

The Aborigines Protection Act, 1886

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ

No. 25

An Act to provide for the better protection and management of the Aboriginal Natives of Western Australia, and to amend the Law relating to certain Contracts with such Aboriginal Natives.

[Assented to 2nd September, 1886.]

WHEREAS it is expedient to establish a Board for the better Protection of the Aborigines and the management of Aboriginal Native affairs, and to amend the law relating to Contracts with and other matters affecting Aboriginal Natives: Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. This Act may be cited for all purposes as ‘The Aborigines Protection Act, 1886,’ and is divided into Parts, as follows (that is to say):—

Part I.—Constitution, Powers, and Duties of Board, and Appointment of Protectors.

Part II.—Contracts.

Part III.—Employment of Aboriginal Prisoners.

Part IV.—Apprentices.

Part V.—Miscellaneous.

and shall come into operation and take effect from the first day of January, 1887.

2. In the construction and for the purposes of this Act, the word ‘Board’ shall mean ‘The Aborigines Protection Board’ constituted and appointed under this Act.

PART I.—CONSTITUTION, POWERS, AND DUTIES OF BOARD, AND APPOINTMENT OF PROTECTORS

3. For the purposes of this Act there shall be a Board, to be called ‘The Aborigines Protection Board,’ which shall consist of five persons to be appointed by the Governor. The Governor shall further appoint one of such persons to be Chairman of the Board, and shall also appoint a proper person to be Secretary of the Board, and the Governor shall from time to time fill up all vacancies in the Board and the office of Secretary whenever they shall occur; and all questions as to the existence of any such vacancy shall be determined by the Governor.

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- 4.** Every such appointment, and every appointment of a Protector of Aborigines under this Act, shall be forthwith published in the 'Government Gazette'; and the production of a copy of the 'Gazette' containing a notice of any such appointment shall be received in all courts of justice and elsewhere as evidence of the due appointment of the person or persons therein named.
- 5.** All questions to be decided by the Board shall be decided by the majority of the votes of the members present at any meeting of the Board, and in case of an equality of votes the Chairman shall have a casting vote. In the event of the absence of the Chairman from any meeting, the members present shall elect one of their number to be chairman of such meeting.
- 6.** It shall be the duty of the Board—
- (1) To apportion, distribute, and apply, as they may think fit, all moneys granted by the Legislative Council for the benefit of Aborigines.
 - (2) To distribute blankets, clothes, and other relief to the Aborigines, in the discretion of the Board.
 - (3) To submit to the Governor any proposals or suggestions relating to the care, custody, or education of the children of Aborigines.
 - (4) To provide as far as practicable for the supply of medicines, medical attendance, 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 the 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 ill-treatment, imposition, and fraud.
- 7.** The Board may from time to time make, alter, or rescind regulations and orders concerning all or any of the matters mentioned in the last preceding section. All such regulations shall be submitted to the Governor for his approval, and when approved shall be laid before the Legislative Council as soon as practicable.
- 8.** The Board shall prepare an annual estimate of the expenditure necessary during each year for the carrying out of the provisions of this Act and the fulfilment of the several duties hereby committed to the Board.
- 9.** The annual estimate shall be subject to approval or amendment by the Governor, and shall be laid before the Legislative Council at the same time and dealt with in the same manner as the General Estimates of the Revenue and Expenditure of the Colony.
- 10.** The Board shall have power to expend all moneys that may be voted by the Legislative Council for the benefit of Aborigines, but such expenditure shall be in accordance with the said annual estimate duly approved as aforesaid; Provided that until the first of such annual estimates is prepared, the Board may expend for the purposes of

'Gazette' evidence of appointments

Decisions of Board

Duty of Board

Board may make regulations and orders

Estimates of expenditure

Mode of dealing with Estimates

Power of Board to expend moneys under their control

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this Act such moneys as may be placed at their disposal by the Governor.

11. Expenditure not comprised within the annual estimates of the Board, approved as aforesaid, may be incurred, subject to the same regulation and control as in the case of expenditure in excess of the Annual General Estimates of the Colony.

Expenditure in excess of Estimates

12. The Board shall present to the Governor, not later than the 15th day of April in every year, a report of and concerning the condition and welfare of the Aborigines, and of the transactions of the Board, and of all moneys expended by the Board during the preceding year, which report shall be laid before the Legislative Council at the next sitting thereof.

Board to present annual report to Governor

13. A separate account of all moneys voted by the Legislative Council, for the benefit of the Aborigines, shall be opened and kept at the Colonial Treasury, and an annual balance sheet, to be prepared in the office of the Treasury, containing details of the whole of the expenditure of the preceding year, of or in connection with such vote, shall be annexed to the annual report of the Board hereinbefore referred to.

Account of moneys voted by Legislature and expenditure thereof to be kept at Treasury

14. The accounts in connection with such vote shall be duly audited in the usual manner by the Auditor General, and all payments therefrom shall be made in accordance with the provisions of 'The Audit Act, 1881.'

Audit of accounts

15. Every member of the Board shall have and may exercise all the powers by this Act vested in Protectors of Aborigines.

Powers of Protectors vested in members of Board

16. It shall be lawful for the Governor, on the recommendation of the Board, to appoint persons to be Protectors of Aborigines, and any such appointment to annul, on the like recommendation.

Appointment of Protectors of Aborigines

17. It shall be the duty of every Protector of Aborigines to conform to the instructions of the Board in all matters of expenditure, and generally to report to the Board on the wants and treatment of Aborigines and their contracts of service and employment; and every Protector of Aborigines may institute, carry on, or defend any action, suit, prosecution, or other proceeding, and enforce any order or judgment of any Court for and on behalf of any Aboriginal, and either in the name of the Aboriginal or of the Protector.

Duty of Protectors

PART II.—CONTRACTS

18. No contract with any Aboriginal for any service or employment shall be of any force or validity as against such Aboriginal unless the same be in writing, and the Aboriginal be of the age of fourteen years and upwards at the time of the making of such contract.

Contracts with Aborigines invalid unless made in certain manner and under certain specified conditions

(a) Nor unless such contract, at the time of the making thereof, be witnessed and truly dated by a third party, being one of the persons mentioned in the next following section, and endorsed by such witness at the same time with a certificate that the contract was fully explained by him to the Aboriginal, and that he appeared to be of the age

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of fourteen years and upwards, and fully to understand the same, and to be a free and voluntary agent in the matter, and under no fear, coercion, or constraint.

- (b) Nor unless such contract be signed or marked by the employer or his agent, and by the Aboriginal.
- (c) Nor unless it shall specify the nature of the service or employment, and the period of the service, which shall not exceed twelve months.
- (d) Nor unless it shall stipulate for the supply by the employer to the Aboriginal of substantial, good, and sufficient rations, clothing, and blankets, and also medicines and medical attendance when practicable and necessary, unless the illness of the Aboriginal be caused by his own improper act or default.
- (e) Nor unless the true date of the making of such contract be expressed therein by the attesting witness.

Penalty on Justice or Protector, or other person

Any Justice or Protector of Aborigines or other person appointed as hereinafter mentioned who shall untruly date any such contract, or endorse thereon any such certificate as aforesaid contrary to the fact, shall forfeit and pay the sum of Twenty pounds, together with full costs of suit, to any person who shall first sue for the same in any court of competent jurisdiction.

Contracts how to be witnessed

19. A contract under this Act shall be witnessed by a Justice of the Peace, a Protector of Aborigines, or some other fit and proper person appointed by the Resident Magistrate of the district wherein the contract is made, for the purpose of witnessing contracts under this Act. Provided always that the appointment of any such person by a Resident Magistrate may at any time be revoked by such Resident Magistrate; and every such appointment and revocation of appointment shall be forthwith published by the Resident Magistrate in the 'Government Gazette,' and the production of a copy of the 'Gazette' containing a notice of any such appointment or revocation shall be received in all Courts of Justice and elsewhere as evidence of the due appointment or revocation of the appointment (as the case may be) of the person therein named.

Form of contract

20. The written contract and certificate in the eighteenth section mentioned may be in the form given in the Schedule to this Act.

Commencement of term of contract

21. The term or period of service mentioned in any contract under this Act shall be deemed to commence from the time of the making of such contract.

Aboriginal under contract to have certain liberty

22. The employer of any Aboriginal engaged under a contract made under this Act shall grant to the Aboriginal at his request, some time during the term of service, leave to absent himself from his work or service under such contract :

- (a) For a period not less than fourteen days, in case the contract be for a term of three months and not exceeding six months.
- (b) For a period not less than thirty days, in case the contract be for a term exceeding six months.

Justice on hearing of complaint

23. It shall be lawful for any Justice or Justices of the Peace, on

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- the hearing of any complaint touching the alleged breach of any contract under this Act, irrespective of any other decision, order, or judgment in the case, to cancel the contract.
24. It shall be lawful for any Justice or Justices, on the complaint of a Protector of Aborigines, or other person, that an Aboriginal is from any cause unfit or unable to work, and for any Protector of Aborigines, being himself a Justice of the Peace, on satisfying himself (whether complaint be made or not) of such unfitness or inability to work, or of the non-fulfilment by the employer of the terms of the contract, or that the contract is not, in the opinion of such Justice or Protector, for *bond fide* service or employment, or that any Aboriginal under contract is ill-treated, forthwith to cancel such contract.
25. It shall be lawful for every Protector of Aborigines to enter upon the premises where any Aboriginal engaged under a contract under this Act may be employed or reside, or may, in the opinion of such Protector, be supposed to be, and to ascertain whether the terms of the contract are being fulfilled by the employer of such Aboriginal.
26. The employer of an Aboriginal engaged under a contract under this Act shall, whenever requested so to do by any Justice of the Peace or Protector of Aborigines, produce to him such contract; and on default thereof, without reasonable excuse in the opinion of such Justice or Protector, such employer shall forfeit and pay a penalty not exceeding Ten pounds.
27. Every contract which shall be cancelled under the provisions of this Act shall be endorsed by the Justice of the Peace ordering such cancellation with the word 'cancelled,' together with the date of such cancellation and the signature of such Justice.
28. Every person who shall forge or alter, or who shall produce or make use of, knowing the same to be forged or altered, with intent to defraud, any contract purporting to be a contract under this Act, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding five years nor less than three years, or to be imprisoned with or without hard labour for any term not exceeding two years.
29. In every case of a conviction for an offence against the provisions of the tenth section of 'The Pearl Shell Fishery Regulation Act, 1873,' it shall be lawful for the convicting Justice or Justices of the Peace, in addition to or in lieu of the penalty by that section imposed, as to such Justice or Justices may seem fit, to order that any person so convicted shall be imprisoned for a period not exceeding six calendar months, either with or without hard labour.
30. No contract with any Aboriginal for any service or employment shall be of any force or validity as against such Aboriginal, if made within fourteen days after the expiration or other determination of any agreement under which such Aboriginal shall have been engaged in the Pearl Shell Fishery, by virtue of 'The Pearl Shell Fishery Regulation Act, 1873.'
31. The provisions of this part of this Act shall not apply to any Aboriginal who shall be engaged for employment in the Pearl Shell Fishery, or in any other industry which shall necessitate the conveyance of such Aboriginal by sea to the scene of such industry.

may cancel contract

Justice, whether complaint be made or not, may cancel contract on certain grounds

Protector may enter certain premises and make inquiries

Employer to produce contract on demand

Penalty

Cancellation of contract

Penalty for forging, &c., contract

Penalty for breach of 10th section of 'The Pearl Shell Fishery Regulation Act, 1873' (37 Vic., No. 11)

No contract with Aboriginal valid as against him in certain cases

This Act not to apply to contract for the Pearl Shell Fishery

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PART III.—EMPLOYMENT OF ABORIGINAL PRISONERS

And whereas it is expedient to legalise the detention and custody of Aboriginal Native Prisoners beyond the limits of a common gaol or other usual place of detention of such prisoners, and to employ them in such suitable labour as the Governor may approve ; Be it enacted :—

Aboriginals may
by order of
Governor be
employed outside
gaol

32. That any Aboriginal now under sentence of imprisonment, with or without hard labour, in any common gaol or other place of detention in this Colony, or who may hereafter be sentenced to imprisonment therein, by the Supreme Court, or any other lawful authority, may, during the term for which he shall be sentenced to be imprisoned or any part thereof, by order of the Governor be employed under the provisions of this Act in such suitable labour in the service of the Government, as the Governor may direct, outside the limits of any gaol or usual place of detention ; Provided that no such prisoner who has not been sentenced to hard labour shall be set to any labour which is severe.

Governor may
place such
prisoner under
custody of
officer or servant
of Government

33. It shall be lawful for the Governor to place any such prisoner under custody of any officer or servant of the Government, who shall be responsible for the safe custody of such prisoner, and he shall thereupon, for all purposes, be deemed to be in legal custody, wherever he may be employed or detained.

Governor may
make rules and
regulations

34. The Governor may make rules, orders, and regulations for the employment and safe custody of such prisoners, and for ensuring propriety of conduct and due performance of labour by them, and such other rules, orders, and regulations as he may think necessary to carry this part of this Act into effect ; and the said rules, orders, and regulations, and any order made under Section 32, may alter, vary, and revoke as occasion may or shall require.

Sheriff, &c.,
relieved from
responsibility

Provided always, and be it enacted, that the Sheriff, and other persons having the charge of any gaol or other place of detention, and wherein such offenders may be sentenced to imprisonment, shall not be responsible for the safe custody of any such prisoner during the time that he may be removed, under order as aforesaid, from or out of such gaol or other place.

Justices may
visit and examine
prisoners

35. Any Justice of the Peace may at all times visit any such prisoner and interrogate him, and report to the Governor, through the Colonial Secretary, any breach or violation of any rules, orders, or regulations made under the authority of this Part of this Act.

PART IV.—APPRENTICES

Resident Magis-
trate may bind
any half-caste or
other Aboriginal
child as an
apprentice

36. It shall be lawful for any Resident Magistrate, acting under the instructions of the Board, to bind by indenture and put out any half-caste or other Aboriginal child, having attained a suitable age, as an apprentice, until he shall attain the age of twenty-one years, to any master or mistress willing to receive such child in any suitable trade, business, or employment whatsoever, and every such binding shall be effectual in law, to all intents and purposes, as if the child had been of full age, and had bound himself to be such apprentice : Provided

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that such Resident Magistrate, previously to executing such indenture, shall inform himself, as fully as he can, of the child's age, which age shall be inserted in such indenture, and shall thereupon, for the purposes of this provision, be taken to be the child's true age without further proof: Provided also, that such Magistrate shall see that in the indenture due and reasonable provision is made for the maintenance, clothing, and proper and humane treatment of any such apprentice.

37. It shall be lawful for any Justice, upon complaint by any such master or mistress, or by any such apprentice, or by any Protector of Aborigines, of misbehaviour by the apprentice on the one hand, or of ill-usage by the master or mistress on the other, to issue a summons or warrant to bring the party complained of before any two Justices, who may investigate the matter, and either dismiss such complaint or punish the party complained of, if the mistress, by fine not exceeding Ten pounds; if the master, by fine not exceeding Ten pounds or imprisonment; if the apprentice, by imprisonment, not exceeding in either case one month; and if it shall appear to such Justices that there is or has been ill-usage by the master or mistress, or incorrigible misconduct in the apprentice, it shall be lawful for such Justices to make an order cancelling and annulling the indenture.

Power of Justices
between masters
and apprentices

38. In the event of the death of any such master or mistress, his or her executor or administrator may, with the approval of the Board, assign any such indenture for the residue of the term then unexpired therein, and any two Justices may, in case of such death, or upon the application of the master or mistress, with the consent of the Board, in case it shall appear to be for the benefit of the apprentice so to do, assign any such indenture to any other person, or may absolutely cancel the indenture, in case there shall be no such executor or administrator: Provided that in every such case of assignment, the assignee shall be as much bound to perform the several covenants of the indenture as if he or she had been the master or mistress originally named therein.

Assignment or
revocation of
indenture

39. It shall be lawful for any Justice of the Peace or for any Protector of Aborigines to visit every such apprentice, and to enter the dwelling-house, or premises, where he may be employed or reside, and ascertain whether the terms of the said indenture have been fulfilled.

Justice of the
Peace or Protec-
tor of Aborigines
to visit

PART V.—MISCELLANEOUS

40. All blankets, bedding, clothing, and other articles issued or distributed to the Aborigines by, or by the direction of the Board, shall be considered on loan only, and shall remain the property of Her Majesty; and it shall not be lawful for the Aborigines receiving such bedding, clothing, or other articles, to sell or otherwise dispose of the same, without the sanction of a Justice of the Peace or Protector.

Prohibition
against disposal
of articles issued
by Board to
Aborigines

41. If any person shall, without such sanction, take, whether by purchase or otherwise, any goods or chattels issued or distributed to any Aboriginal by, or by the direction of the said Board, every such person shall, on conviction, be liable to a penalty not exceeding Twenty

Penalty

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pounds, or in default to be imprisoned for any term not less than one month nor more than three months.

Penalty on person obstructing execution of Act

42. If any person shall violate the provisions of any regulations made under or in pursuance of this Act, or shall obstruct the Board or any member thereof, or any Justice of the Peace, or Protector of Aborigines, in the execution of his duty under this Act or the said regulations, every such person shall on conviction forfeit and pay any sum not exceeding Twenty pounds.

Justice may order Aborigines out of town

43. It shall be lawful for any Justice of the Peace to order any Aboriginal found loitering in any city or town of the Colony, or being therein, and not, in the judgment of such Justice, decently clothed from neck to knee, forthwith to leave such city or town; and any Aboriginal neglecting or refusing to obey such order shall be deemed guilty of an offence, and may be apprehended without warrant, and detained in custody, and on conviction of such offence before any one or more Justices in Petty Sessions shall be liable to imprisonment for any term not exceeding one month.

Punishment of Aborigines under Masters and Servants Acts

Summons or warrant not to be served on Aboriginal beyond certain distance, except when specially directed by Resident Magistrate

Who to be deemed an Aboriginal

44. [*Repealed by 55 Vic., No. 25.*]

45. Every Aboriginal Native of Australia, and every Aboriginal half-caste or child of a half-caste, such half-caste or child habitually associating and living with Aborigines, shall be deemed to be an Aboriginal within the meaning of this Act, and at the hearing of any case the Justice or Justices adjudicating may, in the absence of other sufficient evidence, decide on his or their own view and judgment whether any person with reference to whom any proceedings shall have been taken under this Act is or is not an Aboriginal.

Penalties—how enforced

46. All penalties imposed by this Act may be enforced by summary proceedings before any Justice or Justices of the Peace in Petty Sessions.

Sections of Shortening Ordinance incorporated

47. Sections A, C, F, G, and H of 'The Shortening Ordinance, 1853,' shall be incorporated with, and taken to form part of this Act, to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth in this Act.

F. NAPIER BROOME,
GOVERNOR.

SCHEDULE

This Agreement, made the _____ day _____, 18____, between A.B. (*name of employer*), of _____, and C. (*using the native name of the Aboriginal*), an Aboriginal Native, witnesseth:—

1. The said C. agrees to serve A.B. as (*here state the capacity in which the Aboriginal is to serve*).

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2. Such service to last until
3. C. is to begin work on the **day of**
4. A.B. is to supply C. during the said service with medicines and medical attendance when practicable and necessary, unless the illness of C. be caused by his own improper act or default.
5. A.B. is to give C. during the said service **lbs. of flour,** of tea, &c., per day, and at the commencement of the service is to give him one blanket, one pair of trousers, &c., &c.
6. Before or at the termination of such service A.B. is to give C., &c., &c.
(Signed) A.B.,
C. (his mark).

Signed in the presence of me,

A Justice of the Peace,
or, Protector of Aborigines,
or, person appointed under Section 19.

Form of Endorsement

I, E.F., of (a Justice of the Peace, or, Protector of Aborigines, or, person appointed under Section 19) do hereby certify that the within Agreement was fully explained by me to C. before he executed the same, and that he appears to be of the age of fourteen years and upwards, and fully to understand the said Agreement, and to be a free and voluntary agent in the matter, and under no fear, coercion, or constraint. That the said Agreement was made on the day of the date thereof.

(Signed) E.F.,
J.P.,
or, Protector,
or, person appointed under Section 19.

Dated the day of

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WESTERN AUSTRALIA

ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ

No. 26

An Act to regulate the granting of licenses under 'The Wines, Beer, and Spirit Sale Act, 1880,' in certain districts, and further to amend the said Act.

[Assented to 2nd September, 1886.]

WHEREAS by reason of the recent settlement of the Districts of East Kimberley, West Kimberley, and the Kimberley Goldfield District, the provisions of 'The Wines, Beer, and Spirit Sale Act, 1880,' as to applications for licenses, and in respect of the transfer, renewal, and removal thereof in such districts are inapplicable; And whereas it is desirable to further amend the said Act: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. This Act may be cited as 'The Wines, Beer, and Spirit Sale Act, 1880, Amendment Act, 1886,' and shall come into operation on

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