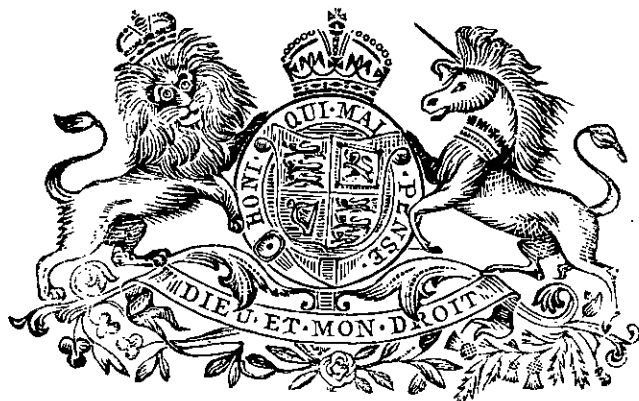


WESTERN AUSTRALIA.



ANNO QUINTO

EDWARDI SEPTIMI REGIS,  
XIV.

\*\*\*\*\*

No. 14 of 1905.

[As amended by No. 42 of 1911.\*]

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

[Reserved, 23rd December, 1905.]

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

**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, 1905*, and shall come into operation on a day to be fixed by proclamation.† Short title.

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

“Aboriginal institution” means and includes any mission, reformatory, orphanage, school, home, station, reserve, or other institution for the benefit, protection, or care of the aboriginal or half-caste inhabitants of the State, and in receipt of any annual or other subsidy or grant from the Government.

“Chief Protector” means the Chief Protector of Aborigines appointed under this Act.

“Department” means the Aborigines Department.

“District”

\* Assented to 16th February, 1911. † Proclaimed to commence 30th April, 1906. See *Government Gazette*, 27th April, 1906.

Q., 1897, No. 17.  
s. 3.

“District” means a magisterial district.

“Half-caste” means any person being the offspring of an aboriginal mother and other than an aboriginal father: Provided that the term “half-caste,” wherever it occurs in this Act, elsewhere than in section three, shall, unless the context otherwise requires, be construed to exclude every half-caste who, under the provisions of the said section, is deemed to be an aboriginal, but shall not apply to quadroons.

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

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

“Prescribed” means prescribed by this Act or regulations.

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

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

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

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

Persons deemed to be aborigines.  
See Q., 1897, No. 17, s. 4.  
Q., 1902, No. 1, s. 2.

3. Every person who is—

- (a) an aboriginal inhabitant of Australia; or
- (b) a half-caste who lives with an aboriginal as wife or husband; or
- (c) a half-caste who, otherwise than as wife or husband, habitually lives or associates with aborigines; or
- (d) a half-caste child whose age apparently does not exceed sixteen years,

shall be deemed an aboriginal within the meaning of this Act, and of every Act passed before or after this Act, unless the contrary is expressed.

In this section the term half-caste includes any person born of an aboriginal parent on either side, and the child of any such person.

The Aborigines Department.  
61 Vict., No. 5, s. 5.

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

Sum to be placed at the disposal of the department.

5. The Colonial Treasurer shall, in every year, place at the disposal of the department, out of the Consolidated Revenue Fund,

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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. 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.

6. It shall be the duty of the department—

Duties of department.

- (1.) To apportion, distribute, and apply, as may seem most fit, the moneys by this Act placed at its disposal; See 61 Vict., No. 5, s. 7.
- (2.) To distribute blankets, clothes, and other relief to the aborigines, at the discretion of the department;
- (3.) To provide for the custody, maintenance, and education of the children of aborigines;
- (4.) To provide, as far as practicable, for the supply of medical attendance, medicines, rations, and shelter to sick, aged, and infirm aborigines;
- (5.) To manage and regulate the use of all reserves set apart for the benefit of aborigines;
- (6.) To exercise a general supervision and care over all matters affecting the interests and welfare of the aborigines, and to protect them against injustice, imposition, and fraud.

7. The Governor shall appoint a Chief Protector of Aborigines, 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. Protectors may be appointed.  
See 61 Vict., No. 5, s. 4;  
Q., 1897, No. 17, s. 6.

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

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

8. The Chief Protector shall be the legal guardian of every aboriginal and half-caste child until such child attains the age of sixteen years, to the exclusion of the rights of the mother of an illegitimate half-caste child. Chief Protector to be guardian.  
Amended by  
No. 42 of 1911,  
s. 3.

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See Q.,  
17, s. 17.

9. Any person who, without the authority, in writing, of a protector, removes or causes to be removed any aboriginal, or a half-caste under the age of sixteen years, or a female half-caste from one district to another, or to any place beyond the limits of the district, shall be guilty of an offence against this Act.

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

Before such authority is given the person desiring to remove shall enter into a recognisance with a surety or sureties, at the discretion of the protector, in a sum which the protector may consider sufficient to defray the expense of the return of the aboriginal or half-caste to the place from which such aboriginal or half-caste is removed.

Every such recognisance shall be in the prescribed form, and shall be taken in duplicate by a protector or other officer, who shall forthwith forward one of the duplicates to the Chief Protector.

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

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

Reserves.  
See Q., 1897, No. 17, ss. 7 and 8.  
Amended by  
No. 42 of 1911,  
s. 4.

- 10. The Governor may, by proclamation, —
  - (1.) Declare any lands reserved for aborigines: provided that not more than two thousand acres of land held under lease from the Crown shall be the subject of the operation hereunder in any one Magisterial district;
  - (2.) Alter the boundaries of a reserve;
  - (3.) Abolish a reserve.

Superintendents of reserves.  
See Q., 1897, No. 17, s. 7.

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

Aborigines may be removed to reserves.  
See Q., 1897, No. 17, s. 9.

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

Any aboriginal who shall refuse to be so removed to or kept within such reserve or district shall be guilty of an offence against this Act.

In every prosecution under this section an averment that the Minister directed the defendant to be removed to and kept within a reserve or district shall be deemed to be proved in the absence of proof to the contrary.

Exceptions.  
See Q., 1897, No.

13. Every aboriginal—

Prohibition of removal of aborigines.

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

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

9. Any person who, without the authority, in writing, of a protector, removes or causes to be removed any aboriginal, or a male half-caste under the age of sixteen years, or a female half-caste from one district to another, or to any place beyond the State, shall be guilty of an offence against this Act.

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 aboriginal or half-caste to the place from which such aboriginal or half-caste 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 Chief Protector.

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

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

Reserves.

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

Amended by No. 42 of 1911, s. 4.

10. The Governor may, by proclamation,—

- (1.) Declare any Crown lands to be reserves for aborigines: 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;
- (2.) Alter the boundaries of a reserve;
- (3.) Abolish a reserve.

Superintendents of reserves.

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

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

Aborigines may be removed to reserves.

See Q., 1897, No. 17, s. 9.

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

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

Exceptions.

See Q., 1897, No. 17, s. 10.

13. Every aboriginal—

- (a) who is lawfully employed by any person; or

(b)

- (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 an aboriginal; 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.

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

Persons who are prohibited from entering a reserve. See Q., 1897, No. 17, s. 11.

15. Any person who, without lawful authority or excuse,—
- (a) goes or remains upon a reserve; or
- (b) removes an aboriginal, or causes, assists, entices, or persuades an aboriginal to remove from a reserve;
- shall be guilty of an offence against this Act.

Penalty for unlawfully going upon or removing aboriginal from reserve. See Q., 1897, No. 17, s. 11.

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

16. 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.

17. It shall not be lawful to employ any aboriginal, or a male half-caste under the age of fourteen years, or a female half-caste, except under permit or permit and agreement.

Aborigines not to be employed without permit. See Q., 1897, No. 17, ss. 12, 14.

18. Every permit—

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

Form and duration of permit. See Q., 1897, No. 17, s. 13, and 1902, No. 1, s. 5.

Such cancellation shall not entitle any employer to claim or recover compensation for the loss of the service of any aboriginal, or to maintain any action in respect of any loss or damage that may be occasioned by such cancellation.

Provided

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.

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.

Added by  
No. 42 of 1911,  
s. 5.

Youths and females  
not allowed on  
ships.

See Q., 1902, No.  
1, s. 10.

Amended by No.  
42 of 1911, s. 6.

No permit for  
employment on  
ocean-going vessels.

19. No permit shall be granted allowing any male aboriginal or half-caste under the age of sixteen years, or any female aboriginal or female half-caste to be employed on board of, or in connection with, any ship or boat.

20. No permit shall be granted allowing any aboriginal or half-caste to be employed on board of or in connection with any ship trading with or voyaging to any place outside the State.

Penalty for unlaw-  
fully employing or  
harbouring  
aborigines.

See Q., 1897, No.  
17, s. 14; and Q.,  
1902, No. 1, s. 4.

Inserted by  
No. 42 of 1911,  
s. 7.

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.

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

22. (1.) No agreement with an aboriginal, or with a male half-caste under the age of sixteen years, or with a female half-caste, for any service or employment, shall be of any force or validity as against such aboriginal or half-caste 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 aboriginal or half-caste, 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 aboriginal or half-caste;

(d)

- (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 aboriginal or half-caste 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 aboriginal or half-caste, or cause him to be conveyed, to the place or district to which he belongs, which shall be specified in the agreement.

(2.) Where an aboriginal or half-caste 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 aboriginal or half-caste 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 aboriginal or half-caste, the person who last employed him conveyed him back to the place or district to which he belonged.

23. Every agreement under this Act shall be made and endorsed 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.

24. Any justice of the peace, protector, or police officer who attests any agreement to which any aboriginal or half-caste 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.

25. Any aboriginal 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 aboriginal.  
55 Vict., No. 25, s. 2.

26. Any employer of an aboriginal 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.

27.



Aborigines in employment to be subject to supervision.  
See Q., 1897, No. 17, s. 16.

Permit to be produced and access to be given.

See Q., 1897, No. 17, s. 16.

27. Every aboriginal, every male half-caste under the age of sixteen years, and every female half-caste, employed by any person shall be under the supervision of a protector or police officer.

28. Every employer shall—

- (1.) Produce to a protector or police officer, on demand, the permit, or permit and agreement as the case may be, under which any aboriginal or half-caste is employed; and
- (2.) Allow a protector or police officer to have access to any aboriginal or half-caste employed, or to any house, ship, boat, or premises where such aboriginal or half-caste may happen to be, at all reasonable times, for such inspection and inquiry as he may deem necessary.

Agreements may be cancelled.

29. An agreement may be cancelled at any time by a protector; and such cancellation shall not entitle an employer to claim or recover compensation for the loss of service of the aboriginal or half-caste, or to maintain any action in respect of any loss or damage occasioned thereby.

Leave of absence, 50 Vict., No. 25, s. 22.

30. The employer of any aboriginal or half-caste engaged under an agreement made under this Act shall grant to the aboriginal or half-caste, at his request, at some time during the term of service, leave to absent himself from his work or service under such agreement—

- (1.) For not less than fourteen days, if the agreement is for a term of three months and not exceeding six months;
- (2.) For not less than thirty days, if the agreement is for a term exceeding six months.

Penalty for neglect to convey aboriginal back to place agreed upon.  
See 50 Vict., No. 25, s. 9.  
51 Vict., No. 18, s. 4.

31. Any master of a ship or vessel or other person who shall neglect or refuse to convey or cause to be conveyed any aboriginal or half-caste who has been party to any agreement with him back, before the expiration of such agreement, to the place or district to which such aboriginal or half-caste belongs, shall be guilty of an offence against this Act.

Any person convicted of such offence may be ordered, at his own expense, to convey such aboriginal or half-caste back to the place or district to which he belongs, by such route as to the justices shall seem fit, or may be required to pay such sum as to the justices shall seem fit for the purpose of paying for the conveyance of such aboriginal or half-caste, and such sum shall, for all purposes, be and be deemed to be added to the fine imposed so as to become a part thereof.

Death of employed aborigines.  
See Q., 1902, No. 1, s. 11.

32. If an aboriginal or half-caste dies during the period of his employment, the employer, forthwith after the death, or if the deceased

deceased was employed on board of any ship, vessel, or boat, forthwith after the arrival of such ship, vessel, or boat at any port in Western Australia shall transmit to the Chief Protector notice in writing of such death under the hand of the employer, and containing such particulars as will enable the deceased to be identified.

33. The Chief Protector may undertake the general care, protection, and management of the property of any aboriginal or half-caste, and may—

Protector to manage property of aboriginals.  
Q., 1902, No. 1, s. 13.

- (1.) Take possession of, retain, sell, or dispose of any such property, whether real or personal;
- (2.) In his own name sue for, recover, or receive any money or other property due or belonging to or held in trust for the benefit of an aboriginal or half-caste, or damages for any conversion of or injury to any such property;
- (3.) Exercise in the name of an aboriginal or half-caste any power which the aboriginal or half-caste might exercise for his own benefit;
- (4.) In the name and on behalf of an aboriginal or half-caste, appoint any person to act as attorney or agent for any purpose connected with the property of the aboriginal or half-caste:

Provided that the powers conferred by this section shall not be exercised without the consent of the aboriginal or half-caste except so far as may be necessary to provide for the due preservation of such property.

The Chief Protector shall keep proper records and accounts of all moneys and other property, and the proceeds thereof received or dealt with by him under the provisions of this section, and shall, for such purpose, be deemed to be a public accountant within the meaning of the Audit Act, 1904.

34. (1.) Whenever a half-caste child whose age does not exceed fourteen years is being maintained in an aboriginal institution or at the cost of the Government, a protector may, with the approval of the Minister, apply to a justice of the peace for a summons to be served on the alleged father of such child for the purpose of obtaining contribution to the support of the child.

Father liable to contribute to support of half-caste child.  
See Q., 1902, No. 1, s. 19.

(2.) On the return of such summons any two justices of the peace 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 such child are proved to the satisfaction of the justices, they may order the defendant to pay such weekly sum (not exceeding ten shillings) for the maintenance of the child as such justices think fit:

Provided that no man shall be taken to be the father of any such child upon the oath of the mother only.

(3.)

(3.) Any two justices of the peace, on the complaint of any such father or of 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 so to do, so that the amount shall not in any case exceed the weekly sum hereinbefore mentioned.

(4.) Whenever, after the making of any such order as aforesaid, it is made to appear to any justice of the peace, by a complaint in writing and upon oath, that any weekly sum to be paid in pursuance thereof has not been paid, or that any father named in such order is about to leave Western Australia, or remove from his usual place of residence, without having first notified his intention to the clerk of petty sessions at the court where the order was made, or without having made due provision for the payment of such weekly sum, such justice may, by warrant, cause such father to be brought before him or some other justice to answer the complaint.

(5.) On the return of such warrant the justice of the peace shall proceed to hear the matter of the complaint, and if the same is proved to be true, shall proceed to levy or enforce payment of the said weekly sums by distress or imprisonment for any period not exceeding three months.

(6.) All contributions and enforced payments under this section towards the support of a half-caste child shall be paid and expended as the Colonial Treasurer may direct.

Aboriginal prisoners may be employed outside prison.  
See 50 Vict., No. 25, s. 32.

**35.** (1.) Any aboriginal in custody under sentence of imprisonment may, by order of the Governor, be employed outside the limits of a prison in such suitable labour in the service of the State as the Governor may direct; but no such prisoner who has not been sentenced to hard labour shall be set to any labour which is severe.

See 50 Vict., No. 25, s. 33.

(2.) Any aboriginal, or any male half-caste under the age of sixteen years, or any female half-caste, in custody under sentence of imprisonment may, by order of the Governor, be placed under custody of any officer or servant of the State, who shall be responsible for the safe custody of such prisoner, and he shall thereupon, for all purposes, be deemed in legal custody, wherever he may be employed or detained.

See 50 Vict., No. 25, s. 34.

(3.) The gaoler having the charge of the prison wherein such prisoner may be sentenced to imprisonment shall not be responsible for the safe custody of any such prisoner during the time he may be removed, under order as aforesaid, from such prison.

Persons prohibited from frequenting camps.  
Q., 1902, No. 1, s. 16.

**36.** It shall not be lawful for any person, other than a superintendent or protector, or a person acting under the direction of a superintendent

superintendent, or under a written permit of a protector, without lawful excuse, to enter or remain or be within or upon any place where aborigines or female half-castes are camped.

Any person, save as aforesaid, who, without lawful excuse, the proof whereof shall lie upon him, is found in or within five chains of any such camp shall be guilty of an offence against this Act; but no person shall be prosecuted for an offence under this section except by the direction of a protector.

37. If at any time he thinks it necessary so to do, a protector may cause any aborigines or half-castes who are camped or are about to camp within or near the limits of any town or municipal district to remove their camp, or proposed camp, at such distance from such town or municipality as he may direct; and all police officers shall assist the protector in carrying out the provisions of this section.

Removal of camps near townships. See Q., 1902, No. 1, s. 17.

Any aboriginal or half-caste neglecting or refusing to obey such order shall be guilty of an offence against this Act.

38. Any justice of the peace or police officer may order any aboriginal found loitering in any town or municipal district, or being therein and not decently clothed, forthwith to leave such town or municipal district.

Justices may order aborigines out of town. 50 Vict., No. 25, s. 43.

Any aboriginal neglecting or refusing to obey such order shall be guilty of an offence against this Act.

39. The Governor may, by proclamation, whenever in the interest of the aborigines he thinks fit, declare any municipal district or town or any other place to be an area in which it shall be unlawful for aborigines or half-castes, not in lawful employment, to be or remain; and every such aboriginal or half-caste who, after warning, enters or is found within such area without the permission, in writing, of a protector or police officer, shall be guilty of an offence against this Act.

Prohibited areas.

40. Any female aboriginal who, between sunset and sunrise, is found within two miles of any creek or inlet used by the boats of pearlers or other sea boats shall be guilty of an offence against this Act.

Females not to remain after sunset at creeks used by pearlers.

41. Any aboriginal who, being the parent or having the custody of any female child apparently under the age of sixteen years, allows that child to be within two miles of any creek or inlet used by the boats of pearlers or other sea boats shall be guilty of an offence against this Act.

Forbidding female children to be brought to creeks used by pearlers.

42.

Marriage of female aborigines. Q., 1902, No. 1, s. 9.

42. No marriage of a female aboriginal with any person other than an aboriginal shall be celebrated without the permission, in writing, of the Chief Protector.

Offence of cohabiting with aborigines.

43. (1.) Every person other than an aboriginal who habitually lives with aborigines, and every male person other than an aboriginal who cohabits with any female aboriginal, not being his wife, shall be guilty of an offence against this Act.

Every male person, not being an aboriginal, who travels accompanied by a female aboriginal, shall be presumed, in the absence of proof to the contrary, to be cohabiting with her, and it shall be presumed, in the absence of proof to the contrary, that she is not his wife.

Added by No. 42 of 1911, s. 8.

(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.

Enticing aborigines from school or service. See 8 Vict., No. 6, s. 1. Amended by No. 42 of 1911, s. 9.

44. Any person who entices or persuades an aboriginal or half-caste to leave any school or aboriginal institution without the consent of a protector, or to leave any lawful service without the like consent, shall be guilty of an offence against this Act.

Penalty for supplying liquor to aborigines. Inserted by No. 42 of 1911, s. 10.

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.

Prohibition against disposal of articles issued to aborigines. 50 Vict., No. 25, ss. 40, 41.

46. All blankets, bedding, clothing, and other articles issued or distributed to the aborigines by or by the direction of the department shall remain the property of His Majesty; and it shall not be lawful for an aboriginal receiving such bedding, clothing,

OR

or other articles to sell or otherwise dispose of the same to any person other than an aboriginal, without the sanction of a protector.

Any person not being an aboriginal, who, without such sanction, takes, whether by purchase or otherwise, or is found in possession of any goods or chattels issued or distributed to an aboriginal by or by the direction of the department shall be guilty of an offence against this Act.

47. Every aboriginal who uses or carries a gun without having in force a license, in writing, in the prescribed form granted to him by a protector shall be guilty of an offence against this Act.

Prohibition of use of guns by aborigines without license.

Any justice of the peace may make such order as to the forfeiture or disposal of any gun found in the possession of an aboriginal contrary to this section as to such justice may seem fit.

In this and the four next following sections the term "gun" includes any firearm from which any shot, bullet, or other missile can be discharged.

48. It shall be lawful for any protector or police officer to demand from any aboriginal using or carrying a gun the production of his license.

License to be produced on demand.

If such aboriginal upon whom the demand is made shall not produce a license duly granted to him under this Act, and in force, and permit the protector or police officer demanding the production thereof to read such license, such aboriginal shall be guilty of an offence against this Act.

49. It shall be lawful for any protector or police officer to take from any aboriginal any gun found in his possession, if such aboriginal shall not, on demand, produce a license duly granted to him, and in force, to carry such gun.

Power to take guns from aborigines.

50. It shall be unlawful to sell or deliver a gun to any aboriginal unless at the time of the sale or delivery such aboriginal has in force a license granted to him by a protector permitting such aboriginal to carry a gun.

Prohibition of sale or delivery of guns to unlicensed aborigines.

Any person who, contrary to this section, sells or delivers a gun to an aboriginal shall be guilty of an offence against this Act.

51. In any prosecutions under sections forty-seven or fifty, the burden of proof that the aboriginal held a license in force to carry a gun shall lie on the defendant, and until the contrary is proved it shall be presumed that the aboriginal did not hold such license.

Proof of license on accused.

52. In every prosecution for an offence against this Act or the regulations, the averment in the complaint that any person referred to therein is an aboriginal or half-caste shall be deemed to be proved in the absence of proof to the contrary.

Presumption of person being an aboriginal.

Facilitating proof of age.

53. At the hearing of any prosecution under this Act, the justices may decide, upon their own view and judgment, whether any aboriginal or half-caste child before them has attained any specified age; but nothing herein shall be construed so as to prevent the age of such aboriginal or half-caste child being proved.

Actions for recovery of wages may be brought in name of protector.

54. All actions and other proceedings against any person for the recovery of wages due to an aboriginal or half-caste who is, or has been, employed by such person, or for any breach of an agreement made with an aboriginal or half-caste, may be instituted and carried on by, or in the name of, a protector, or any other person authorised by the Minister.

Arrest without warrant.

55. It shall be lawful to arrest without warrant any aboriginal or half-caste who offends against any of the provisions of this Act.

Application of provisions of State Children Act.

Inserted by No. 42 of 1911, s. 11.

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.

Jurisdiction of justices, etc.

See Q., 1902, No. 1, s. 18.

56. Any resident magistrate or, in his absence, any two justices of the peace may hear and determine any complaint for any offence against the provisions of this Act or the regulations thereunder, at any place within the State where the offender may be, or where any ship or boat connected with such offence may be found, or at any place appointed for the holding of courts of petty sessions, and may make orders for the detention of such ship, vessel, or boat as they think fit.

If any person appears to a protector, police officer, or other person acting under the authority of a protector to have committed any such offence, the protector, police officer, or other person as aforesaid may, by written order under his hand, direct the offender, and if necessary the ship or boat to which he belongs, and the master and crew thereof, to proceed to the nearest convenient place at which a court of petty sessions is held, and the resident magistrate or justices may hear and determine the matter in a summary way. The protector may order the detention of such ship or boat until the alleged offence has been adjudicated upon.

Any person who disobeys any order made under the provisions of this section shall be guilty of an offence against this Act.

Service of summons and execution of warrant limited. See 55 Vict., No. 25, s. 4.

57. It shall not be obligatory upon any police officer to serve any summons, or execute any warrant of arrest against an aboriginal in respect of any offence against this Act, beyond a distance  
of

of fifty miles from the place where such summons or warrant was issued, except when specially directed by a resident magistrate.

58. Every person convicted of an offence against this Act shall, except as is herein otherwise provided, be liable to imprisonment, with or without hard labour, for not exceeding six months, or to a fine not exceeding fifty pounds. Penalties.

59. (1.) All offences against this Act or the regulations may be prosecuted in a summary way before any resident magistrate or, in his absence, any two justices of the peace. Offences to be prosecuted summarily.

(2.) At the hearing of any prosecution under this Act against an aboriginal the resident magistrate or justices may permit any person to address him or them, and examine and cross-examine witnesses, on behalf of such aboriginal.

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 to the indictment, complaint, or charge. No plea of guilty to be entered except with the approval of a protector.  
Inserted by  
No. 42 of 1911.  
s. 12.

(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.)



(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 district.

Inserted by No. 42 of 1911, s. 12.

**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.

Regulations.

See Q., 1897, No. 17, s. 31.

**60.** The Governor may make regulations for all or any of the matters following (that is to say):—

- (a) Prescribing the duties of protectors and superintendents and any other persons employed to carry the provisions of this Act into effect:
- (b) For the control of the receipt and payment of money, classification of accounts, authorisation of expenditure, and all matters pertaining to the management of the accounts of the department:
- (c) Providing for the care, custody, and education of the children of aborigines and half-castes:
- (d) Enabling any aboriginal or half-caste child to be sent to and detained in an aboriginal institution, industrial school, or orphanage:
- (e) For the control, care, and education of aborigines and half-castes in aboriginal institutions, and for the supervision of aboriginal institutions:
- (f) Prescribing the conditions on which any aboriginal or half-caste children may be apprenticed to or placed in service with suitable persons:
- (g) Prescribing the conditions on which any aboriginal or half-caste prisoner may be placed under the custody of any officer or servant of the State:
- (h) Regulating the payment of wages payable under agreements:

(i)

- (i) Providing for the control of aborigines and half-castes residing upon a reserve, and for the inspection of aborigines and half-castes employed under the provisions of this Act; and
- (j) For the maintenance of discipline and good order upon a reserve:
- (k) 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 upon a reserve, and providing for the revocation of such authority in any case:
- (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.
- (l) For all other purposes relating to the administration of this Act.

Added by No. 42  
of 1911, s. 13.

Added by No. 42  
of 1911, s. 13.

61. All such regulations shall be published in the *Government Gazette*, and thereupon shall have the force of law; and shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is then in session, and if not, within fourteen days after the commencement of the next ensuing session.

Publication of  
regulations.

62. Such regulations may impose, for any breach hereof, a fine not exceeding twenty pounds, or imprisonment for any period not exceeding one month.

Penalties.

63. The Minister may issue to any aboriginal or half-caste who, in his opinion, ought not to be subject to this Act, a certificate in writing under his hand that such aboriginal or half-caste is exempt from the provisions of this Act, and from and after the issue of such certificate such aboriginal or half-caste shall be so exempt accordingly:

Power to exempt  
certain half-castes  
from Act.  
See Q., 1897, No.  
17, s. 33.  
Q., 1902, No. 1,  
s. 6.

But any such certificate may be revoked at any time by the Minister, and thereupon this Act shall apply to such aboriginal or half-caste as if no such certificate had been issued.

64. (1.) A separate account of the moneys placed at the disposal of the department shall be opened and kept at the Treasury as a Trust account, in the manner prescribed by the Colonial Treasurer.

Accounts and  
audit.  
Amended by No.  
42 of 1911, s. 14.

(2.)

Subsections 2-6  
inserted by No.  
42 of 1911, s. 14.

(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.

(7.) The Auditor General shall have all the powers conferred upon him by the Audit Act, 1904, and any amendment thereof, with respect to the audit of accounts of the department.

Validation of  
appointments made  
and acts and  
things done under  
61 Viet., No. 5.

65. Whereas a Bill intituled "An Act to further amend the Constitution Act of 1889, and for the better protection of the Aboriginal Race of Western Australia" having been duly passed by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia was, on the eleventh day of December, One thousand eight hundred and ninety-seven, reserved by the Governor for the signification of the pleasure of Her late Majesty thereon, and received the assent of Her late Majesty in Council on the third day of February, One thousand eight hundred and ninety-eight, and was proclaimed in Western Australia on the first day of April, One thousand eight hundred and ninety-eight, but the Royal assent was not signified by such proclamation as required by the Statute made and passed in the fifth and sixth years of the reign of Her late Majesty, and intituled "An Act for the Government of New South Wales and Van Diemen's Land":

And whereas the said Bill appears in the Statute Book of Western Australia as of the sixty-first year of Her late Majesty Queen Victoria, and purports to repeal the Act and parts of Acts mentioned in the First Schedule hereto, and to provide *inter alia* for the abolition of the Aborigines Protection Board, and for the establishment

Section 65.

## THE FIRST SCHEDULE.

Date.	Title.	Extent of Repeal.
50 Vict., No. 25	The Aborigines Protection Act, 1886	Part I.
52 Vict., No. 23	The Constitution Act, 1889 .. ..	Section 70.
52 Vict., No. 24	The Aborigines Act, 1889 .. ..	The whole.

Section 66

## THE SECOND SCHEDULE.

Date	Title.	Extent of Repeal.
8 Vict., No. 6	An Act to prevent the enticing away the Girls of the Aboriginal Race from School, or from any service in which they are employed.	The whole.
37 Vict., No. 11	The Pearl Shell Fishery Regulation Act, 1873	The whole, except sections 11 and 12.
39 Vict., No. 13	The Pearl Shell Fishery Regulation Act, 1875	Section 5.
50 Vict., No. 25	The Aborigines Protection Act, 1886	Parts II., III., IV., and V.
51 Vict., No. 18	The Pearl Shell Fishery Regulation Acts Amendment Act, 1887	The whole, except section 5.
55 Vict., No. 25	The Aborigines Protection Act (Amendment), 1892	The whole.
61 Vict., No. 5	The Aborigines Act, 1897 .. ..	The whole.

establishment of the Aborigines Department, which should discharge the duties of the said Board so purported to be abolished, and for the annual appropriation of Five thousand pounds to be applied to the purposes of the said Department: And whereas, after the proclamation in Western Australia of the said Bill (hereinafter called an Act) as a Statute, the said Aborigines Protection Board was in fact abolished, and the said Department was established: And whereas it is desirable to validate such abolition of the said Aborigines Protection Board and the establishment of the said Department and such repeal: Be it therefore further enacted as follows:—

The Act and parts of Acts mentioned in the First Schedule shall be deemed to have been repealed, the Aborigines Protection Board shall be deemed to have been abolished, and the Aborigines Department shall be deemed to have been lawfully established on and from the date upon which the said Act intituled “An Act to further amend the Constitution Act of 1889, and for the better protection of the Aboriginal Race of Western Australia” was proclaimed as aforesaid; and all appointments made, and all acts and things done or purporting to have been done by the apparent sanction of the said Act by the Governor, the Minister appointed to administer the same, the Colonial Treasurer, the Aborigines Department, Protectors of Aborigines, and other officers respectively, are hereby validated and confirmed for all purposes whatsoever.

66. The Acts mentioned in the Second Schedule are hereby <sup>Repeal.</sup> repealed to the extent and in the manner therein stated.