

sary the ship or boat to which he belongs, and the master and crew thereof, to proceed to the nearest convenient place at which a court of petty sessions is held, and the resident magistrate, or justices may hear and determine the matter in a summary way. The protector may order the detention of such ship or boat until the alleged offence has been adjudicated upon.

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

57. It shall not be obligatory upon any police officer 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 resident magistrate.

Services of
summons and
execution of
warrant
limited.
See 53 Vict.,
No. 25, s. 4.
Amended by
No. 43 of
1936, s. 3.

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

Penalties
Amended by
No. 43 of
1936, s. 29.

- (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.

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

Offences to be
prosecuted
summarily.
Amended by
No. 43 of
1936, s. 3.

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

Inserted by
No. 43 of
1936, s. 30.
Formerly s.
59a, 1913 re-
print.

60. (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.

No plea of
guilty to be
entered
except with
the approval
of a protec-
tor.

Inserted by
No. 42 of
1911, s. 12.
Amended by
No. 43 of
1936, s. 3.

(2.) Except as in the subsection next following provided no court, judge, magistrate, or justice of the peace shall accept or allow to be recorded or entered any plea of guilty when pleaded by or on behalf of a native to any indictment, complaint, or charge for or of any crime, misdemeanour, or offence, indictable or otherwise, preferred against such native; and in the event of a native pleading guilty to any such indictment, complaint or charge, the court, judge, magistrate, or justice before which or before whom the plea is pleaded, shall reject the same, and order a plea of not guilty to be recorded or entered, and thereupon the trial shall proceed as if the accused native had pleaded not guilty in the first instance, and no reference or comment shall be made or permitted during the course of the proceedings and trial to or upon the fact that the accused native originally pleaded to the indictment, complaint, or charge.

(3.) Notwithstanding the terms of the subsection last preceding, a plea of guilty by or on behalf of a native may, subject to a note in writing of the circumstances being made by the presiding judge, chairman, magistrate, or justice, be accepted and acted upon, provided the same is pleaded in the presence and hearing of a protector of natives, and that the protector satisfies the court, judge, magistrate, or justice before whom the plea is made that the accused native understands the nature of the accusation against him, and is aware of his right to trial, and without duress or pressure of any sort desires to plead guilty, and that the protector approves of such plea of guilty being pleaded.

(4.) No member of the police force, being a protector of natives, whose duties as a member of the police force connect him with the particular prosecution, shall be entitled to approve of or assent to any plea of guilty under subsection three of this section in such prosecution.

(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.

61. (1.) Any native who having been at any time convicted of an offence under section three hundred and eighty-two or four hundred and fifty-two of the Criminal Code, is subsequently convicted of an offence under either of those sections and sentenced to imprisonment, may on the warrant of the Minister be released from his imprisonment, and conveyed into some part of the State defined in the warrant and prevented from passing outside the boundaries thereof during the Governor's pleasure or for such period as may be limited in that behalf by the warrant.

Power to remove certain convicted offenders from district.

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

Amended by No. 43 of 1936, ss. 3 and 35.

Formerly s. 59b. 1913 reprint.

(2.) If the offender escape beyond the said boundaries he may at any time, and as often as necessary and without any additional warrant be arrested and taken back into such part of the State and compelled to remain therein in accordance with the said warrant.

62. Every person who is charged with assaulting a native shall be summarily tried by a stipendiary, police, or resident magistrate.

Charge of assaulting native to be dealt with summarily.

New section inserted by 43 of 1936, s. 31.

63. (1.) The Governor may by proclamation establish a court, to be called "a court of native affairs," in any district or districts, to be specified in such proclamation for the trial of any offence committed by a native against another native.

Establishment of native courts.

New section inserted by 43 of 1936, s. 31.

(2.) (a) Every such court shall be constituted by the Governor by commission in the prescribed form from time to time, as occasion requires.

(b) The court shall be constituted by a special magistrate, who shall be nominated by the Governor in the commission and who shall be chairman of the court, and the Commissioner or a protector nominated by the Commissioner.

(c) The court shall if practicable call to its assistance a headman of the tribe to which the accused person belongs.

(3.) Every such court shall have exclusive jurisdiction in connection with the trial of any native for any such offence and may, in considering any charge which is made against a native, take into account in mitigation of punishment any tribal custom which may be set up and proved as the reason for the commission of the offence.

(4.) Where it appears that any native has in pursuance of any tribal custom committed an offence against another native, then the court may, in the case of a charge which, under the Criminal Code, may involve punishment of death or imprisonment without the option of a fine for any period in excess of ten years, sentence the offender to any term of imprisonment not more than ten years with hard labour, or order that the offender be banished from his country and kept during the Governor's pleasure in prison or in some place reserved by the Governor for native prisoners under sentence of banishment. The proceedings of any such court shall be final and without appeal: Provided the wife of an accused native shall not be a compellable witness.

(5.) The Governor may make regulations prescribing the procedure to be followed by such courts in the trial of offenders.

64. (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.

Natives' Trust Fund.
New section inserted by 43 of 1936, s. 31.

(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 for the benefit of natives generally, 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-five.

65. Any person who defrauds any native by any artifice, trick, or misrepresentation shall be guilty of an offence against this Act.

Defrauding natives.
New section inserted by 43 of 1936, s. 31.

66. Whenever the Minister on the recommendation of 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.
New section inserted by 43 of 1936, s. 31.

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

67. (1.) Any person who without a permit in writing from a protector supplies any native with or permits any native to have possession of any poison or noxious substance shall be guilty of an offence against this Act.

Penalty on supplying poison to natives.
New section inserted by No. 43 of 1936, s. 31.

(2.) A permit granted under this section may authorise any person to supply poison to a native or natives specified in the permit for a period not longer than six months from the date of the permit, or such shorter period as the protector thinks advisable, but a permit may be renewed by a protector in respect of any native or natives, provided that the period of renewal is never greater than six months.

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

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

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

Amended by No. 43 of 1936, s. 3.
Formerly s. 60, 1913 reprint.

- (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) Regulating the payment of wages payable to natives under agreements:
- (i) Providing for contributions by natives whether in a native institution or elsewhere to 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 of benefits therefrom and for the payment by natives for medical treatment and other relief, but so that no such regulation shall prevent any native inmate of such institution who is unable to pay for any such treatment or relief from obtaining same:
- (j) Providing for the control of natives residing upon a reserve, and for the inspection of natives employed under the provisions of this Act; and
- (k) For the maintenance of discipline and good order upon a reserve:
- (l) Authorising entry upon a reserve by specified persons or classes of persons for specified objects, and the conditions under which such persons may enter or remain upon a reserve, and providing for the revocation of such authority in any case:

Amended by
No. 43 of
1936, s. 32.

Inserted by
No. 43 of
1936, s. 32.

- (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.
- (n) For exempting from the provisions of sections twenty-three, twenty-four, and twenty-five of this Act all or any agreements for service in any portion of the State defined in the regulation: Added by No. 42 of 1911, s. 13.
- (o) For the establishment of mission stations and the issue of permits to mission workers; Inserted by No. 43 of 1936, s. 32.
- (p) For all other purposes relating to the administration of this Act:
- (q) Prescribing the procedure to be followed in Courts of Native Affairs. Inserted by No. 43 of 1936, s. 32.
69. All such regulations shall be published in the *Government Gazette*, and thereupon shall have the force of law; and shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is then in session, and if not, within fourteen days after the commencement of the next ensuing session. Publication of regulations. Formerly s. 61, 1913 reprint.
70. Such regulations may impose for any breach thereof— Penalties. Amended by 43 of 1936, s. 33; formerly s. 62, 1913 reprint.
- (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.
- (c) for a third or subsequent offence, a fine not exceeding one hundred pounds or imprisonment for twelve months, or both.
71. 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: Power to exempt certain natives from Act. See Q., 1897, No. 17, s. 33. Q., 1902, No. 1, s. 6. Amended by No. 43 of 1936, s. 3. Formerly s. 63, 1913 reprint.

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.

Inserted by
No. 43 of
1936, s. 34.

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.

Amended by
No. 42 of
1911, s. 14.
Formerly s.
64, 1913 re-
print.

Subsections
2-6 inserted
by No. 42 of
1911, s. 14.
Amended by
No. 43 of
1936, s. 3.

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

(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 Colonial Treasurer.

(3.) The Minister shall cause accounts to be kept of all moneys received and expended by the department.

(4.) Within sixty days after the close of each financial year the Minister shall cause a statement of receipts and payments for the year to be prepared, and such other statements as he may direct.

(5.) Within eighty days after the close of each financial year the Minister shall cause the statement of receipts and payments and other statements in connection with the accounts for the year to be submitted to the Auditor General for audit, and when so audited and reported upon by the Auditor General the same shall be published in the *Government Gazette*.

(6.) The statement of receipts and payments and other statements as aforesaid, duly audited, together with a report by the 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.

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

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

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

Validation of appointments made and acts and things done under 61 Vict., No. 5. Formerly s. 65, 1913 reprint.

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.

Repeal.
Formerly s.
66, 1913 re-
print.

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

Section 73.

THE FIRST SCHEDULE.

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

Section 74.

THE SECOND SCHEDULE.

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

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