

WESTERN AUSTRALIA.

NATIVE WELFARE.

No. 14 of 1905.¹

(Affected by Act No. 23 of 1944.)

[As amended by Acts:

- No. 42 of 1911 assented to 16th February, 1911;
- No. 8 of 1931² assented to 21st August, 1931;
- No. 43 of 1936 assented to 11th December, 1936;
- No. 37 of 1940 assented to 30th December, 1940;
- No. 4 of 1941 assented to 25th September, 1941;
- No. 42 of 1947 assented to 11th December, 1947;
- No. 60 of 1954 assented to 30th December, 1954;
- No. 64 of 1954³ assented to 30th December, 1954;
- No. 3 of 1960 assented to 6th October, 1960;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to make provision for the welfare of the Native Inhabitants of Western Australia.

Amended by
No. 43 of
1936, s. 3;
No. 64 of
1954, s. 3.

[*Reserved, 23rd December, 1905.*]

[*Royal Assent Proclaimed, 27th April, 1906.*]

BE 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 *Native Welfare Act, 1905-1960*, and shall come into operation on a day to be fixed by proclamation. §

Short title.
No. 14 of
1905, s. 1.
Amended by
No. 3 of
1960, s. 1.

¹ Came into operation on 30th April, 1906; See *Gazette* of 27/4/1906.

² Came into operation on 1st January, 1932; See *Gazette* of 6/1/1931.

³ Came into operation on 20th May, 1955; See *Gazette* of 20/5/1955.

[NOTE: In this reprint—

(a) any reference in the marginal or foot notes to

(i) the 1936 reprint

is to the reprint of the Native Administration Act, 1905-1936 contained in the Appendix to the Sessional Volume of Statutes for the year 1936;

(ii) the 1941 reprint

is to the Native Administration Act, 1905-1941, incorporating all amendments to and including No. 4 of 1941 and reprinted pursuant to the Amendments Incorporation Act, 1938;

(b) the numbering and lettering of sections, subsections, paragraphs, etc., contained in the 1941 reprint are retained.]

Interpreta-
tion.
Ibid s. 2.

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

Amended by
No. 43 of
1936, s. 2;
and s. 3.
No. 60 of
1954, s. 2;
No. 64 of
1954, s. 4
and s. 6.
No. 3 of
1960, s. 2.

“Native institution” means a mission, reformatory, orphanage, school, home, station, reserve, or other institution for the benefit, protection, or care of the native inhabitants of the State declared by proclamation to be a native institution for the purposes of this Act.

“Commissioner” means the Commissioner of Native Welfare appointed under this Act.

“Department” means the Department of Native Welfare.

“Native” means—

- (a) any person of the full blood descended from the original inhabitants of Australia; and
- (b) any person of less than full blood who is descended from the original inhabitants of Australia or from their full blood descendants, except a quadroon or person of less than quadroon blood:

Provided that any person of the full blood or of less than the full blood descended from the original inhabitants of Australia who has served in the Territory of New Guinea or beyond the limits of the Commonwealth of Australia as a member of the Naval, Military or Air Forces of the Commonwealth and has received or is entitled to receive an honourable discharge; or who has served a period of not less than six months' full time duty as a member of the Naval, Military, or Air Forces of the Commonwealth and who has received or is entitled to receive an honourable

discharge, has all the rights, privileges and immunities and is subject to the duties and liabilities of a natural born or naturalised subject of Her Majesty who is of the same age.

“Protector” means a Protector of natives appointed under this Act, and includes the Commissioner.

“Quadroon” means a person who is descended from the full blood original inhabitants of Australia or their full blood descendants but who is only one-fourth of the original full blood.

“reserve” means a reserve for natives proclaimed under this Act.

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

3.¹ [*Repealed by No. 3 of 1960, s. 3.*]

Persons of quadroon or less than quadroon blood may in certain cases come under the Act.
New section inserted by No. 43 of 1936, s. 5 as s. 3A; renumbered 3 in 1936 reprint.
Repealed by No. 3 of 1960, s. 3.

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

The Department of Native Welfare
No. 14 of 1905, s. 4.
Amended by No. 43 of 1936, s. 3; No. 64 of 1954, s. 5.
See 61 Vict., No. 5 s. 5.

¹ NOTE: s. 3 as enacted by No. 14 of 1905 was repealed by No. 43 of 1936, s. 4.

Sum to be placed at the disposal of the Department.

Ibid s. 5; amended by No. 64 of 1954, s. 7.
See 61 Vict., No. 5, s. 6.

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

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.

Duties of Department.

Ibid s. 6.

Amended by No. 43 of 1936, s. 3; No. 64 of 1954, s. 8.
See 61 Vict., No. 5, s. 7.

6. It shall be the duty of the Department—

- (a) To apportion, distribute, and apply, as may seem most fit, the moneys by this Act placed at its disposal;
- (b) To distribute blankets, clothes, and other relief to the natives, at the discretion of the Department;
- (c) To provide for the custody, maintenance, and education of the children of natives;
- (d) To provide, as far as practicable, for the supply of medical attendance, medicines, rations, and shelter to sick, aged, and infirm natives;
- (e) To manage and regulate the use of all reserves set apart for the benefit of natives;
- (f) To exercise such general supervision and care over all matters affecting the interests and welfare of the natives as the Minister in his discretion considers most fit to assist in their economic and social assimilation by the community of the State, and to protect them against injustice, imposition, and fraud.

6A. (1) The Minister,

Authority
to acquire,
improve, and
dispose of
land to
natives.

Cf. No. 13 of
1943, N.S.W.,
s. 3 (a).

S. 6A added
by No. 64 of
1954, s. 9.
Amended by
No. 3 of 1960,
s. 4.

- (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;

- (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

Cf. No. 68 of
1948.

- (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, 1933,¹ 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.

(4) The powers conferred on the Minister by this section may be exercised by him for or in respect of agricultural, pastoral, industrial, commercial or domestic purposes or for or in respect of such other purposes, whether of the same kind as, or a different kind from, those here specified, as the Minister thinks fit.

Protectors
may be
appointed.
No. 14 of
1905, s. 7;
amended by
No. 42 of
1911, s. 2;
No. 43 of
1936, s. 3;
No. 64 of
1954, ss. 6, 10.
No. 3 of 1960,
s. 5.
See 61 Vict.,
No. 5, s. 4;
Q. 1897,
No. 17, s. 6.

7. (1) The Governor shall appoint a Commissioner of Native Welfare, and the Minister may from time to time appoint and dismiss fit and proper persons to be Protectors, who shall, within the parts of the State respectively assigned to them by the Minister, have and exercise the powers and duties prescribed 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.

(1a) The Governor may appoint a person to be the deputy of the Commissioner and the person when so appointed is authorised to exercise any power, and to carry out any duty, which the Commissioner may exercise or is required to carry out under this Act, whether the Commissioner is absent or not, but the

¹ Now Land Act, 1933-1960.

appointment of a deputy does not affect the exercise or discharge by the Commissioner himself of any power or duty.

(2) The Commissioner shall, under the Minister, be responsible for the administration of the Department and the execution of this Act throughout the State.

(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 becomes occupants of offices of Protector.

(5) The provisions of this section do not render the provisions of the Public Service Act, 1904,¹ the Superannuation and Family Benefits Act, 1938,² or the Government Employees (Promotions Appeal Board) Act, 1945,³ 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.

Exemption
from
personal
liability.
Inserted by
No. 3 of 1960,
s. 6.

7A. A person who occupies or has occupied the office of Minister, Commissioner, Deputy Commissioner, or officer of the Department, or who otherwise carries out or has carried out any duty or function under this Act, is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred or which purports to be conferred, or the carrying out of any duty imposed or which purports to be imposed, by this Act.

Commis-
sioner to be
guardian.
No. 14 of
1905, s. 8.
Amended by
No. 42 of
1911, s. 3;
No. 43 of
1936, ss. 3
and 7; No. 64
of 1954, s. 11.
Cf. No. 66
of 1947,
as amended.
S. 4.

8. The Commissioner shall be the legal guardian of every native child notwithstanding that the child has a parent or other relative living, until such child attains the age of twenty-one years except while the child is a ward according to the interpretation given to that expression by section four of the Child Welfare Act, 1947;⁴ 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.

¹ Now Public Service Act, 1904-1956.

² Now Superannuation and Family Benefits Act, 1938-1960.

³ Now Government Employees (Promotions Appeal Board) Act, 1945-1960.

⁴ Now Child Welfare Act, 1947-1959.

9. Any person who without the authority, in writing, of a Protector, removes or causes any native to be removed to any place beyond the State, shall be guilty of an offence against this Act.

Prohibition of removal of natives.

Ibid s. 9.

Amended by No. 43 of 1936, ss. 3 and 8; No. 64 of 1954, ss. 6, 12.

See Q. 1897, No. 17, s. 17; Q. 1902, No. 1, s. 7.

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 native to the place from which such native 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 Commissioner.

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

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

10. In order that the spread of leprosy within the State may be limited the following provisions shall operate and have effect, that is to say—

Restrictions against natives travelling within the State.

New section inserted by No. 4 of 1941, s. 2, as s. 9A; renumbered s. 10 in 1941 reprint. Amended by No. 64 of 1954, s. 13.

- (1) The provisions of this section shall operate and have effect notwithstanding any other provision to the contrary contained elsewhere in this Act: and where any provision contained elsewhere in this Act is or may be deemed to be or is capable of being construed as being inconsistent with or repugnant to any provision contained in this section, the lastmentioned provision shall prevail, and the provision contained elsewhere in this Act as aforesaid shall be subject to and be construed and have effect as being subject to the provision contained in this section.
- (2) The expression "the boundary line," as used in this section, means the twentieth parallel of south latitude or such other boundary as may from time to time be declared by the Governor by proclamation.

- (3) Subject as hereinafter otherwise provided, no native who at the time of the commencement of this section is living north of the boundary line, or who at any time thereafter shall have passed to that part of the State north of the boundary line, shall pass to any part of the State south of the boundary line, by land, sea or air, save and except in any of the circumstances following, namely—

- (a) where as the result of mental infirmity or insanity the transfer of the native to a mental treatment hospital or to a hospital for the insane, or to another institution, in a place south of the boundary line is, after a medical examination of the native, deemed to be necessary and the native will be under the regular supervision of a medical officer whilst in such mental treatment hospital or hospital for the insane or other institution aforesaid; or
- (b) where the native is found on medical examination to require specialist medical attention which is available only at a place south of the boundary line and the native has obtained from the Minister a permit authorising him to travel to such place in order to obtain such specialist medical attention:

Provided that every permit issued by the Minister to a native under this paragraph shall be so issued upon and subject to the following conditions:—

- (i) that the permit shall operate only for the period, not exceeding three months, specified in the permit, unless such period is extended by the Minister; and

- (ii) that the native shall return to a place north of the boundary line immediately after the termination of the specialist medical attention for which he received the permit; and
 - (iii) that if the native fails or refuses to submit himself to the specialist medical attention for which he received the permit for a period, which in the opinion of the Minister is unreasonable, the Minister may cancel the permit and cause the native to be apprehended and conveyed to a place north of the boundary line; and
 - (iv) that whilst the native is in a place south of the boundary line he shall regularly submit himself for medical examination by a medical practitioner nominated by the Minister at such place and at such intervals of time as the Minister may direct and require; and
 - (v) that the Minister may, at any time and without giving any reason, cancel the permit and require the native to return to a place north of the boundary line forthwith, if in the opinion of the Minister, it is desirable, having regard to the objects of this section, that the native should not be permitted to continue to remain in any part of the State south of the boundary line; or
- (c) where in accordance with law the attendance of a native is required at a place south of the boundary line in

connection with any action, cause, proceeding, or other legal matter and the native cannot lawfully refuse to attend as required: provided that, where a native attends at a place south of the boundary line under the authority of this paragraph, he shall forthwith, after such attendance is no longer necessary, return to a place north of the boundary line: and if he fail or refuse so to do for a period, which in the opinion of the Minister is unreasonable, the Minister may cause him to be apprehended and taken to a place north of the boundary line; or

- (d) where the native travels in a part of the State south of the boundary line as the employee of or in company with any person droving stock, who holds a permit issued by the Minister authorising such person to employ or take with him the said native south of the boundary line: Provided that every permit issued by the Minister under this paragraph shall, as well as including any other conditions required to be included therein under the Act, include the following conditions:

- (i) that the permit shall operate only for the period specified in the permit; and
- (ii) that the holder of the permit will undertake to return, or cause the native to be returned, to a place north of the boundary line immediately after the droving for which the native is employed or upon which the native accompanies the holder of the permit has been completed;

- (iii) that if the holder of the permit fail or make default in his undertaking under paragraph (ii) of this proviso, the Minister may make good such default at the expense of the holder of the permit; and
- (iv) that whilst the native is in a place south of the boundary line, the holder of the permit will not permit or suffer the native to consort with other natives living south of the boundary line and will, if so required by the Minister, cause the native to submit himself for medical examination by a medical practitioner nominated by the Minister at such place and at such intervals of time as the Minister may direct and require; and
- (v) that the Minister may at any time, and without giving any reason, cancel the permit and require the holder of the permit to return or cause the native to be returned at the expense of the holder of the permit to a place north of the boundary line if, in the opinion of the Minister, it is desirable, having regard to the objects of this section, that the native should not be permitted to continue to remain in any part of the State south of the boundary line; or
- (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.

- (4) If any native to whom subsection (3) of this section applies is found south of the boundary line in contravention of the provisions of the said subsection (3), he shall be guilty of an offence.

Penalty: Fifty pounds.

- (5) No person shall cause a native to whom subsection (3) of this section applies, to travel from a place north of the boundary line to any place south of the boundary line, or shall aid, abet, encourage, or induce such a native so to do in contravention of the provisions of subsection (3) of this section.

Penalty: One hundred pounds.

- (6) Any native to whom subsection (3) of this section applies who is found south of the boundary line in contravention of the provisions of subsection (3) of this section may be apprehended by a member of the Police Force of the State, or any Protector or other officer appointed for the purposes of this Act, and be removed to a place north of the boundary line at the expense of the native.

- (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.

Reserves.
No. 14 of
1905, s. 10.
Amended by
No. 42 of
1911, s. 4,
and No. 43 of
1936, s. 3.
Renumbered
s. 11 in
1941 reprint.
See Q. 1897,
No. 17, ss. 7,
8.

11. The Governor may, by proclamation,—

- (1) Declare any Crown lands to be reserves for natives: 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.

Superintend-
ents of
reserves.
Ibid s. 11.
Renumbered
s. 12 in
1941 reprint.
See Q. 1897,
No. 17, s. 7.

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

Natives may
be removed
to reserves.
Ibid s. 12.
Amended by
No. 43 of
1936, ss. 3
and 9.
Renumbered
s. 13 in 1941
reprint.

13. [*Repealed by No. 64 of 1954, s. 14.*]

Exceptions.
Ibid s. 13.
Amended by
No. 43 of
1936, s. 3.
Renumbered
s. 14 in
1941 reprint.

14. [*Repealed by No. 64 of 1954, s. 15.*]

Persons who
are pro-
hibited from
entering a
reserve.
Ibid s. 14.
Amended by
No. 43 of
1936, ss. 3
and 10;
No. 64 of
1954, s. 16.
See Q. 1897,
No. 17, s. 11.

15. It is an offence against this Act for any person other than a native 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 an inspector or a Protector or a person authorised in that behalf under the regulations.

16. (1) Any person who, without lawful authority or excuse,—

- (a) goes or remains within the boundaries or confines of a reserve or native institution; or
- (b) removes a native, or causes, assists, entices, or persuades a native to remove from a reserve or native institution; or
- (c) transports or assists a native in or after his removal or escape therefrom,

Penalty for unlawfully going upon or removing native from reserve, etc. *Ibid* s. 15. Amended by No. 43 of 1936, ss. 3 and 11; No. 64 of 1954, s. 17. See Q. 1897, No. 17, s. 11.

shall be guilty of an offence against this Act.

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

(2) Any person guilty of an offence under the provisions of this section shall be liable—

- (a) in the case of a first offence, to a penalty not exceeding fifty pounds or to imprisonment with hard labour for six months, or both;
- (b) in the case of a second offence, to a penalty not exceeding one hundred pounds or to imprisonment with hard labour for twelve months, or both;
- (c) in the case of a third or subsequent offence, to a penalty not exceeding two hundred pounds or to imprisonment with hard labour for two years, or both.

(3) A complaint under the Justices Act, 1902,¹ 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.

¹ Now Justices Act, 1902-1959.

Compulsory examination of diseased natives, etc. Inserted by No. 43 of 1936, s. 12 as s. 15A: Renumbered s. 16 in 1936 reprint, and s. 17 in 1941 reprint.

17. [*Repealed by No. 64 of 1954, s. 18.*]

Existing apprenticeships determined. No. 14 of 1905, s. 16. Renumbered s. 17 in 1936 reprint and s. 18 in 1941 reprint.

18. [*Repealed by No. 64 of 1954, s. 19.*]

Natives not to be employed without permit. *Ibid* s. 17. Amended by No. 43 of 1936, ss. 3 and 13: Renumbered s. 18 in 1936 reprint and s. 19 in 1941 reprint.

19. [*Repealed by No. 64 of 1954, s. 20.*]

Form and duration of permit. No. 14 of 1905, s. 18. Amended by No. 42 of 1911, s. 5; No. 43 of 1936, ss. 3 and 14: Renumbered s. 19 in 1936 reprint, and s. 20 in 1941 reprint.

20. [*Repealed by No. 64 of 1954, s. 21.*]

Youths and females not allowed on ships. No. 14 of 1905, s. 19. Amended by No. 42 of 1911, s. 6; No. 43 of 1936, s. 15; No. 64 of 1954, s. 22: Renumbered s. 20 in 1936 reprint and s. 21 in 1941 reprint.

21. It is an offence to employ, engage or permit any male native under the age of sixteen years or any female native to serve on board of or in connection with any ship or boat without the written consent of the Commissioner.

22. [*Repealed by No. 64 of 1954, s. 23.*]
 No permit for employment on ocean-going vessels.
Ibid s. 20.
 Amended by No. 43 of 1936, s. 3:
 Renumbered s. 21 in 1936 reprint and s. 22 in 1941 reprint.
23. [*Repealed by No. 64 of 1954, s. 24.*]
 Penalty for unlawfully employing or harbouring natives.
Ibid s. 21.
 Inserted by No. 42 of 1911, s. 7, and amended by No. 43 of 1936, s. 16:
 Renumbered s. 22 in 1936 reprint and s. 23 in 1941 reprint.
24. [*Repealed by No. 64 of 1954, s. 25.*]
 Agreements.
Ibid s. 22.
 Amended by No. 43 of 1936, ss. 3 and 17:
 Renumbered s. 23 in 1936 reprint and s. 24 in 1941 reprint.
25. [*Repealed by No. 64 of 1954, s. 26.*]
 Duplicate of agreement to be sent to protector.
 No. 14 of 1905, s. 23:
 Renumbered s. 24 in 1936 reprint and s. 25 in 1941 reprint.
26. [*Repealed by No. 64 of 1954, s. 27.*]
 Penalty for false attestation.
Ibid s. 24.
 Amended by No. 43 of 1936, s. 3:
 Renumbered s. 25 in 1936 reprint and s. 26 in 1941 reprint.
27. [*Repealed by No. 64 of 1954, s. 28.*]
 Penalty for breach of agreement by native.
Ibid s. 25.
 Amended by No. 43 of 1936, s. 3:
 Renumbered s. 26 in 1936 reprint and s. 27 in 1941 reprint.

Penalty.
for breach of
agreement
by employer.
Ibid s. 26.

28. [*Repealed by No. 64 of 1954, s. 29.*]

Amended by
No. 43 of
1936, s. 3:
Renumbered
s. 27 in
1936 reprint
and s. 28 in
1941 reprint.

Natives in
employment
to be subject
to super-
vision.

29. Every native employed as an employee or engaged as an independent contractor by any person shall be under the supervision of the Commissioner.

Ibid s. 27.
Amended by
No. 43 of
1936, ss. 3,
18; No. 64 of
1954, s. 30:
Renumbered
s. 28 in
1936 reprint
and s. 29 in
1941 reprint.
See Q. 1897,
No. 17, s. 16.

Permit to be
produced and
access to be
given.

30. 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 have access to the native, or to any house, ship, boat, or premises where the native may happen to be, at all reasonable times, for such inspection and inquiry as he may deem necessary.

Ibid s. 28.
Amended by
No. 43 of
1936, ss. 3
and 19;
No. 64 of
1954, s. 31:
Renumbered
s. 29 in
1936 reprint
and s. 30 in
1941 reprint.

Agreements
may be
cancelled.

31. [*Repealed by No. 64 of 1954, s. 32.*]

Ibid s. 29.
Amended by
No. 43 of
1936, s. 3:
Renumbered
s. 30 in
1936 reprint
and s. 31
in 1941
reprint.

Leave of
absence.

32. [*Repealed by No. 64 of 1954, s. 33.*]

Ibid s. 30.
Amended by
No. 43 of
1936, s. 3:
Renumbered
s. 31 in
1936 reprint
and s. 32 in
1941 reprint.

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.

Employer to provide for return of native employee, on completion of services, to place where engaged.

No. 14 of 1905, s. 31: Renumbered s. 32 in 1936 reprint, and s. 33 in 1941 reprint:

Repealed and re-enacted by No. 64 of 1954, s. 34.

(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, 1902,¹ 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.

34. If a native dies during the period for which he has been engaged, whether as an employee or as an independent contractor, to carry out services for a person, that person, forthwith after the death, or if the deceased was, in connection with the carrying out of the services, on board of any ship, vessel, or boat, forthwith after the arrival of such ship, vessel,

Death of employed natives.

Ibid. s. 32.

Amended by

No. 43 of

1936, s. 3;

No. 54 of

1954, s. 35:

Renumbered

s. 33 in

1936 reprint

and s. 34 in

1941 reprint.

See Q. 1902,

No. 1, s. 11.

¹ Now Justices Act, 1902-1959.

or boat at any port in Western Australia, shall transmit to the Commissioner notice in writing of such death under the hand of that person, and containing such particulars as will enable the deceased to be identified.

Commissioner to manage property of natives.

Ibid. s. 33.

Amended by No. 43 of 1936, ss. 3, 20; No. 64 of 1954, s. 36: Renumbered s. 34 in 1936 reprint and s. 35 in 1941 reprint. Q. 1902, No. 1, s. 13.

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

- (a) Take possession of, retain, sell, or dispose of any such property, whether real or personal;
- (b) 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 a native, or damages for any conversion of or injury to any such property;
- (c) Exercise in the name of a native any power which the native might exercise for his own benefit;
- (d) In the name and on behalf of a native, appoint any person to act as attorney or agent for any purpose connected with the property of the native;
- (e) Require a statement in writing from any person who has had any contractual transaction or financial dealing or dealings in property with a native of any such transaction or dealing during the period of one year preceding such requisition.

(2) The powers conferred by this section shall not be exercised, except in the case of minors, without the consent of the native, except so far as may be necessary to provide for the due preservation of such property.

(3) Any person who fails to supply a statement when required by the Commissioner so to do, or who wilfully gives or supplies any false information in any such statement commits an offence against this Act.

(4) The Commissioner 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, 1904.¹

(5) The Commissioner may expend or apply any money in his possession or standing to the credit of any native for his maintenance, education, advancement or benefit.

36. (1) The Commissioner may obtain letters of administration or letters of administration with the will annexed of the estate of any deceased native.

Commissioner may obtain letters of administration with will annexed.

(2) Notwithstanding the provisions of any Act or law to the contrary regulating in the absence of a will any succession to and the administration of the estate of any deceased or missing native, all property and rights of property vested in any native who dies intestate shall vest in the Commissioner upon trust to pay the just debts of the deceased and to distribute the balance between the widow or husband of the deceased and/or the next of kin, if the same or some of them can be ascertained, according to the laws of the State, in accordance with and in the manner prescribed for the administration of the estates of persons dying intestate by the Administration Act, 1903,² and if such widow, husband, and/or next of kin cannot be so ascertained, amongst those persons who may by regulation be prescribed as the persons entitled to succeed to the property of the deceased: Provided that, where there is no person entitled to succeed to such property under the regulations, the proceeds of the estate of the deceased shall be paid to a special trust account and if within twelve months of the date of the payment to that account, no valid claim is made to the proceeds, the Governor may notwithstanding the provisions of any other Act order, on an application

New section inserted by No. 43 of 1936, s. 21, as s. 33A; amended by No. 64 of 1954, s. 37: Renumbered s. 35 in 1936 reprint and s. 36 in 1941 reprint. Amended by No. 64 of 1954, s. 37; No. 3 of 1960, s. 7. Cf. Q. 25 Geo. V., No. 38, s. 26 (5).

¹ Now Audit Act, 1904-1957.

² Now Administration Act, 1903-1960.

being made in that behalf, that the proceeds or any portion thereof, shall be paid in such proportions and manner and upon such terms and conditions to such person or persons having a moral but no legal or equitable claim thereto, to be held by that person or those persons for his or their own use as the Governor may in each case deem advisable but where no such order is made the Commissioner may utilise the proceeds for the benefit of natives generally. Provided further, that a certificate under the hand of the Commissioner shall be conclusive evidence as to the person or persons entitled under the regulations to succeed to the estate of any deceased or missing native or that there is no such person or persons so entitled.

(2a) (a) On and after the date on which an order is made by the Governor under subsection (2) of this section, a person shall not make a claim against the Commissioner, the Treasurer or any person in whose favour the order is made, for or in respect of the proceeds which are the subject of the order or any property from which the proceeds were obtained.

(b) Any such claim which the person may have against all or any of the persons referred to in paragraph (a) of this subsection, shall be deemed on and from the date of the order to be extinguished and forever determined.

(3) (a) In this subsection—

[Cf. No. 13 of 1903 as amended, s. 85, renumbered 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, 1903,¹ and by section four of the Stamp Act, 1921.²

(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,

¹ Now Administration Act, 1903-1960.

² Now Stamp Act, 1921-1960.

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.

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.

Where native employee becomes sick or suffers injury.
S. 37 of 1941 reprint repealed and re-enacted by No. 64 of 1954, s. 38.

(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, 1912.¹

Father liable to contribute to support of child.

No. 14 of 1905, s. 34.

Amended by No. 43 of 1936, ss. 3 and 22; No. 64 of 1954, s. 39: Renumbered s. 37 in 1936 reprint and s. 38 in 1941 reprint. See Q. 1902, No. 1, s. 19.

38. (1) Whenever a male child whose age does not exceed sixteen years or a female child whose age does not exceed eighteen years, and who in either case is the offspring of a native and some person other than a native is being maintained in a native institution or at the cost of the Government, a Protector may, with the approval of the Commissioner proceed pursuant to the provisions of the Child Welfare Act, 1947,² for the purpose of obtaining contribution to the support of the child.

(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.

[Subsections (3) to (6) both inclusive repealed by No. 64 of 1954, s. 39 (c).]

¹ Now Workers' Compensation Act, 1912-1960.

² Now Child Welfare Act, 1947-1959.

39. (1) Any native 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.

Native prisoners may be employed outside prison.

Ibid., s. 35.

Amended by No. 43 of 1936, ss. 3 and 23.

Renumbered s. 38 in 1936 reprint and s. 39 in 1941 reprint.

See Vict., No. 25, s. 32.

(2) Any native, 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. 33.

(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.

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

40. [*Repealed by No. 64 of 1954, s. 40.*]

Persons prohibited from frequenting camps.

No. 14 of 1905, s. 36:

Amended by No. 43 of 1936, ss. 3, 24:

Renumbered s. 39 in 1936 reprint and s. 40 in 1941 reprint.

41. [*Repealed by No. 64 of 1954, s. 41.*]

Removal of camps near townships.

Ibid., s. 37.

Amended by No. 43 of 1936, s. 3:

Renumbered s. 40 in 1936 reprint and s. 41 in 1941 reprint.

Justices may
order natives
out of town.

Ibid. s. 38.

Amended by
No. 43 of 1936,
s. 3:

Renumbered
s. 41 in 1936
reprint and
s. 42 in
1941 reprint.

42. [*Repealed by No. 64 of 1954, s. 42.*]

Prohibited
areas.

Ibid., s. 39.

Amended by
No. 43 of
1936, s. 3;
No. 42 of
1947, s. 2:

Renumbered
s. 42 in
1936 reprint
and s. 43 in
1941 reprint.

43. [*Repealed by No. 64 of 1954, s. 43.*]

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

Ibid., s. 40.

Amended by
No. 43 of
1936, s. 3:
Renumbered
s. 43 in
1936 reprint
and s. 44 in
1941 reprint.

44. [*Repealed by No. 64 of 1954, s. 44.*]

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

Ibid., s. 41.

Amended by
No. 43 of
1936, s. 3:
Renumbered
s. 44 in
1936 reprint
and s. 45 in
1941 reprint.

45. [*Repealed by No. 64 of 1954, s. 45.*]

Marriage of
natives.
Inserted by
No. 43 of
1936, s. 25, as
s. 42:

Renumbered
s. 45 in
1936 reprint
and s. 46 in
1941 reprint.

46. [*Repealed by No. 64 of 1954, s. 46.*]

47. (1) Any person (except a native)—

- (a) who habitually lives with natives or with any native not his wife or her husband; or
- (b) who cohabits with or has sexual intercourse with any native who is not his wife or her husband

shall be guilty of an offence against this Act, and shall be liable to imprisonment for a period not more than two years, or to a penalty not more than one hundred pounds.

Every person who is not a native and who without the permission in writing of a Protector lives or resides with, either temporarily or continually, a native of the opposite sex shall be presumed, in the absence of proof to the contrary, to be cohabiting with her or him, and it shall be presumed in the absence of proof to the contrary that she is not his wife or that he is not her husband.

(2) Any person who persuades or solicits any native to cohabit with or have sexual intercourse with any person who is not a native, or who persuades or solicits any person who is not a native to cohabit with or have sexual intercourse with any native contrary to the provisions of this section commits an offence against this Act and shall be liable—

- (a) in the case of a first offence, to imprisonment for a period of not less than three months and not more than twelve months, or to a penalty not less than twenty-five pounds nor more than fifty pounds;
- (b) for a second offence, to imprisonment for a period not less than six months and not more than two years, or to a penalty not less than fifty pounds nor more than one hundred pounds.

(3) All offences under this section shall be tried and determined by a Magistrate.

Offence of
cohabiting
with natives.
No. 14 of
1905, s. 43.
Amended by
No. 42 of
1911, s. 8;
No. 43 of
1936, ss. 3, 26;
No. 64 of
1954, s. 47;
Renumbered
s. 46 in
1936 reprint
and s. 47 in
1941 reprint.

Added by
No. 42 of
1911, s. 8, as
(2): Re-
numbered
(4) in
1936 reprint.
Amended by
No. 43 of
1936, s. 3.

(4) No complaint shall be made under this section without the authority of the Commissioner:

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

Enticing
natives
from service.
No. 14 of
1905, s. 44.
Amended by
No. 42 of
1911, s. 9;
No. 43 of
1936, s. 27:
Renumbered
s. 47 in
1936 reprint
and s. 48 in
1941 reprint.

48. [*Repealed by No. 64 of 1954, s. 48.*]

Penalty for
supplying
liquor to
natives.
Inserted by
No. 42 of
1911, s. 10,
as s. 45;
amended by
No. 43 of
1936, s. 3;
No. 37 of
1940, s. 2:
Renumbered
s. 48 in
1936 reprint
and s. 49 in
1941 reprint.

49. (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 native 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 native 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 native for himself or for any other person.

Inserted by
No. 37 of
1940, s. 2,
as subsec.
(3a): Re-
numbered
(4) in 1941
reprint.

(4) Any native who asks, solicits, or otherwise attempts to procure any other person whomsoever to purchase or to obtain the supply or gift of any fermented, spirituous or other intoxicating liquor in any quantity whatsoever, either alone or mixed with any other substance, or any opium for such native, shall be guilty of an offence, and be liable on sum-

mary conviction to a penalty not exceeding five pounds or to imprisonment not exceeding one month. It shall not be a defence to a charge of an offence under this subsection that no purchase was made or that no supply or gift was obtained as requested by the native charged.

(5) 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.

Formerly
(4): Re-
numbered
(5) in 1941
reprint.

(6) In any proceedings for an offence against any of the provisions of this section, any liquor mentioned in the complaint or information as being fermented, spirituous, or other intoxicating liquor shall, until the contrary is proved, be deemed to be fermented, spirituous, or other intoxicating liquor.

Inserted by
No. 37 of
1940, s. 2,
as (5):
Renumbered
(6) in 1941
reprint.

50. (1) Any person being the holder of any license under the Licensing Act, 1911-1944¹ for the sale of spirituous or fermented liquors who shall permit or suffer any native not exempted from the provisions of this Act to remain in or loiter about his licensed premises shall be guilty of an offence against this Act.

Prohibition
of natives
on premises
licensed for
sale of
liquor.

New section
inserted by
No. 43 of
1936, s. 28,
as s. 45A;
amended by
No. 64 of
1954, s. 49:

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, 1911-1953,¹ shall not apply.

Renumbered
s. 49 in
1936 reprint
and s. 50 in
1941 reprint.

(2) Any native not exempted from the provisions of this Act who enters, remains on, or loiters about premises in respect of which any such license is held shall be guilty of an offence against this Act.

Provided that this section shall not apply to any native employed on the licensed premises under a permit granted by the Commissioner.

¹ Now Licensing Act, 1911-1960.

Prohibition against disposal of articles issued to natives.
No. 14 of 1905, s. 46.
Amended by No. 43 of 1936, s. 3:
Renumbered s. 50 in 1936 reprint and s. 51 in 1941 reprint.
[Note: Ss. 47-51 as enacted by No. 14 of 1905 were repealed by No. 8 of 1931, s. 2 and Sched.]

51. [Repealed by No. 64 of 1954, s. 50.]

Presumption of person being a native.
S. 52 of 1941 reprint repealed and re-enacted by No. 64 of 1954, s. 51.
[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, 1902,¹ 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.

Facilitating proof of age.
No. 14 of 1905, s. 53 amended by No. 43 of 1936, s. 3; No. 64 of 1954, s. 52:
Renumbered s. 52 in 1936 reprint and s. 53 in 1941 reprint.

53. At the hearing of the charge of an offence, the justices, where the charge is being dealt with summarily, or the jury where the charge is not being dealt with summarily, may decide, upon their own view and judgment, whether any native child before them has attained any specified age; but nothing herein shall be construed so as to prevent the age of such native child being proved.

Actions for recovery of wages may be brought in name of Protector.
Ibid s. 54.
Amended by No. 43 of 1936, s. 3; No. 64 of 1954, s. 6:
Renumbered s. 53 in 1936 reprint and s. 54 in 1941 reprint.

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

¹ Now Justices Act, 1902-1959.

55. It shall be lawful to arrest without warrant any native who offends against any of the provisions of this Act.

Arrest without warrant.

Ibid s. 55.

Amended by No. 43 of 1936, s. 3:

Renumbered s. 54 in 1936 reprint and s. 55 in 1941 reprint.

56. The governing authority of a native institution shall have and may exercise, in respect of any native child sent to the institution, all the rights and powers conferred upon such governing authority in respect of wards under the provisions of the Child Welfare Act, 1947.¹

Application of provisions of Child Welfare Act.

Inserted by No. 42 of 1911, s. 11 as s. 55A; amended by No. 43 of 1936, ss. 3 and 35; No. 64 of 1954, s. 53:

Renumbered s. 55 in 1936 reprint and s. 56 in 1941 reprint.

57. Any 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, 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.

Jurisdiction of justices, etc.

No. 14 of 1905, s. 56; amended by No. 64 of 1954, ss. 6, 54: Renumbered s. 57 in 1941 reprint.

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

If any person appears to a Protector, member of the Police Force of the State, or other person acting under the authority of a Protector, to have committed any such offence, the Protector, member of the Police Force of the State, 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 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.

¹ Now Child Welfare Act, 1947-1959.

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

Services of
summons and execu-
tion of
warrant
limited.
Ibid s. 57.
Amended by
No. 43 of
1936, s. 3;
No. 64 of
1954, s. 55:
Renumbered
s. 58 in
1941 reprint.
See 55 Vict.,
No. 25, s. 4.

58. It shall not be obligatory upon any member of the Police Force of the State to serve any summons, or execute any warrant of arrest against a native in respect of any offence against this Act, beyond a distance of fifty miles from the place where such summons or warrant was issued, except when specially directed by a magistrate.

Penalties.
Ibid s. 58.
Repealed
and new
section
inserted by
No. 43 of
1936, s. 29:
Renumbered
s. 59 in
1941 reprint.

59. Every person convicted of an offence against this Act shall, except as herein otherwise provided, be liable—

- (a) in the case of a first offence, to imprisonment with or without hard labour for not exceeding six months or to a fine not exceeding fifty pounds;
- (b) in the case of a second offence, to imprisonment with or without hard labour for not exceeding twelve months or to a fine not exceeding one hundred pounds;
- (c) in the case of a third or subsequent offence, to imprisonment with or without hard labour for not exceeding two years or to a fine not exceeding two hundred pounds.

Offences to
be prose-
cuted sum-
marily.
Ibid s. 59.
Amended by
No. 43 of
1936, s. 3;
No. 64 of
1954, s. 56:
Renumbered
s. 60 in
1941 reprint.

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

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

61. (1) No admission of guilt or confession before trial shall be sought or obtained from any native charged or suspected of any offence punishable by death or imprisonment in the first instance. If any such admission or confession is obtained it shall not be admissible or received in evidence.

Admission of guilt by native before trial not admissible. Inserted by No. 42 of 1911, s. 12, as s. 59A; amended by No. 43 of 1936, ss. 3, 30; No. 64 of 1954, ss. 6, 57: Renumbered s. 60 in 1936 reprint and s. 61 in 1941 reprint.

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.

[Subsections (2), (3) and (4) of section 61 repealed by No. 64 of 1954, s. 57 (b).]

(5) Any Protector may, on behalf of a native 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.

Formerly subsec. (4): Renumbered (5) in 1936 reprint.

62. [Repealed by No. 64 of 1954, s. 58.]

Power to remove certain convicted offenders from district. Inserted by No. 42 of 1911, s. 12 as s. 59B; amended by No. 43 of 1936, ss. 3 and 35 (2) (b): Renumbered s. 61 in 1936 reprint and s. 62 in 1941 reprint.

63. [Repealed by No. 64 of 1954, s. 59.]

Charge of assaulting native to be dealt with summarily. Inserted by 43 of 1936, s. 31 as s. 59C: Renumbered s. 62 in 1936 reprint and s. 63 in 1941 reprint.

Establish-
ment of
native
courts.

Inserted by
43 of 1936,
s. 31 as
s. 59D:

Renumbered
s. 63 in
1936 reprint
and s. 64 in
1941 reprint.

64. [*Repealed by No. 64 of 1954, s. 60.*]

Natives'
Trust Fund.

Inserted by
No. 43 of
1936, s. 31
as s. 59E;
amended by
No. 64 of
1954, s. 61;
No. 3 of
1960, s. 8:

Renumbered
s. 64 in
1936 reprint
and s. 65 in
1941 reprint.

65. (1) Any wages due to or property known to belong to a native—

(a) who absconds from service; or

(b) who is deceased,

and any estate or other moneys to which a native is entitled, either as beneficiary or otherwise, shall forthwith be paid or delivered by the employer, trustee, debtor, or other person liable to pay or deliver the same to the Commissioner, and failure to do so shall be an offence against the Act.

(2) The Commissioner may recover any such wages or property by action in his name in any court of competent jurisdiction.

(3) On receipt of such wages or property the Commissioner shall, in the case of money, place the same to the credit of a special trust account, and where the property does not consist of money the Commissioner shall as soon as reasonably may be convert the same into money and place the same to the credit of such account.

(4) Subject to the provisions of this Act, the moneys placed to the credit of the said account as herein provided may in the case of a native who has absconded, and in the event of no claim for the money being made by the native within a period of three years, be applied by the Commissioner generally for the benefit of natives, and in the case of a native who has died intestate, shall be applied in accordance with regulations made under the provisions of section thirty-six or an order made by the Governor under subsection (2) of section thirty-six

of this Act, but where the proceeds are not paid under the regulations or an order, they may be utilised by the Commissioner for the benefit of natives generally.

66. [*Repealed by No. 64 of 1954, s. 62.*]

Defrauding natives.
New section inserted by 43 of 1936, s. 31 as s. 59F:
Renumbered s. 65 in 1936 reprint and s. 66 in 1941 reprint.

67. Whenever the Minister on the recommendation of the Commissioner is of the opinion that any tribal practice of the natives or any section of the natives in any district is injurious to the natives or any section of the natives, he may give all such instructions as in his opinion are calculated to minimise or stamp out the practice.

Minister may prohibit tribal practices in certain cases.
Inserted by 43 of 1936, s. 31 as s. 59G:
Renumbered s. 66 in 1936 reprint and s. 67 in 1941 reprint.

Any person who disobeys any instruction of the Minister under this section shall be guilty of an offence against this Act.

68. [*Repealed by No. 64 of 1954, s. 63.*]

Penalty on supplying poison to natives.
Inserted by No. 43 of 1936, s. 31 as s. 59H:
Renumbered s. 67 in 1936 reprint and s. 68 in 1941 reprint.

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

Regulations. No. 14 of 1905, s. 60. Amended by No. 42 of 1911, s. 13; No. 43 of 1936, ss. 3, 32; No. 64 of 1954, s. 64:
Renumbered s. 68 in 1936 reprint and s. 69 in 1941 reprint.
Cf. s. 7 (3) ante.

(a) Prescribing the duties of Protectors and superintendents and any other persons employed to carry the provisions of this Act into effect;

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

- (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 natives;
- (d) enabling any native child to be sent to and detained in a native institution, industrial school, or orphanage;
- (e) for the control, care, and education of natives in native institutions, and for the supervision of native institutions;
- (f) prescribing the conditions on which any native children may be apprenticed to or placed in service with suitable persons;
- (g) prescribing the conditions on which any native prisoner may be placed under the custody of any officer or servant of the State;
- (h) [*Repealed by No. 64 of 1954, s. 64.*]
- (i) regulating a fund for the general welfare and relief of natives; and for the establishment, management, and control of such fund, including eligibility for and the amount and method of payment of benefits therefrom;
- (j) providing for the inspection of natives, employed as employees or engaged as independent contractors and their conditions of service;
- (k) providing for the control of reserves and the supervision of natives on reserves;
- (l) authorising entry upon a reserve by specified persons or classes of persons for specified objects, and the conditions under

Inserted by
No. 43 of
1936, s. 32
as (hh):
relettered
(1) in 1936
reprint.

Formerly (k):
relettered
(1) in 1936
reprint.

which such persons may enter or remain upon a reserve, and providing for the revocation of such authority in any case;

- (m) 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;

Added by No. 42 of 1911, s. 13 as (k1): relettered (m) in 1936 reprint.

- (n) [*Repealed by No. 64 of 1954, s. 64.*]

- (o) for the establishment of mission stations and the issue of permits to mission workers;

Inserted by No. 43 of 1936, s. 32 as (K3): relettered (o) in 1936 reprint.

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

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

- (p) for all other purposes relating to the administration of this Act.

Formerly (l): relettered (p) in 1936 reprint.

- (q) [*Repealed by No. 64 of 1954, s. 64.*]

70. [*Repealed by No. 64 of 1954, s. 65.*]

Publication of regulations.
No. 14 of 1905, s. 61: Renumbered s. 69 in 1936 reprint and s. 70 in 1941 reprint.

71. Such regulations may impose for any breach thereof—

- (a) for a first offence, a fine not exceeding twenty pounds or imprisonment for any period not exceeding three months, or both;
- (b) for a second offence, a fine not exceeding fifty pounds or imprisonment not exceeding six months, or both;

Penalties for breach of regulations.
Ibid s. 62.
Amended by 43 of 1936, s. 33: Renumbered s. 70 in 1936 reprint and s. 71 in 1941 reprint.

- (c) for a third or subsequent offence, a fine not exceeding one hundred pounds or imprisonment for twelve months, or both.

Power to exempt certain natives from Act.
Ibid s. 63.
 Amended by No. 43 of 1936, ss. 3, 34:
 Renumbered s. 71 in 1936 reprint and s. 72 in 1941 reprint.
 See Q. 1897, No. 17, s. 33; Q. 1902, No. 1, s. 6.

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

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

Provided that any native who is aggrieved on account of the refusal by the Minister to grant such certificate, or of the revocation by the Minister of his certificate under this section may appeal to a magistrate in the magisterial district in which he resides. The magistrate may make such order regarding the issue or revocation of the certificate as in his opinion the justice of the case requires, and such order shall be given effect by the Minister. Such appeal shall be in accordance with the regulations, which may prescribe the time for appealing and the procedure to be followed.

Accounts and audit.
Ibid s. 64.
 Amended by No. 42 of 1911, s. 14:
 No. 43 of 1936, s. 3;
 No. 64 of 1954, ss. 6, 66:
 Renumbered s. 72 in 1936 reprint and s. 73 in 1941 reprint.

73. (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 Treasurer of the State.

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

(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 *Govern-ment Gazette*.

(6) The statement of receipts and payments and other statements as aforesaid, duly audited, together with a report by the Commissioner on the condition and welfare of the natives, 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, 1904,¹ and any amendment thereof, with respect to the audit of accounts of the Department.

74. Where as 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

Validation of appointments made and acts and things done under 61 Vict., No. 5.
No. 14 of 1905, s. 65:
Renumbered s. 73 in 1936 reprint and s. 74 in 1941 reprint.

¹ Now Audit Act, 1904-1957.

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 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.

75. The Acts mentioned in the Second Schedule are hereby repealed to the extent and in the manner therein stated.

Repeal.
Ibid s. 66:
Renumbered
s. 74 in
1936 reprint
and s. 75 in
1941 reprint.

THE FIRST SCHEDULE.

Section 74.

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.

THE SECOND SCHEDULE.

Section 75.

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.

