

WESTERN AUSTRALIA.



ANNO PRIMO

GEORGII QUINTI REGIS,

LIII.

\*\*\*\*\*

No. 42 of 1911.

AN ACT to amend the Aborigines Act, 1905.

[Assented to 16th February, 1911.]

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

1. This Act may be cited as the *Aborigines Act Amendment Act, 1911*, and shall be read as one with the Aborigines Act, 1905, hereinafter referred to as the principal Act. Short title.

2. Section seven of the principal Act is amended by the addition of the following paragraph:— Amendment of sec. 7.

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

3. Section eight of the principal Act is amended by adding the following words:—"to the exclusion of the rights of the mother of an illegitimate half-caste child." Amendment of sec. 8.

Amendment of  
sec. 10.

4. Section ten of the principal Act is amended by striking out the words "not exceeding, in any one magisterial district, an area of two thousand acres," and inserting in lieu thereof the words "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."

Amendment of  
sec. 18.

5. Section eighteen of the principal Act is amended by the addition of the following paragraphs:—

Provided also that no protector shall, without permission of the Chief Protector, 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 Chief Protector shall be cancelled except by the Chief Protector or the Minister.

Amendment of  
sec. 19.

6. Section nineteen of the principal Act is amended by the deletion of the words, "and it shall not be lawful to suffer any such aboriginal or half-caste to be upon any ship or boat without the authority in writing of a protector."

Amendment of  
sec. 21.

7. Section twenty-one of the principal Act is hereby repealed, and the following section is inserted in lieu thereof:—

21. Any person who—

(a) contrary to this Act employs any aboriginal or any male half-caste under the age of fourteen years or any female half-caste; or

(b) without the authority in writing of a protector permits or suffers any aboriginal or any such half-caste as aforesaid to be upon or in any house, ship, boat, camp, or other place in his occupation or under his control,

shall be guilty of an offence against this Act.

Amendment of  
sec. 43.

8. Section forty-three of the principal Act is amended by adding a subsection as follows:—

(2.) No complaint shall be made under this section without the authority of the Chief Protector:

Provided that an averment in the complaint that it is made with the authority of the Chief Protector shall be deemed to be proved in the absence of proof to the contrary.

Amendment of  
sec. 44.

9. Section forty-four of the principal Act is amended by striking out the words "girl under the age of sixteen years."

10. Section forty-five of the principal Act is hereby repealed, and the following section shall stand in lieu thereof:— Amendment of  
sec. 45.

45. (1.) Any person who sells, supplies, or gives any fermented, spirituous, or other intoxicating liquor, in any quantity whatsoever, either alone or mixed with any other substance, or any opium, to any aboriginal or half-caste shall be guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred pounds, or to any term of imprisonment not exceeding six months, or to both.

(2.) Any aboriginal or half-caste who knowingly receives any such liquor or opium shall be guilty of an offence and liable on summary conviction to a penalty not exceeding five pounds or to imprisonment not exceeding one month.

(3.) It is immaterial whether the liquor or opium was sold, supplied, or given to such aboriginal or half-caste for himself or for any other person.

(4.) The minimum penalty, pecuniary or other, for an offence under this section shall be one-fifth the maximum, and such minimum penalty shall not be liable to reduction under any power of mitigation which would but for this subsection be possessed by the Court.

11. After section fifty-five of the principal Act the following section is inserted:— Application of  
provisions of State  
Children Act  
(1907, No. 31).

55A. The governing authority of an Aboriginal Institution shall have and may exercise, in respect of any aboriginal or half-caste child sent to the institution, all the rights and powers conferred upon such governing authority in respect of State children by the State Children Act, 1907.

12. After section fifty-nine of the principal Act the following sections are inserted:— No plea of guilty  
to be entered ex-  
cept with the  
approval of a pro-  
tector

59A. (1.) Except as in the subsection next following provided, no court, judge, magistrate, or justice of the peace shall accept or allow to be recorded or entered any plea of guilty when pleaded by or on behalf of an aboriginal native to any indictment, complaint, or charge for or of any crime, misdemeanour, or offence, indictable or otherwise, preferred against such aboriginal native; and in the event of an aboriginal native pleading guilty to any such indictment, complaint, or charge, the court, judge, magistrate, or justice before which or before whom the plea is pleaded, shall reject the same, and order a plea of not guilty to be recorded or entered, and thereupon the trial shall proceed as if the accused aboriginal native had pleaded not guilty in the first instance, and no reference or comment shall be made or permitted during the course of the proceedings and trial to or upon the fact that the accused aboriginal native originally pleaded guilty to the indictment, complaint, or charge.

(2.) Notwithstanding the terms of the subsection last preceding, a plea of guilty by or on behalf of an aboriginal native may, subject to a note in writing of the circumstances being made by the presiding judge, chairman, magistrate, or justice, be accepted and acted upon, provided the same is pleaded in the presence and hearing of a protector of aborigines, and that the protector satisfies the court, judge, magistrate, or justice before whom the plea is made that the accused aboriginal native understands the nature of the accusation against him, and is aware of his right to trial, and without duress or pressure of any sort desires to plead guilty, and that the protector approves of such plea of guilty being pleaded.

(3.) No member of the police force, being a protector of aborigines, whose duties as a member of the police force connect him with the particular prosecution, shall be entitled to approve of or assent to any plea of guilty under subsection two of this section in such prosecution.

(4.) Any protector may, on behalf of an aboriginal indicted for or charged with any crime, misdemeanour, or offence, address the court or the jury, on behalf of the accused, and examine and cross-examine the witnesses.

Power to remove  
certain convicted  
offenders from dis-  
trict.

59B. (1.) Any aboriginal who having been at any time convicted of an offence under section three hundred and eighty or four hundred and forty-nine of the Criminal Code, is subsequently convicted of an offence under either of those sections and sentenced to imprisonment, may on the warrant of the Minister be released from his imprisonment, and conveyed into some part of the State defined in the warrant and prevented from passing outside the boundaries thereof during the Governor's pleasure or for such period as may be limited in that behalf by the warrant.

(2.) If the offender escape beyond the said boundaries he may at any time, and as often as necessary, and without any additional warrant be arrested and taken back into such part of the State and compelled to remain therein in accordance with the said warrant.

Amendment of  
sec. 60.

13. Section sixty of the principal Act is amended by the insertion of the following paragraphs:—

(K1.) Declaring any portion of the seaboard to be a place at which it shall be unlawful for any boat manned by persons of Asiatic race, and having a person of Asiatic race in charge thereof, to be or remain, and imposing a penalty on the person in charge of any such boat which is or remains in such place.

(K2.) For exempting from the provisions of sections twenty-two, twenty-three, and twenty-four of this Act all or any agreements for service in any portion of the State defined in the regulation.

14. Section sixty-four of the principal Act is amended by adding the words "in the manner prescribed by the Colonial Treasurer" to the first paragraph of subsection one, and by striking out the second paragraph of subsection one and by striking out subsections two to six and inserting the following subsections in lieu thereof:—

Amendment of  
sec. 64.

(2.) The Chief Protector or such other officers as the Minister may appoint shall operate upon the trust account, in such manner as may be prescribed by the Colonial Treasurer.

(3.) The Minister shall cause accounts to be kept of all moneys received and expended by the department.

(4.) Within sixty days after the close of each financial year the Minister shall cause a statement of receipts and payments for the year to be prepared, and such other statements as he may direct.

(5.) Within eighty days after the close of each financial year the Minister shall cause the statement of receipts and payments and other statements in connection with the accounts for the year to be submitted to the Auditor General for audit, and when so audited and reported upon by the Auditor General the same shall be published in the *Government Gazette*.

(6.) The statement of receipts and payments and other statements as aforesaid, duly audited, together with a report by the Chief Protector on the condition and welfare of the aborigines, and of the transactions of the department for the year, shall be laid before both Houses of Parliament within twenty-eight days after the audit is completed, if Parliament is then in session, and if not, then within twenty-eight days after the commencement of the next ensuing session.

15. All copies of the principal Act hereafter printed by the Government Printer shall be printed as amended by this Act and under the supervision of the Clerk of the Parliaments, and all necessary reference to the amending Acts made in the margin.

Manner of showing  
amendments.