

(3) **District officer's opinion not evidence before tribunal of fact.** No provision of section thirty-eight of this Act shall be construed to render admissible before a jury or, as the case may require, a justice as a tribunal of fact determining a charge against an assisted Aborigine or an assisted Islander the opinion of a district officer in relation to the matter referred to in subsection (1) of section thirty-eight of this Act.

(4) **Appearance for assisted persons.** Any district officer or, in the case of an assisted Aborigine being the accused, the manager of the reserve whereon such accused usually resides, may appear for an assisted Aborigine or an assisted Islander charged with any offence, may examine and cross-examine witnesses called in relation to such charge and may address the court (including the jury) on behalf of such accused any provision of any other Act or rule of practice notwithstanding.

(5) **Definition of "accused".** In this section and in sections thirty-eight and thirty-nine of this Act the term "accused" includes a defendant being dealt with summarily for any offence.

41. When female not a compellable witness. (1) When a male assisted Aborigine or assisted Islander and a female assisted Aborigine or assisted Islander are living together as man and wife otherwise than in lawful marriage at the time when, according to the charge relevant thereto, the male assisted Aborigine or assisted Islander commits an offence and it appears—

(a) in the case of a charge against a male assisted Aborigine, to the district officer of the district wherein such assisted Aborigine usually resides or to the manager of the reserve whereon such assisted Aborigine usually resides; or

(b) in the case of a charge against a male assisted Islander, to the district officer or, where such assisted Islander usually resides on a reserve for Aborigines, the manager of such reserve,

that they would be likely to continue in that relationship, the female assisted Aborigine or, as the case may be, assisted Islander shall not be a compellable witness against such male assisted Aborigine or, as the case may be, assisted Islander.

(2) No provision of the preceding subsection or of sections thirty-eight, thirty-nine or forty of this Act applies in relation to proceedings before an Island court or an Aboriginal court.

42. Minister for Education may take charge of mission school aided by State. The Governor in Council may, by Order in Council, authorize the Minister for Education of Queensland to take charge of and administer any school situated on a mission conducted by any Church, religious body or secular organization for the benefit of Aborigines or Islanders in respect of which school moneys of the State have been expended by way of aid or endowment either before or after the commencement of this Act.

The Governor in Council may, by such Order in Council, specify conditions upon which the Minister for Education of Queensland may so take charge of and administer such a school.

The Minister for Education of Queensland, authorized as aforesaid, may take charge of and administer such a school in accordance with such Order in Council.

PART V—ABORIGINES' AFFAIRS

43. Consequences of tribal union. (1) When a male Aborigine or a female Aborigine has lived in a connubial relationship with another person in accordance with recognized tribal practice the children of such a union, whether born before or after the commencement of this Act, shall be deemed to be legitimate and the fact that such union was not created in any way required by a law of the State or Commonwealth to create a lawful marriage or was not at any material time registered in accordance with law shall not prejudice the claim of the surviving partner of such union or of any child of such union to succeed to the estate of the deceased partner of such union or to the benefit of any damages or any right of action therefor, or of workers' compensation which would be payable in respect of the death of the deceased partner of such union to the surviving partner of such union or to any child of such union were such union a lawful marriage.

(2) A certificate purporting to be under the hand of the Director that any male Aborigine or any female Aborigine has lived with another person in accordance with recognized tribal practice shall be conclusive evidence of the fact certified.

44. (1) Aboriginal courts. The Governor in Council may, by regulation, establish for a reserve or community of Aborigines a court which shall be called an Aboriginal court.

In relation to the Aborigines in the reserve or community for which it is established an Aboriginal court shall have and may exercise such powers, duties, functions and jurisdictions as are, from time to time, prescribed pursuant to this Act.

(2) **Aboriginal councils.** The Governor in Council may, by regulation, establish for a reserve or community of Aborigines a council which shall be called an Aboriginal council.

In relation to the assisted Aborigines in the reserve or community for which it is established an Aboriginal council shall have and may exercise such powers, duties and functions of local government as are, from time to time, prescribed pursuant to this Act.

PART VI—ISLANDERS' AFFAIRS

45. Local Government of reserves for Islanders. (1) (a) Every reserve for Islanders and the Islander community situated at Bamaga on the Northern Peninsula reserve shall be governed by an Island council (in this Part called a "council") comprising such number of members not exceeding five (including the chairman) as the district officer may, from time to time, fix.

The chairman of a council shall be called, and in this Act is called, "chairman".

The other members of a council shall be called, and in this Act are called, "councillors".

(b) Every council constituted pursuant to "*The Torres Strait Islanders Acts, 1939 to 1946*," and existing at the commencement of this Act shall, unless it is previously dissolved in accordance with this Act,

continue in existence until the first triennial election of chairman and councillors held pursuant to this Act and shall be deemed to have been constituted pursuant to this Act.

(c) Every by-law, resolution and order lawfully made by a council pursuant to "*The Torres Strait Islanders Acts, 1939 to 1946,*" shall be deemed to have been made by such council pursuant to this Act and to be of force and effect accordingly.

(2) Every Islander who has attained the age of twenty-one years and who resides or is entitled to reside on the reserve or, in the case of the Islander community at Bamaga aforesaid, within that community and who consents to be so nominated and who is not otherwise rendered incapable by this section shall be qualified to be nominated as a candidate for and to be elected and to act as chairman or a councillor.

Every person nominated as a candidate shall pay to the district officer the sum of five pounds to be by him retained until the result of the election is known.

A person who fails to pay such sum at least seven days before the date fixed for the election as in this section prescribed shall not be a candidate at that election.

The district officer shall, upon the result of the election being known, pay to each candidate who is elected and to each other candidate who received at least one-fifth of the number of votes received by the candidate who received most votes the sum of five pounds paid to him by such candidate and shall pay the sum of five pounds paid to him by any other candidate to Consolidated Revenue.

(3) A person who—

(a) is undergoing a sentence imposed upon him by a court, other than an Island court, consequent upon his conviction of any offence; or

(b) has been convicted before an Island court of an offence against this Act or any by-law of a council within the period of two years last preceding his nomination; or

(c) holds an appointment as policeman on a reserve for Islanders or within the Islander community at Bamaga aforesaid,

shall not be capable of being nominated as a candidate for or of being elected or of acting as chairman or a councillor.

(4) (a) The chairman and the whole number of councillors shall be elected by the electors and for this purpose a triennial election shall be held.

(b) The first triennial election of a council shall be held pursuant to this Act in the third year after the date of the last triennial election of such council held prior to the commencement of this Act but if there be no such date then upon a date to be fixed in the manner provided by subsection (6) of this section.

(5) (a) Subject to this subsection, the office of chairman or councillor shall—

(i) commence on the day of his election; and

(ii) become vacant at the conclusion of the next triennial election under this Act unless sooner vacated in accordance with this Act.

(b) The office of chairman or of councillor shall be deemed to have been vacated if the holder of such office—

- (i) dies or resigns;
- (ii) is convicted of an indictable offence before any court other than an Island court;
- (iii) is convicted of an offence before an Island court;
- (iv) accepts an appointment as policeman on a reserve for Islanders or within the Islander community at Bamaga aforesaid;
- (v) otherwise becomes disqualified to act as chairman or, as the case may be, councillor.

(6) At any election of a council the voting shall be by secret ballot and each elector shall be entitled to one vote.

The election shall be held on a date to be fixed by the three group representatives (in this Part provided for) or, in the event of their failing to do so, by the district officer, during the year of the triennial election and shall be conducted in one public building on the reserve or within the community for which such election is being held.

In this subsection the term "public building" means a school, community hall, an Island council meeting place and any other building approved by the district officer.

(7) Every Islander who has attained the age of twenty-one years and who resides on the reserve or, in the case of the Islander community at Bamaga aforesaid, within the community shall be qualified to vote unless he is undergoing a sentence imposed upon him by a court other than an Island court consequent upon his conviction of any offence.

(8) A chairman or any councillor may resign his office by notice (oral or written) to the district officer and such resignation shall take effect from the time it is received by such officer.

(9) (a) When a vacancy arises in the office of chairman or councillor prior to the conclusion of the next triennial election an election may be held to fill such office on a date to be fixed by the three group representatives or, in the event of their failing to do so, by the district officer.

(b) A person elected under this subsection to fill any vacancy shall in relation to that election hold office for the remainder of the term for which his predecessor in that office was elected.

Any such person may at the triennial election next ensuing after his election or at any subsequent time be elected or re-elected to the office of chairman or councillor if he is then capable of acting as such.

(c) If sufficient vacancies occur to prevent a quorum of members of a council from being obtained the district officer may make such arrangements as he considers necessary for the carrying on of the essential services of the reserve until such vacancies are filled.

(10) Every election of a council shall be conducted in accordance with such rules, forms and directions as are prescribed.

(11) (a) At the first meeting of a council after the conclusion of an election of chairman and councillors, or at some adjournment of such meeting, the members present shall elect one of their number to be deputy chairman of the council who shall, subject to this subsection, hold office until the conclusion of the next triennial election.

The office of deputy chairman shall—

- (i) commence on the day of his election thereto; and
- (ii) become vacant at the conclusion of the next triennial election under this Act unless sooner vacated.

(b) The office of deputy chairman shall be deemed to have been vacated if the holder of such office—

- (i) dies or resigns;
- (ii) is convicted of an indictable offence before any court other than an Island court;
- (iii) is convicted of an offence before an Island court;
- (iv) accepts an appointment as policeman on a reserve for Islanders or within the Islander community at Bamaga aforesaid;
- (v) otherwise becomes disqualified to act as a councillor.

(c) A deputy chairman may resign his office by notice (oral or written) to the district officer and such resignation shall take effect from the time it is received by such officer.

(12) In this section the term “sentence” includes a suspended sentence and a probation order and, notwithstanding the provisions of section nineteen of “*The Offenders Probation and Parole Act of 1959*,” the term “conviction” includes a conviction in respect of which a probation order is made.

46. Functions and powers of council. (1) A council shall have and may exercise the functions of local government of the reserve or, in the case of the Islander community at Bamaga aforesaid, of that community and shall be charged with the good rule and government of the reserve or, as the case may require, the community in accordance with Island customs and practices and shall have power to make by-laws for such good rule and government and to cause all such by-laws to be observed and carried out.

(2) A council shall, in addition, have power to make by-laws for promoting, maintaining, regulating, and controlling the peace, comfort, health, moral safety, convenience, food supply, housing, and welfare of the inhabitants of the reserve, and for the planning, development, and embellishment of the reserve, and for the direction, administration, and control of the working and business of the local government of the reserve, and shall cause all such by-laws to be carried out.

(3) Without limiting the generality of its powers and authorities, a council shall have and possess and may exercise and perform express powers and authorities (including the power to make by-laws) in relation to the following matters: The undertaking, provision, construction, maintenance, management, execution, control, regulation, and/or regulation of the use of roads, bridges, viaducts, and culverts, baths, and bathing-places, health, sanitation, cleansing, and scavenging, drainage, removal, suppression and abatement of nuisances, public conveniences, water conservation, disposal of the dead, village planning, subdivision of land and use and occupation of land, buildings and use and occupation of buildings, protection from fire, boundaries and fences, eradication and destruction of noxious weeds, animals, agricultural drainage and reclamation of land, and generally all works, matters, and things in its opinion necessary or conducive to the good rule and government of the reserve and the well-being of its inhabitants.

(4) The power to control and regulate shall include power to license or permit or refuse to license or permit or prevent or prohibit by by-laws in that behalf.

(5) Fees, charges, fares, rents, and dues may be imposed by by-law but this subsection shall not prejudice the power of a council to impose same or any of them by resolution.

(6) A by-law may be amended or repealed at any time by another by-law.

(7) A council shall cause printed copies of all by-laws to be kept at the office of the council.

(8) A by-law shall have no force or effect until it is approved by the Director, and every by-law approved by the Director shall come into operation on the day of such approval or such later date as the Director shall fix.

(9) A by-law may prescribe a penalty for the breach thereof or of any other by-law, but no pecuniary penalty prescribed shall exceed twenty pounds and no term of imprisonment prescribed shall exceed three months.

(10) When a by-law has been approved by the Director the council which made it shall cause it to be exhibited for a reasonable time in a prominent place on the reserve or, as the case may be, within the area of the community.

(11) The district officer may at any time by notice in writing suspend any resolution or order of a council either for an indefinite period or for such a period as he may specify.

If the district officer suspends a resolution or order of a council the chairman of that council may institute a reference from the decision in that behalf by way of application to the Stipendiary Magistrate or Acting Stipendiary Magistrate who constitutes the Magistrates Court in the Magistrates Courts District of Somerset.

Any such reference shall be instituted within twenty-eight days after such decision is made known to the chairman of the council concerned by lodging such application signed by the applicant with the clerk of the court in such district.

The institution of a reference pursuant to this subsection shall suspend the operation of the district officer's decision until such reference is determined or otherwise disposed of in accordance with this subsection.

The district officer may at any time after the institution of such a reference apply to the Stipendiary Magistrate or Acting Stipendiary Magistrate to whom the application concerned has been made that such reference be struck out for want of prosecution.

If such Stipendiary Magistrate or Acting Stipendiary Magistrate is satisfied that such reference has not been prosecuted by the applicant without adequate reason for such default he shall strike out and thereby dispose of such reference and thereupon the district officer's decision in issue shall be restored to its full force and effect.

If such Stipendiary Magistrate or Acting Stipendiary Magistrate allows such reference or varies the district officer's decision in issue such decision shall not have any force or effect or, as the case may be, shall have force and effect only as so varied.

47. Island rate. A council may make and levy a rate (in this Act called the "Island rate") upon such basis as may be prescribed by the by-laws of the council or, in so far as it is not so prescribed, as may be determined by the council.

A council may impose fees, charges, fares, rents and dues in respect of any property, service, matter or thing for the purpose of enabling it to exercise and perform its functions.

48. Island police. (1) A council may, subject to the approval of the district officer, appoint policemen for the reserve or, in the case of the Islander community at Bamaga aforesaid, for that community.

(2) Such policemen shall have such powers and duties as are prescribed by the by-laws of the council concerned and in so far as they are not so prescribed, as are determined by the three group representatives or, in so far as they do not so determine, by the district officer.

49. Dissolution of council. (1) The Director may upon the petition of at least two-thirds of the electors of a reserve, if in his opinion it is necessary so to do, by notice in writing dissolve a council whereupon—

(a) the chairman and councillors shall forthwith vacate their respective offices;

(b) a fresh election of the chairman and the whole number of councillors shall be held at such time as the district officer appoints.

(2) Within the period between the dissolution of a council and the election of another council the district officer may make such arrangements as he considers necessary for carrying on the essential services of the reserve.

50. Island Fund. (1) The Island Fund established under "*The Torres Strait Islanders Act of 1939*" is hereby preserved and continued and the same shall be maintained and administered, subject to the Minister and the Director, by the district officer of the district of Somerset.

(2) There shall be paid into the Island Fund—

(a) all moneys prescribed by this Act or any other Act to be so paid;

(b) all moneys paid in respect of rates, fees, charges, fares, rent and dues imposed by a council;

(c) all moneys paid in respect of fines imposed by an Island court; and

(d) all moneys paid by way of grants to such fund.

(3) (a) Moneys specified in paragraph (a) of the last preceding subsection and paid into the Island Fund shall be held for and applied to the purpose prescribed by the Act pursuant to which they were so paid.

(b) Moneys paid into the Island Fund pursuant to paragraphs (b), (c) or (d) of the last preceding subsection shall be applied, from time to time, towards expenditure incurred or to be incurred by the councils in the exercise and performance by them of the functions of local government.

(c) A disbursement shall not be made from the Island Fund unless the district officer approves.

(4) If, in pursuance of a resolution or order of a council or otherwise, a disbursement from the Island Fund has been made to any person which the district officer considers to be unnecessary, extravagant or not

authorized by this Act, the district officer may order such person to repay such disbursement to the Island Fund either forthwith or within such time as the district officer may allow.

The amount of any such disbursement may be recovered by the district officer as a debt due to him in any court of competent jurisdiction.

Any person who fails to comply with an order of the district officer issued under this subsection commits an offence against this Act.

51. Group representatives. (1) For the purposes of this section the reserves for Islanders are divided into three groups as follows:—

- (a) Eastern group comprising those reserves set forth under that heading in Schedule II to this Act;
- (b) Central group comprising those reserves set forth under that heading in Schedule II to this Act;
- (c) Western group comprising those reserves set forth under that heading in Schedule II to this Act and the Islander community at Bamaga on the Northern Peninsula reserve.

(2) The Governor in Council may, from time to time by Order in Council, declare any reserve for Islanders or community of Islanders to be within one of the three groups aforesaid and thereupon such reserve or, as the case may be, community shall be a reserve or, as the case may be, a community within the group as declared.

(3) The members of the councils within each such group shall, as soon as practicable after each triennial election of such councils, elect by majority vote of those so voting a person who is capable as provided by this Act to be the representative of such group.

A person shall be capable of being a group representative if he is also capable of acting as a chairman or councillor at the time of his election.

(4) (a) A group representative shall, subject to this section, hold his office until the next election of a group representative of the group concerned.

(b) The office of a group representative shall become vacant if the holder of that office—

- (i) dies or resigns;
- (ii) is convicted of an indictable offence before any court other than an Island court;
- (iii) is convicted of an offence before an Island court;
- (iv) accepts an appointment as policeman on a reserve for Islanders or within the Islander community at Bamaga aforesaid;
- (v) otherwise becomes disqualified to act as a group representative.

(c) A group representative may resign his office by notice (oral or written) to the district officer and such resignation shall take effect from the time it is received by such officer.

(d) If the office of a group representative becomes vacant before his successor is elected following the next ensuing triennial election of councils the councils in the group concerned may elect another person capable under this Act of being a group representative who shall, subject to this Act, hold such office for the remainder of the term of his predecessor in such office.

(5) Each group representative shall be entitled to attend at every meeting of a council within the group in relation to which he is representative and to advise the council in the exercise of its powers and performance of its functions under this Act.

Unless a group representative is also a member of the council a meeting of which he is attending he shall not be entitled to vote in relation to the business before such meeting.

(6) The three group representatives shall meet at least twice in each year at such places and at such times as they may determine for the purpose of promoting the well-being of Islanders.

(7) For the purposes of this section a person convicted of an indictable offence in respect of which a probation order has been made under "*The Offenders Probation and Parole Act of 1959*" shall be deemed convicted of an indictable offence notwithstanding the provisions of section nineteen of that Act.

52. (1) Island court. A council may at any time constitute itself into a court (in this Act called an "Island court") and exercise in relation to Islanders within its reserve, or in the case of the Islander community at Bamaga aforesaid, within that community, the jurisdiction from time to time conferred upon such court by this Act.

An Island court shall be constituted by a majority of the whole number of members of the council.

A person shall not sit as a member of an Island court constituted for the purpose of hearing and determining any matter in which he has an interest.

(2) **Appeals from Island court.** (a) Any person who feels aggrieved by a decision of an Island court may, within twenty-eight days after the pronouncement of such decision, appeal from such decision to the group representative of the group of reserves which includes the reserve or community for which such Island court is constituted.

Such group representative, after hearing the appellant and a representative of the Island court concerned, or such of them as desires to be heard, may pronounce the decision which in his opinion such court should have pronounced in the first instance.

(b) Any person who feels aggrieved by a decision of a group representative given upon an appeal instituted pursuant to paragraph (a) of this subsection may, within twenty-eight days after the pronouncement of such decision, appeal from such decision to the district officer who, after hearing the appellant and a representative of the Island court concerned or such of them as desires to be heard, may pronounce the decision which in his opinion such court should have pronounced in the first instance.

(c) The decision of a group representative given on an appeal instituted pursuant to paragraph (a) of this subsection shall, unless and until the district officer pronounces a decision upon an appeal therefrom instituted pursuant to paragraph (b) of this subsection, be deemed to be the decision of the Island court concerned.

The decision of the district officer given on an appeal instituted pursuant to paragraph (b) of this subsection shall be deemed to be the decision of the Island court concerned.

(3) **Saving of Island courts' orders and decisions.** Every order and decision made by an Island court constituted pursuant to "*The Torres Strait Islanders Acts, 1939 to 1946*," and subsisting at the commencement of this Act shall continue to be of full force and effect as if made by an Island court constituted pursuant to this Act.

53. District officer trustee of vessels, plant and produce. (1) The interest of an assisted Islander in a vessel or item of plant which but for this section would be the property wholly or partly of an assisted Islander

and which is used or intended to be used by such assisted Islander for the purpose of engaging in any industry and his interest in the produce of any such engagement shall be deemed to be vested in the district officer of the district of Somerset as trustee for such assisted Islander upon the following trusts:—

- (a) to direct or join with others in directing the working of such vessel or plant by such assisted Islander in the manner considered by such district officer to be in the best interests of such assisted Islander;
- (b) to sell or cause to be sold, on behalf of such assisted Islander, his interest in such produce.

Such district officer may, upon request in that behalf by such assisted Islander or if, in his own opinion, the interests of such assisted Islander require it, sell or cause to be sold a vessel or item of plant or an interest therein held by him pursuant to this subsection.

(2) Such district officer may—

- (a) repudiate any contract of sale lease or hire of any such vessel, plant or produce which contract has been made without his authority;
- (b) recover by action in his own name in any court of competent jurisdiction any such vessel, plant or produce delivered to any person pursuant to such a contract or damages in lieu thereof.

There may be set off against a claim by such district officer made pursuant to this subsection any amount of consideration proved to have been paid under the contract concerned to any assisted Islander entitled to the beneficial interest in such vessel, plant or produce.

(3) The purchase price of the interest of an assisted Islander in any such vessel, plant or produce sold by or with the authority of such district officer shall be paid to him and, if not so paid, may be recovered by him by action in his own name in any court of competent jurisdiction.

Such district officer, out of such purchase price, shall—

- (a) pay the expenses properly incurred on behalf of the assisted Islander in respect of such sale;
- (b) pay all debts properly incurred on behalf of the assisted Islander in relation to such vessel, plant or produce;
- (c) pay the balance of such purchase price to the assisted Islander beneficially entitled thereto and, if there be more than one such assisted Islander, according to their respective shares and at the time of such payment account to him or them for the disbursement of such purchase price.

PART VII—ISLAND INDUSTRIES BOARD

54. Island Industries Board. (1) The corporation known as “The Island Industries Board” continued in being under “*The Torres Strait Islanders Acts, 1939 to 1946,*” is hereby preserved, continued in being and constituted under and for the purposes of this Act and in this Act is called the “Board”.

(2) Notwithstanding the repeal of “*The Torres Strait Islanders Acts, 1939 to 1946,*” or any provision of this Act—

- (a) every right and every obligation of the Board subsisting at the commencement of this Act may be enforced by or, as the case may be, against the Board as if this Act had not been passed; and