

NATIVE WELFARE.

12° Elizabeth II., No. LXXIX.

No. 79 of 1963.

AN ACT to consolidate and amend the law relating to and providing for the Welfare of the Native Inhabitants of Western Australia; and for incidental and other purposes.

[Assented to 19th December, 1963.]

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

Short title.

1. This Act may be cited as the *Native Welfare Act, 1963.*

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

3. (1) The Acts specified in the Schedule to this Act are repealed to the extent therein mentioned. Repeal and savings.

(2) The provisions of sections fifteen and sixteen of the Interpretation Act, 1918, apply in respect of the repeals effected by subsection (1) of this section, but this express inclusion of the application of the provisions of those sections does not exclude the application to this Act of the other provisions of the Interpretation Act, 1918.

(3) Where in any other Act reference is made to an Act repealed by this section or to any provision thereof, the reference shall be taken, unless the context indicates or requires otherwise, to be a reference to this Act, or as the case requires, to the corresponding provision of this Act, and that reference shall be read and construed accordingly.

4. In this Act unless the context requires otherwise— Interpretation.

“Commissioner” means the Commissioner of Native Welfare appointed under this Act, and includes any person for the time being discharging the duties of the office of Commissioner;

“Department” means the Department of Native Welfare established under this Act;

“manager” means a manager appointed under this Act for any reserve;

“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 person so descended who is only one-fourth or less than one-fourth of the original full blood;

but notwithstanding the provisions of this interpretation, any person of the full blood or of less than the full blood descended from the original inhabitants of Australia who—

- (i) has served in the Territory of New Guinea or beyond the limits of the Commonwealth as a member of the Naval, Military or Air Forces of the Commonwealth; or
- (ii) 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 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 subject of Her Majesty who is of the same age;

“native institution” means a school, home, hostel, station, farm, reserve, mission, or other institution for the benefit or care of the native inhabitants of the State, declared by proclamation to be a native institution for the purposes of this Act;

“representative” means a person appointed by the Minister pursuant to the provisions of section twelve of this Act;

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

Department
of Native
Welfare.

5. (1) There shall be established a Department to be called the Department of Native Welfare, which Department shall be under the Minister and be charged with the duty of promoting the welfare of natives.

(2) Without limiting the operation of section three of this Act, the Department of Native Welfare established under the Acts repealed by this Act, as that Department existed immediately prior to the coming into operation of this Act, shall be deemed to be and shall be the Department of Native Welfare established pursuant to this section.

6. (1) The Treasurer of the State shall in every year place at the disposal of the Department a sum of ten thousand pounds out of the Consolidated Revenue Fund, and such further moneys as may be provided by Parliament, to be applied to the purposes of the Department.

**Annual sum
to be placed
at disposal of
Department.**

(2) If in any year the whole of the annual sum placed at the disposal of the Department is not expended, the unexpended balance shall be retained by the Department and expended in the performance of the duties of the Department in any subsequent year.

7. It shall be the duty of the Department—

**Duties of
Department.**

- (a) to apportion, distribute and apply, as may seem most fit, the moneys placed at its disposal pursuant to this Act;
- (b) to provide and distribute relief to 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 natives who are sick, aged or infirm;
- (e) to manage and regulate the use of all reserves set apart for the benefit of natives;
and

- (f) to exercise such general supervision and care in respect to all matters affecting the interests and welfare of 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.

**Minister for
Native
Welfare
a body
corporate.**

8. (1) The Minister shall for the purposes of this Act be and continue to be a body corporate under the name of the "Minister for Native Welfare" with perpetual succession and a common seal; and by that name shall be capable of suing and being sued and of acquiring, holding, exchanging, leasing, and disposing of real and personal property, and of doing and suffering all that bodies corporate may do and suffer.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Minister affixed to a document and shall presume that it was duly affixed.

**Authority
to acquire
land and
to dispose
thereof to
natives.**

9. (1) The Minister may—

(a) acquire, whether by purchase, exchange, lease or otherwise, land with or without improvements referred to in paragraph (b) of this subsection for the purpose of sale or lease in accordance with the provisions of this subsection; and

(b) effect to or upon the land acquired such improvements, including clearing, drainage, fencing, sowing, and the provision of livestock, machinery, houses and buildings, and until the land is sold or leased maintain and repair such improvements, including those already effected to or upon the land at the time of the acquisition thereof, as the Minister thinks fit; and

- (c) 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) 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 may require to secure payment of the balance of the purchase price and interest at such rate as the Minister thinks fit on that balance remaining unpaid from time to time, the Minister shall cause the fee simple in the land to be transferred or conveyed to, and the ownership of such of the improvements as comprise livestock, machinery or other chattels to be vested in, the purchaser subject to the securities.

(2) The Minister may, in addition to the powers conferred on him by subsection (1) of this section, lend money to a native to enable him to improve and develop any land owned or held by him, or to acquire further land, but no such loan shall be made except upon the security of a mortgage to the Minister, for such term, at such rate of interest and upon such terms and conditions as the Minister thinks fit, of the native's estate and interest in the land and the improvements thereon, with or without such additional security as the Minister thinks fit.

(3) The provisions of the Land Act, 1933, and the regulations made under that Act, that are 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; but the Governor may, nevertheless, make such regulations as he thinks necessary or convenient for the purpose of giving effect to that subsection.

(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 such other purposes, whether of the same kind as, or a different kind from, those specified in this subsection, as the Minister thinks fit.

Minister may extend this Act to persons of less than full blood who are not natives.

10. Notwithstanding any other provision of this Act, the Minister may at any time extend in his discretion all or any of the benefits and privileges conferred on natives under this Act to any person who establishes to the satisfaction of the Minister that he is a person of less than full blood descended from the original inhabitants of Australia or from their full blood descendants but is not a native within the meaning of section four of this Act.

Commissioner of Native Welfare to be appointed.

11. (1) The Governor shall appoint a person to be Commissioner of Native Welfare who shall, under the Minister, be responsible for the administration of this Act and of the Department throughout the State.

(2) The Governor may appoint a person to be the deputy of the Commissioner and that person when so appointed is authorised to exercise any power and perform any duty that the Commissioner may exercise or is required to perform under this Act, whether the Commissioner is absent or not; but the appointment of a deputy does not affect the exercise or discharge by the Commissioner himself of any power or duty.

(3) Without limiting the operation of section three of this Act, the persons who immediately prior to the coming into operation of this Act were respectively the Commissioner of Native Welfare and the deputy of the Commissioner, under the provisions of the Acts repealed by this Act, shall be deemed to have been appointed in accordance with this Act the Commissioner of Native Welfare and the deputy of the Commissioner respectively.

12. (1) The Minister may from time to time appoint fit and proper persons to be representatives who shall, within the parts of the State respectively assigned to them by the Minister, have and exercise the powers and duties prescribed.

Representatives and other officers may be appointed.

(2) The Governor may at any time and from time to time appoint such other persons to such other offices, and with such powers and functions, as he considers necessary or convenient for effectually carrying out the provisions of this Act.

(3) Without limiting the operation of section three of this Act the persons who immediately prior to the coming into operation of this Act occupied the offices of Protector under the Acts repealed by this Act shall upon the coming into operation of this Act become, without further appointment, the occupants of the offices of representative in accordance with and for the purposes of this Act.

13. The provisions of sections eleven and twelve of this Act do not render the provisions of the Public Service Act, 1904, the Superannuation and Family Benefits Act, 1938, or the Government Employees (Promotions Appeal Board) Act, 1945, applicable to a person if those Acts did not apply to him on the coming into operation of this Act, or affect the application to him of the provisions of any of those Acts if they applied to him before the coming into operation of this Act.

Application of Public Service Act, 1904, and other Acts.

**Delegation
by Minister.**

14. (1) The Minister may by writing signed by him delegate all or any of the powers and functions conferred upon him by this Act, with the exception of this power of delegation, to the Commissioner or to any other officer of the Department, and the person to whom the power or function is so delegated may exercise that power or function in the same manner and with the same effect as if it were directly conferred upon him by this Act and not by delegation.

(2) Where the exercise of the power or function is dependent upon the opinion, belief, satisfaction or other state of mind of the Minister in relation to any matter, that power or function when delegated may be exercised by the delegate upon his opinion, belief, satisfaction or state of mind in relation to the matter.

(3) A person who purports to exercise a power or function pursuant to a delegation conferred under the provisions of this section is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation made pursuant to this section may be revoked wholly or in part by the Minister at any time, but no delegation shall prevent the Minister from exercising personally any power or function delegated by him under this section.

**Delegation
by Com-
missioner.**

15. (1) 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, with the exception of 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.

(2) In relation to any delegation by the Commissioner pursuant to this section, the provisions of subsections (2), (3) and (4) of section fourteen of this Act apply as if repeated in this section but as if any reference in those subsections to the Minister were a reference to the Commissioner.

16. A person who occupies or has occupied the office of Minister, Commissioner, deputy of the Commissioner, representative, manager or officer of the Department, or who otherwise exercises or performs or has exercised or performed any power or function conferred or any duty imposed by 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 or function conferred or purported to be conferred, or the performance of any duty imposed or purported to be imposed, by this Act.

**Exemption
from personal
liability.**

17. (1) Any person who without the authority in writing of the Commissioner removes or causes to be removed any native to any place beyond the State commits an offence against this Act.

**Prohibition
of removal
of natives.**

(2) The Commissioner shall not give the authority referred to in subsection (1) of this section unless and until the person desiring the removal beyond the State of a native enters into a recognisance with a surety or sureties, at the discretion of the Commissioner, in a sum that the Commissioner considers sufficient to defray the expense of the return of the native to the place from which he is to be removed.

(3) A recognisance under this section shall be in the prescribed form and may be renewed from time to time at the discretion of the Commissioner.

(4) The Commissioner may, in his discretion, dispense with such recognisance in any particular case.

18. (1) The Governor may, by proclamation—

**Reserves for
natives.**

- (a) declare any Crown lands to be reserves for natives;
- (b) alter the boundaries of a reserve;
- (c) abolish a reserve;

but notwithstanding the provisions of paragraph (a) of this subsection, not more than two thousand acres of land held under lease or license from the Crown shall be the subject of proclamation under that paragraph in any one magisterial district.

(2) A proclamation made under this section may be cancelled or from time to time varied, or an error in any such proclamation may be rectified, by a subsequent proclamation.

Managers of reserves.

19. (1) The Minister may appoint fit and proper persons to be managers of reserves.

(2) Without limiting the operation of section three of this Act, any person who immediately prior to the coming into operation of this Act occupied the office of superintendent of a reserve under the Acts repealed by this Act shall upon the coming into operation of this Act become, without further appointment, the occupant of an office of manager of a reserve in accordance with and for the purposes of this Act.

Entering of reserves prohibited.

20. (1) 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 manager or an officer of the Department, or a member of either House of the Federal or State Parliaments, or a person authorised in that behalf under the regulations.

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

Commissioner to have access to natives in employment.

21. 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 and 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.

22. (1) A person who engages a native, whether as an employee or an independent contractor, under circumstances that require the native to perform services at a place more than fifty miles distant from where the native is engaged, shall at his own expense provide, when the native has completed the services, for the return of the native to the place where he was engaged.

Employer
to return
native
employee
to place of
engagement.

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence against this Act.

(3) A court of summary jurisdiction, whether it imposes or does not impose a penalty upon an offender under this section, may—

- (a) 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) if the court thinks fit, order him to pay to the clerk of the court such sum as the court considers proper for, and to be applied in, payment of the cost of the return of the native to that place.

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

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

Commis-
sioner
to manage
property of
natives.

- (a) take possession of, retain, sell or otherwise 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 or held in trust for the benefit of a native, or damages for any conversion of or injury to any such property;