

21. Declaration of Aborigine, part-Aborigine or Islander to be in need of care. (1) When an Aborigine, part-Aborigine or Islander has been tried or sentenced before or by a Judge of the Supreme Court, a Circuit Court or a District Court or before or by a Magistrates Court constituted by a Stipendiary Magistrate such Judge or Magistrate may, whether or not such person was convicted of the offence with which he was charged, if he is satisfied that such person is in need of care under this Act, order that such care be provided.

(2) When an order is made pursuant to the preceding subsection the registrar or clerk of the court wherein such order was made shall forthwith furnish to the Director at Brisbane notice of the making of such order and the identity and usual place of residence (so far as it is known to such registrar or, as the case may be, clerk) of the Aborigine, part-Aborigine or Islander concerned.

(3) Upon receiving notice pursuant to the last preceding subsection the Director shall issue in the prescribed form a certificate of entitlement in relation to the person in respect of whom the order was made pursuant to this section.

22. Admission of children of assisted Aborigine or assisted Islander. A child who is born by or to an assisted Aborigine or assisted Islander shall not by virtue of the fact of its birth or parentage be or be deemed to be an assisted Aborigine or, as the case may be, assisted Islander but the Director may, in the prescribed form under his hand, declare such a child—

(a) who has not attained or has not apparently attained the age of seventeen years; and

(b) at least one of whose parents is, at the time of such declaration, an assisted Aborigine or assisted Islander,

to be an assisted Aborigine or, as the case may be, assisted Islander:

Provided that the Director shall not exercise the power by this section conferred upon him in relation to such a child who is habitually residing with his parent who is not, at the time, an assisted Aborigine or, as the case may be, assisted Islander.

23. Certificates of entitlement. (1) Every certificate compiled pursuant to section sixteen of this Act and the form of every declaration made pursuant to sections seventeen, eighteen or twenty-two of this Act shall be deemed to be, in relation to every person named therein, a certificate of entitlement.

(2) The Director shall retain the original of every certificate of entitlement and shall, from time to time, send written notice of the existence of such certificate to the district officer of the district in which the person or persons named therein, from time to time, habitually resides or reside.

24. Cancellation of certificate of entitlement. (1) Upon his own motion or upon application in that behalf made by or on behalf of an assisted Aborigine or assisted Islander the Director may, if he is satisfied that the best interests of such person no longer require that he be subject to the application of this Act as an assisted Aborigine or assisted Islander, cancel in relation to such person the certificate of entitlement issued in relation to or including such person.

(2) If the Director cancels a certificate of entitlement pursuant to the preceding subsection he shall, at the same time, cancel the certificate of entitlement (be it the same or another such certificate) issued in relation to every child of the person in relation to whom such first-mentioned certificate of entitlement is cancelled who—

- (a) at the date of such cancellation has not attained or has not apparently attained the age of seventeen years; and
- (b) has habitually resided with such person prior to such cancellation.

(3) Upon cancellation of a certificate of entitlement the person in relation to whom such cancellation is effected shall thereby cease to be an assisted Aborigine or, as the case may be, assisted Islander.

(4) When the Director has cancelled a certificate of entitlement in relation to any person he shall forthwith endorse or annex a suitable endorsement on or to such certificate to evidence such cancellation and shall, as soon as possible,—

- (a) inform, in writing, the person in relation to whom such certificate has been cancelled of such cancellation; and
- (b) send written notice of such cancellation to the district officer of the district in which such person last habitually resided prior to such cancellation.

25. Reference from decision of Director. (1) Any person—

- (a) who having applied to the Director that he be admitted to the application of this Act as an assisted Aborigine or assisted Islander has had such application refused;
- (b) who has been declared by the Director to be an assisted Aborigine or assisted Islander or has been included in such a declaration otherwise than upon his own application;
- (c) who, having applied to the Director that a certificate of entitlement issued in relation to him or in which he is included be cancelled in relation to him, has had such application refused;
- (d) in relation to whom the Director has cancelled a certificate of entitlement otherwise than upon his own application,

may institute a reference from the decision of the Director in that behalf by way of application to a Stipendiary Magistrate who constitutes the Magistrates Court in the district in which such person resides at the date of the application whereby such reference is instituted.

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

(2) (a) The institution of a reference pursuant to this section shall suspend the operation of the Director's decision in issue and of any certificate of entitlement issued as a consequence thereof until such reference is determined or otherwise disposed of in accordance with this section.

(b) The Director may at any time after the institution of a reference pursuant to this section apply to the Stipendiary Magistrate to whom the application concerned has been made that such reference be struck out for want of prosecution.

If such 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 Director's decision in issue and any certificate issued as a consequence thereof shall be restored to its full force and effect.

(3) If such Stipendiary Magistrate allows such a reference, in whole or in part, he shall order the Director to do all things which the Director may lawfully do under this Act to give effect to his decision and the Director shall comply accordingly.

(4) Neither the institution of a reference pursuant to this section nor the decision of a Stipendiary Magistrate allowing such a reference shall render unlawful any action taken prior to the institution of such reference in reliance upon the Director's decision from which such reference was instituted or upon a certificate of entitlement issued in consequence of such decision.

PART IV—PROVISIONS COMMON TO BOTH ABORIGINES' AND ISLANDERS' AFFAIRS

26. Grant of aid. Subject to appropriation by Parliament of money for the purpose, the Director may, from time to time, grant aid, in money or in kind—

- (a) to any assisted Aborigine or any assisted Islander; and
- (b) to any person who, though not an assisted Aborigine or assisted Islander, is descended from an Aborigine or an Islander,

subject to and in accordance with regulations made under this Act.

27. Management of property. (1) A district officer may,—

- (a) upon request in that behalf made to him by the assisted Aborigine or, as the case may be, assisted Islander concerned; or
- (b) if such district officer is satisfied that the best interests of the assisted Aborigine or, as the case may be, assisted Islander concerned, or of any member of the family of such assisted Aborigine or assisted Islander who should be supported by him, require it,

undertake and maintain the management of the property of any assisted Aborigine or assisted Islander who usually resides within the district of such district officer.

(2) If an assisted Aborigine or assisted Islander whose property is being managed by a district officer takes up residence of a permanent nature in another district the district officer of that other district shall undertake and maintain management of the property of such assisted Aborigine or, as the case may be, assisted Islander.

(3) A district officer shall cease to manage the property of an assisted Aborigine or, as the case may be, assisted Islander if,—

- (a) he is satisfied that the best interests of such assisted Aborigine or, as the case may be, assisted Islander, or of any member of the family of such assisted Aborigine or assisted Islander who should be supported by him, no longer require that he should manage such property and, where such district officer is a person other than the Director, the Director approves that he cease to manage such property;

- (b) being a person other than the Director, he is directed by the Director to relinquish such management; or
- (c) he is directed by a Stipendiary Magistrate pursuant to section twenty-nine of this Act to cease such management.

28. Powers incident to management of property. (1) Subject to the next succeeding subsection, a district officer who is maintaining the management of the property of an assisted Aborigine or assisted Islander may, if he is satisfied that the best interests of such assisted Aborigine or, as the case may be, assisted Islander, or of any member of the family of such assisted Aborigine or assisted Islander who should be supported by him, require it,—

- (a) take possession of, retain, sell or otherwise dispose of any of such property;
- (b) in his own name sue for and recover or receive any property to which such assisted Aborigine or, as the case may be, assisted Islander is entitled;
- (c) in his own name sue for and recover or receive any damages for conversion of or injury to such property;
- (d) exercise in the name of such assisted Aborigine or, as the case may be, assisted Islander any power which such assisted Aborigine or, as the case may be assisted Islander may exercise for his benefit;
- (e) in the name of such assisted Aborigine or, as the case may be, assisted Islander appoint any person to act as attorney or agent of such assisted Aborigine or, as the case may be, assisted Islander for any purpose connected with such property;
- (f) require any person who, within twelve months last preceding the date of such requisition, had contractual, financial or property dealings with such assisted Aborigine or, as the case may be, assisted Islander to furnish to such district officer a statement containing such details of those dealings as such district officer requires.

(2) When a district officer who is maintaining the management of the property of an assisted Aborigine or an assisted Islander is a person other than the Director he may exercise any of the powers conferred upon him by the preceding subsection only with the approval of the Director first had and obtained.

(3) Any person who when required by a district officer to furnish a statement pursuant to paragraph (f) of subsection (1) of this section fails to furnish to the district officer a statement containing such details as the district officer requires commits an offence against this Act.

(4) A district officer who is maintaining the management of the property of an assisted Aborigine or, an assisted Islander shall keep proper and accurate records and accounts of all such property and the proceeds of the sale or disposal of any such property received or dealt with by him pursuant to this Act and shall, for this purpose, be deemed to be a public accountant within the meaning of "*The Audit Acts, 1874 to 1963.*"

29. (1) Reference from action of district officer. Any person of whose property a district officer has undertaken the management pursuant to paragraph (b) of subsection (1) of section twenty-seven of this Act may

apply to the Stipendiary Magistrate who constitutes the Magistrates Court in the district in which such person resides at the date of such application for an order that such district officer cease such management.

Any such application shall be made within twenty-eight days after such person's becoming aware that such district officer has undertaken the management of his property by lodging such application signed by the applicant with the clerk of the court in such district.

(2) **Application for cessation of management.** Any person of whose property a district officer is maintaining the management pursuant to section twenty-seven of this Act may request such district officer to cease such management and, if his request be refused, may apply to the Stipendiary Magistrate who constitutes the Magistrates Court in the district in which such person resides at the date of such application for an order that such district officer cease such management.

Any such application shall be made within twenty-eight days after such refusal is made known to such person by lodging such application signed by the applicant with the clerk of the court in such district.

(3) (a) Until an application duly made under subsections (1) or (2) of this section is determined or otherwise disposed of in accordance with this section, a district officer who has undertaken or is maintaining the management of the property of the applicant may only exercise in relation to such property a power the exercise of which is reasonably required to prevent waste of or to preserve such property.

(b) The district officer concerned in an application under subsections (1) or (2) of this section may at any time apply to the Stipendiary Magistrate to whom such first-mentioned application has been made that such first-mentioned application be struck out for want of prosecution.

If such Stipendiary Magistrate is satisfied that such first-mentioned application has not been prosecuted by the applicant without adequate reason for such default he shall strike out and thereby dispose of such first-mentioned application.

(4) If the Stipendiary Magistrate to whom an application under subsections (1) or (2) of this section is made allows such application he shall order the district officer concerned to cease the management of the property of the applicant either forthwith or on and from a later date to be specified by him and such district officer shall comply accordingly.

(5) A Stipendiary Magistrate shall not deal with any application purporting to be made under subsection (2) of this section which application is made within six months after an application by the same applicant under subsections (1) or (2) of this section has been determined or otherwise disposed of in accordance with this section and such an application so made shall be deemed not to be duly made under subsection (2) of this section.

(6) Neither the making of an application under subsections (1) or (2) of this section nor the decision of a Stipendiary Magistrate allowing such an application shall render unlawful any act of a district officer taken in relation to the property of the applicant prior to the making of such application.

30. Execution of instruments. (1) Notwithstanding any provision of any Act or rule of law to the contrary an instrument executed by an assisted Aborigine or an assisted Islander shall be of no validity or effect unless such execution has been approved of and witnessed by the district officer or other officer authorized in that behalf by the Director.

(2) Any person who knowingly causes or induces an assisted Aborigine or an assisted Islander to execute an instrument without the approval of and witnessing by the district officer or other officer referred to in the preceding subsection commits an offence against this Act.

31. Administration of estates. (1) Notwithstanding any provision of any Act or rule of law or practice to the contrary the Director—

(a) shall administer the estate of a deceased or missing assisted Aborigine or assisted Islander and shall, if the value or nature of such estate require it, be entitled to a grant of probate or, as the case may require, letters of administration in relation to that estate:

Provided that the Director may, if he thinks it desirable, renounce the rights by this paragraph conferred on him in favour of The Public Curator of Queensland who shall thereupon be entitled to an order to administer such estate or, as the case may require, to file an election to administer such estate and shall administer such estate; and

(b) whether or not he is administering such estate, in the absence of a testamentary instrument lawfully made and in accordance with this Act and if it should prove impracticable to ascertain the person or persons entitled in law to succeed to such estate or any part thereof, may determine which person or persons shall be entitled to succeed to such estate or part or any part thereof.

The persons so determined shall succeed to such estate or part in such order and proportions as the Director so determines.

(2) A certificate purporting to be under the hand of the Director that the person or persons named therein is or are entitled to succeed to the estate or any part of the estate of an assisted Aborigine or assisted Islander or that there is no person so entitled shall be conclusive evidence of the fact certified.

(3) When there is no person entitled to succeed to the estate or any part of the estate of a deceased or missing assisted Aborigine or assisted Islander such estate or part shall vest in the Director who shall pay the same as follows:—

(a) when the estate or part thereof is that of an assisted Aborigine, into the Aborigines' Welfare Fund for the benefit of assisted Aborigines generally;

(b) when the estate or part thereof is that of an assisted Islander, into the Island Fund preserved under this Act.

(4) For the purposes of this section, the estate of a person who at the date of his death or disappearance was, for the purposes of this Act, an Aborigine or, as the case may be, an Islander because of his residence upon a reserve and who was at such date an assisted Aborigine or assisted Islander shall be deemed to be the estate of an assisted Aborigine or, as the case may be, assisted Islander notwithstanding such person's ceasing to be a resident of such reserve.

32. Restriction on creditors' rights. No person shall have any right to or remedy against any property held by a district officer or any other person on behalf of an assisted Aborigine or assisted Islander or on

behalf of the estate of the same on account of any money lent or goods supplied on credit to an assisted Aborigine or assisted Islander unless such money or goods have been so lent or supplied with the consent of a district officer.

This section applies in relation to any property held by a district officer or any other person on behalf of a person who has ceased to be an assisted Aborigine or, as the case may be, assisted Islander in accordance with this Act or on behalf of the estate of any such person.

33. Disposal of unclaimed money. When a person ceases to be an assisted Aborigine or assisted Islander in accordance with this Act a district officer shall, as soon as practicable, pay all moneys which he is then holding on behalf of that person or which subsequently come into his hands for that person to the credit of the Aboriginal Protection of Property Account to be held for such person or, as the case may require, disposed of at his direction.

34. Transfer to and from reserves. The Director may from time to time by writing under his hand—

- (a) order an assisted Aborigine who is not residing on a reserve or an assisted Islander who is not residing on a reserve to be transferred from any district to a reserve and to reside on such reserve for such period as the Director by such writing specifies or until the Director in like manner otherwise orders;
- (b) upon the recommendation of an Aboriginal court of a reserve on which the assisted Aborigine concerned is residing, order the assisted Aborigine against whom such recommendation is made to be transferred from such reserve to another reserve for Aborigines and to reside on such other reserve until the Director, in like manner, otherwise orders;
- (c) upon the recommendation of an island court of a reserve on which the assisted Islander concerned is residing, order the assisted Islander against whom such recommendation is made to be transferred from such reserve to another reserve (whether it be a reserve for Aborigines or for Islanders) and to reside on such other reserve until the Director, in like manner, otherwise orders.

35. Reference from order of Director. (1) Any person in relation to whom the Director makes an order pursuant to the last preceding section may institute a reference from such order by way of application to a Stipendiary Magistrate who constitutes the Magistrates Court in the district in which such person resides at the date of the application whereby such reference is instituted.

Any such reference shall be instituted within twenty-eight days after the Director's order is made known to such person by lodging such application signed by the applicant with the clerk of the court in such district.

(2) (a) The institution of a reference under this section shall suspend the operation of the Director's order in issue until such reference is determined or otherwise disposed of in accordance with this section.

(b) The Director may at any time after the institution of a reference under this section apply to the Stipendiary Magistrate to whom the application concerned has been made that such reference be struck out for want of prosecution.

If such 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 Director's order in issue shall be restored to its full force and effect.

(3) If such Stipendiary Magistrate allows such a reference he shall order the Director to do all things which the Director may lawfully do under this Act to give effect to his decision and the Director shall comply accordingly.

(4) Neither the institution of a reference pursuant to this section nor the decision of a Stipendiary Magistrate allowing such a reference shall render unlawful any action taken prior to the institution of such reference in reliance upon the Director's order from which such reference was instituted.

36. Unauthorized mining on reserves. (1) Notwithstanding any provision of "*The Mining Acts, 1898 to 1955,*" a holder of a miner's right shall not thereby be entitled to enter or be within the limits of a reserve unless—

- (a) in the case of a reserve other than a reserve on a Torres Strait Island he has the written permission of the manager of that reserve; or
- (b) in the case of a reserve on a Torres Strait Island he has the written permission of the district officer.

(2) The manager of a reserve or the district officer may at any time revoke his permission granted under the preceding subsection.

(3) If the manager of a reserve refuses his permission or revokes his permission the holder of a miner's right who applied for such permission may renew his application to the Director who may grant or refuse his permission.

If the Director grants his permission such permission shall, for the purposes of this section, be deemed to be the permission of the manager of the reserve concerned:

Provided that such manager shall not revoke the permission of the Director granted pursuant to this subsection.

(4) A holder of a miner's right who enters or is within the limits of a reserve otherwise than in accordance with this section commits an offence against this Act.

It is a defence to a charge of an offence against this section to prove that there was lawful authority for the defendant's entering or being within the limits of such reserve.

(5) Notwithstanding the provisions of any other Act a mining lease over an area within a reserve shall not be granted until the application therefor has been approved by the Director.

37. Trading on reserves. (1) Unless—

- (a) in relation to a reserve for Aborigines, he has first obtained the written authority of the manager of such reserve or of the Director; or

(b) in relation to a reserve for Islanders, he has first obtained the written authority of the district officer,

a person shall not—

- (i) remove from any reserve any natural, primary or manufactured product of such reserve; or
- (ii) on any reserve purchase, lease, hire, rent, acquire or receive by barter or otherwise any such product of such reserve or any property situated on such reserve; or
- (iii) on any reserve sell, lease, hire, rent, supply to or place under the control of an assisted Aborigine resident on such reserve or an assisted Islander so resident any property.

(2) It is a defence to a charge of an offence against this section to prove that the defendant was at the time of the alleged offence an assisted Aborigine resident on the reserve concerned or an assisted Islander so resident.

38. Confession of offence. (1) When an assisted Aborigine or an assisted Islander is charged with an offence, indictable or otherwise, and it appears that he has made an admission of guilt or confession before trial any district officer may appear before the presiding judge or justice constituting the court by which the accused is to be tried either of his own motion or at the request of the accused and inform such judge or justice by evidence whether, in his opinion, it is likely that the accused did not understand such admission of guilt or confession having regard to his stage of development.

(2) If such district officer testifies that, in his opinion, it is likely that the accused did not understand such admission of guilt or confession the same shall not be admitted as evidence in the trial until the presiding judge or, as the case may be, justice is satisfied upon a *voir dire* or thereafter during the trial that the accused understood such admission of guilt or confession at the time it was made.

(3) The provisions of this section shall not prejudice or in any way limit the rights of the accused to challenge the admissibility or the reception into evidence of an admission of guilt or confession in any manner in which any accused might exercise such rights according to law.

39. Plea of guilty. (1) When an assisted Aborigine or an assisted Islander is before a court charged with an offence, indictable or otherwise, and it appears that he desires to plead guilty to such charge any district officer may, of his own motion or at the request of such accused, appear before such court to inform such court by evidence of the probability of the accused's understanding the nature and consequences of his pleading guilty to such charge having regard to his stage of development.

Such evidence may be rebutted by evidence called by or on behalf of any party to the proceeding.

If the district officer so appearing satisfies the court that it is probable that the accused does not understand the nature or consequences of his pleading guilty to such charge the court shall not accept or allow to be recorded or entered a plea of guilty by or on behalf of the accused but

shall, if the accused does not plead any other plea, cause a plea of not guilty to be recorded or entered on behalf of the accused the provisions of any other Act notwithstanding.

A plea of not guilty so recorded or entered shall have the same effect as if it had been actually pleaded by the accused.

(2) If the district officer so appearing does not satisfy the court as specified in the preceding subsection or, if a district officer does not appear pursuant to such subsection, the court may accept a plea of guilty made by or on behalf of an assisted Aborigine or an assisted Islander as in any other case:

Provided that before it accepts such a plea of guilty by virtue of the fact that a district officer has not so appeared a court shall be satisfied that a notice has been given to the Director or to a district officer of—

- (a) the name of the accused;
- (b) the substance of the offence charged or to be charged against the accused; and
- (c) the desire of the accused to plead guilty to such charge or to a charge of any other specified offence established by the evidence,

a sufficient time before the date of the hearing.

(3) (a) A notice required by the last preceding subsection may be—

- (i) served upon the Director or the district officer to whom it is addressed personally or by leaving it at his usual place of business; or
- (ii) sent by prepaid post letter addressed to the Director or such district officer at his usual place of business.

(b) In any proceeding a document appearing to be a duplicate of such a notice and purporting to comply with the provisions of the last preceding subsection and to be addressed to the Director or, as the case may be, district officer at his usual place of business shall be accepted as sufficient evidence of the sending of the original of such notice and that such original was sent on the date appearing on such duplicate as the date of such notice.

(c) A court may adjourn a hearing from time to time to allow such a notice to be given and in the meantime may remand the accused in custody or on bail on his own recognizance with such surety or sureties or without any surety as the court thinks fit.

40. (1) Hearsay evidence admissible. When a district officer appears before a court, judge, or justice pursuant to section thirty-eight or thirty-nine of this Act his evidence concerning the matters referred to in those sections shall be admissible notwithstanding that it is in the nature of hearsay evidence.

(2) **Acceptance of plea of guilty conclusive.** A plea of guilty accepted by a court in accordance with section thirty-nine of this Act shall not thereafter be challenged or questioned in any proceeding on the ground that, having regard to his stage of development, the accused did not understand the nature or consequences of such plea.