- (b) substituting for the paragraph designations, (1) to (5) both inclusive, the paragraph designations, (a), (b), (c), (d) and (e) respectively;
- (c) substituting for the words, “Provided that the” in line twenty-four the figure, “2” in brackets thus—(2) and the word, “The”;
- (d) adding before the word, “Any” in line twenty-nine the figure, “3” in brackets thus—(3);
- (e) adding before the word, “The” in line thirty-three the figure, “4” in brackets thus—(4); and
- (f) adding before the word, “The” in line thirty-nine the figure, “5” in brackets thus—(5).

37. Section thirty-six of the principal Act is ^{S. 36} amended by—

- (a) deleting the words, “other than a native exempted from the provisions of this Act” in lines five and six of subsection (2);
- (b) transposing the word, “generally” in line twenty-two of subsection (2) so as to precede the word, “for” in that line; and
- (c) adding the following subsections:—

(3) (a) In this subsection—

Cf. No. 13 of 1903 as amended, s. 85, re-numbered 65 in the 1943 reprint; and No. 10 of 1922, as amended, s. 3.

“fees” means fees prescribed by or under an Act and includes duty according to the respective interpretations given to that expression by Part V. of the Administration Act, 1903, and by section four of the Stamp Act, 1921.

(b) Where under the power conferred by subsection (1) of this section the Commissioner makes application for a grant of letters of administration or letters of administration with the will annexed, and the gross amount of the estate does not exceed two hundred pounds, fees are not payable in respect of matters relating or incidental to the application, or to the administration of the estate by the Commissioner as administrator under the grant of the letters of administration.

(4) Where by or under an Act provision is made for the administrator of a deceased person's estate to give notice calling for claims against the estate, prior to distributing the estate, the Commissioner may effectively give the notice

- (a) in such form as he thinks fit; and
- (b) by publishing the notice, alone or together with other similar notices relating to other deceased estates of which he is the administrator, in the *Gazette* and in a newspaper, twenty-eight days at least before he proceeds to the distribution of the estate.

S. 37
repealed and
re-enacted.

38. Section thirty-seven of the principal Act is repealed and re-enacted as follows:—

37. (1) In this section—

“employee” means a native who is employed as an employee, or who is engaged as an independent contractor, by an

employer, and includes a native who ordinarily lives upon the property of the employer and is wholly or partially dependent upon the earnings of the employee, or who would, but for the receipt of a pension, be so dependent;

“employer” means a person who employs a native as an employee, or who engages a native as an independent contractor.

(2) Where an employee becomes sick, or affected by disease, or suffers an injury, his employer shall, as soon as possible after he becomes aware of the sickness, disease, or injury, notify the fact in writing to the nearest or most accessible Protector; and

(i) if it is expedient in the native's interest that he be removed to a hospital for attention,

provide free transport and send him to the nearest or most accessible hospital; or

(ii) if directed to do so by a Protector, provide free transport and send the native to the Protector, and provide free transport for conveying the native from the Protector to the nearest or most accessible hospital.

(3) Employers shall keep and use for the benefit of their employees, such drugs, dressings and instruments for rendering first aid, as are prescribed by the regulations.

(4) The provisions of this section do not relieve an employer of any of his obligations under the Workers' Compensation Act, 1912.

S. 38
amended.

39. Section thirty-eight of the principal Act is amended by—

- (a) substituting for the words, “Minister, apply to a justice of the peace for a summons to be served on the alleged father of such child” in lines seven, eight, and nine of subsection (1) the words, “Commissioner proceed pursuant to the provisions of the Child Welfare Act, 1947”;
- (b) substituting for subsection (2) the following subsection:—
 - (2) Where contributions are made towards the support of a child mentioned in subsection (1) of this section, whether as the result of proceedings mentioned in that subsection or otherwise, the Commissioner may direct the application of the contributions in such manner as he thinks best suited for the benefit of the child, and his direction has effect according to its tenor; and
- (c) repealing subsections (3) to (6) both inclusive.

S. 40
repealed.

40. Section forty of the principal Act is repealed.

S. 41
repealed.

41. Section forty-one of the principal Act is repealed.

S. 42
repealed.

42. Section forty-two of the principal Act is repealed.

S. 43
repealed.

43. Section forty-three of the principal Act is repealed.

S. 44
repealed.

44. Section forty-four of the principal Act is repealed.

S. 45
repealed.

45. Section forty-five of the principal Act is repealed.

S. 46
repealed.

46. Section forty-six of the principal Act is repealed.

47. Section forty-seven of the principal Act is amended by— S. 47
amended.

- (a) deleting the words, "or who travels accompanied by," in lines eleven and twelve of subsection (1); and
- (b) deleting the word, "Resident" in line two of subsection (3).

48. Section forty-eight of the principal Act is repealed. S. 48
repealed.

49. Section fifty of the principal Act is amended by adding the following proviso after the word "Act" in the sixth line of the section:— S. 50
repealed.

Provided that nothing in this section shall render it unlawful for any holder of such license at his discretion to permit any native to enter and remain on his licensed premises for the purpose of having food or lodging, and for the purposes of this proviso the provisions of section one hundred and fifty-one of the Licensing Act, 1911-1953, shall not apply.

50. Section fifty-one of the principal Act is repealed. S. 51
repealed.

51. Section fifty-two of the principal Act is repealed and re-enacted as follows:— S. 52
repealed and
re-enacted.
Cf. No. 11 of
1902 as
amended s.
42; and
Criminal
Code 1913,
ss. 578 and
720.

52. Where in a complaint made under the Justices Act, 1902, or in an indictment or information presented under the Criminal Code, 1913, for an offence, there is an averment that a person referred to in the complaint, information or indictment is a native, Courts and persons acting judicially shall presume the averment proved in absence of proof to the contrary.

S. 53
amended.

52. Section fifty-three of the principal Act is amended by—

- (a) substituting for the words, “any prosecution under this Act” in line one the words, “the charge of an offence”; and
- (b) adding after the word, “justices” in line two, the words, “, where the charge is being dealt with summarily, or the jury where the charge is not being dealt with summarily,”.

S. 56
amended.

53. Section fifty-six of the principal Act is amended by substituting for the figures, “1907-1941” in line six, the figures, “1947”.

S. 57
amended.

54. Section fifty-seven of the principal Act is amended by—

- (a) deleting the word, “resident” in line one and again in line eighteen;
- (b) deleting the words, “or the regulations thereunder” in line four;
- (c) substituting for the words, “police officer” in line ten the words, “member of the Police Force of the State”; and
- (d) substituting for the words, “police officer” in lines twelve and thirteen the words, “member of the Police Force of the State”.

Cf. No. 30 of
1918, as
amended s. 4
“This Act”.

S. 58
amended.

55. Section fifty-eight of the principal Act is amended by—

- (a) substituting for the words, “police officer” in line one the words, “member of the Police Force of the State”; and
- (b) deleting the word, “resident” in line six.

56. Section sixty of the principal Act is amended by— S. 60
amended.

- (a) deleting the words, "or the regulations" in lines one and two; and Cf. No. 30 of
1918, as
amended s. 4.
"This Act";
and s. 59
ante.
- (b) deleting the word, "resident" in line three and again in line six.

57. Section sixty-one of the principal Act is amended by— S. 61
amended.

- (a) adding after subsection (1) the following proviso:—

Provided that nothing in this subsection shall apply to natives living or domiciled in that portion of the State bounded on the north by the 26th parallel of latitude reaching from the coast to the 123rd meridian of longitude, thence by that meridian of longitude southwards to the Southern Ocean. ; and

- (b) repealing subsections (2), (3) and (4).

58. Section sixty-two of the principal Act is repealed. S. 62
repealed.

59. Section sixty-three of the principal Act is repealed. S. 63
repealed.

60. Section sixty-four of the principal Act is repealed. S. 64
repealed.

61. Section sixty-five of the principal Act is amended by transposing the word "generally" in line six of subsection (4) so as to precede the word, "for" in that line. S. 65
amended.

62. Section sixty-six of the principal Act is repealed. S. 66
repealed.

63. Section sixty-eight of the principal Act is repealed. S. 68
repealed.

S. 69
amended.

64. Section sixty-nine of the principal Act is amended by—

(a) adding after paragraph (a) the following paragraph:—

Cf. s. 7 (3)
ante.

(aa) prescribing how the Commissioner may delegate under subsection (3) of section seven of this Act, and how the delegation may be proved;

(b) repealing paragraph (h);

(c) deleting the words “providing for contributions by natives whether in a native institution or elsewhere” in lines one and two of paragraph (i);

(d) substituting for the word “to” the word “regulating” in line two of paragraph (i);

(e) adding after the word, “amount” in line six of paragraph (i) the words, “and method of payment”;

(f) deleting the words from and after the word, “therefrom” in line six of paragraph (i) to the end of the paragraph;

(g) repealing and re-enacting paragraph (j) as follows:—

(j) providing for the inspection of natives, employed as employees or engaged as independent contractors and their conditions of service;

(h) repealing and re-enacting paragraph (k) as follows:—

(k) providing for the control of reserves and the supervision of natives on reserves;

(i) repealing paragraph (n);

(j) adding after paragraph (o) the following paragraphs:—

(oa) prescribing fees payable for the purposes of this Act;

(ob) prescribing the form of recognisance mentioned in section nine of this Act; and

(k) repealing paragraph (q).

65. Section seventy of the principal Act is repealed. S. 70
repealed.

66. Section seventy-three of the principal Act is amended by substituting for the words, "Colonial Treasurer" in the last lines of each of subsections (1) and (2), the words, "Treasurer of the State". S. 73
amended.
Cr. No. 8 of
1925.
