

3 GEO. VI. No. 7, 1939. *Torres Strait Islanders Act.*

TORRES STRAIT ISLANDERS.

An Act to Make Provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants, and for other purposes.

3 GEO. VI.
No. 7.
THE
TORRES
STRAIT
ISLANDERS
ACT OF
1939.

[ASSENTED TO 12TH OCTOBER, 1939.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

PART I.—
PRELIMINARY.
Short title.

1. (1.) This Act may be cited as "*The Torres Strait Islanders Act of 1939.*"

* (2.) Subject as otherwise provided, this Act shall come into operation on a date to be proclaimed by the Governor in Council by Proclamation published in the *Gazette*, which date is hereinafter referred to as the commencement of this Act.

(3.) (i.) This Act shall for all purposes also extend and apply to any vessel in any river, harbour, or other water within the territorial jurisdiction of the State in the same manner as if it were a house within the State.

(ii.) The master or other person in charge of any such vessel shall be deemed to be the occupier of such vessel.

(iii.) This section does not apply to any vessel which is under the command or charge of any officer bearing His Majesty's commission or to any vessel which belongs to the Government of any foreign State.

(4.) Subject to the provisions hereinafter contained—

(a) All reserves under † "*The Aboriginals Protection and Restriction of the Sale of Opium Acts, 1897 to 1934,*" existing upon any Torres Strait island at the commencement of this Act shall be reserves under this Act and be subject to this Act in all respects;

* Act proclaimed in force on and from 12th October, 1939. See Proclamation dated 12th October, 1939, published in *Gazette* of 14th October, 1939, at page 1273.

† 61 Vic. No. 17 and amending Acts, *supra*, pages 3 *et seq.* (Repealed by 3 Geo. VI. No. 6, *supra*, page 17455).

Members
may be
re-elected.

(iii.) Nothing herein contained shall prevent any person from being immediately or at any time re-elected to the office of chairman or member if he is capable for the time being under this Act of being and continuing as such chairman or member.

(iv.) If vacancies occur at any time to prevent a quorum of members from being obtained the protector may make such arrangements as he considers necessary for carrying on the essential services of the reserve until such vacancies are filled.

Election of
deputy
chairman.

(13.) (i.) At the first meeting of the council after the conclusion of the triennial election of members or a fresh election of members or at some adjournment thereof the members present shall elect one of the members to be deputy chairman who shall, except as hereinafter provided, hold office until the conclusion of the next triennial election of members.

(ii.) If the deputy chairman resigns his office as deputy chairman or member or his office otherwise becomes vacant the council shall elect a member to be deputy chairman in his stead who shall hold office until the period aforesaid.

(iii.) The office of deputy chairman shall—

- (a) Commence on the day of his election thereto ;
- (b) Become vacant on the day of the conclusion of the next triennial election or on his ceasing to be a member.

Powers and
duties of
chairman.

(14.) (i.) The chairman shall preside at every meeting of the council at which he is present and if he is prevented by absence, illness, or otherwise from presiding at any meeting the deputy chairman shall preside at the meeting.

When
deputy
chairman
may act.

(ii.) A deputy chairman may act in the office of chairman during such time as the chairman is prevented by absence or illness or otherwise from performing the duties of chairman or during such time as a vacancy exists in the office of chairman.

Meetings.

(15.) (i.) The first meeting of the Council shall be held within seven days after the conclusion of the first election at a time to be fixed by the chairman.

(ii.) The first meeting of the council after the conclusion of every triennial election or fresh election

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of all the members of the council shall be held within seven days after the conclusion of such election at a time to be fixed by the chairman.

(iii.) The council shall have power to fix by by-law or resolution when meetings shall be held.

(16.) (i.) No business shall be transacted at any meeting unless a majority of the whole number of members of the council are present when such business is transacted. Quorum voting.

(ii.) All powers vested in the council may be exercised by the majority of the members present at any meeting duly held and all questions shall be decided by a majority and by open voting.

(17.) (i.) On every question the chairman shall have a vote and if the numbers are equally divided he shall have a second or casting vote. Chairman's casting vote.

(ii.) At all meetings save as by this Act is otherwise provided all members present shall vote.

(iii.) If a member refuses to vote his vote shall be counted for the negative.

(18.) (i.) The members present at a meeting may from time to time adjourn the meeting. Adjournments.

(ii.) If a quorum is not present within one hour after the time appointed for a meeting the members present or the majority of them or any one member if only one is present or the clerk if no member is present may adjourn such meeting to any time not later than seven days from the date of such adjournment.

12. The council shall cause minutes of all the proceedings of the council with the names of the members present at each meeting and the names of all members voting upon any question to be duly recorded from time to time in minute-books to be provided for the purpose, which shall be kept by the clerk. Records; minutes of proceedings.

The minutes of each meeting shall be signed after confirmation by the council by the chairman at the meeting next succeeding the meeting at which such proceedings have taken place.

Such minute-books shall be open to inspection.

(b) All contracts and agreements entered into with islanders, permits and certificates of exemption granted with respect to islanders, and removal orders issued pursuant to **“The Aboriginals Protection and Restriction of the Sale of Opium Acts, 1897 to 1934,”* shall be of the same validity as if they had been entered into, granted, and issued under this Act, and shall be subject to this Act in all respects.

Parts of
Act.

2. This Act is divided into Parts as follows:—

PART I.—PRELIMINARY ;

PART II.—CENTRAL AUTHORITY ;

PART III.—ISLAND LOCAL GOVERNMENT ;

PART IV.—ISLAND COURT ;

PART V.—PRESERVATION AND PROTECTION ;

PART VI.—ISLAND INDUSTRIES BOARD.

Definitions.

3. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say:—

Council.

“Council”—The island council constituted under this Act ;

Director.

“Director”—The Director of Native Affairs appointed under †*“The Aboriginals Preservation and Protection Act of 1939”* and charged with the administration of this Act: the term also includes the Deputy Director of Native Affairs or any officer who may be appointed as Assistant Director of Native Affairs ;

Islander.

“Islander”—Any person who is—

(a) One of the native race of the Torres Strait islands,

(b) A descendant of the native race of the Torres Strait islands and is habitually associating with islanders as defined in paragraph (a) of this definition, or

* 61 Vic. No. 17 and amending Acts, *supra*, pages 3 *et seq.* (Repealed by 3 Geo. VI. No. 6, *supra*, page 17455).

† 3 Geo. VI. No. 6, *supra*, page 17455.

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- (c) A person other than an islander as defined in paragraph (a) or (b) of this definition who is living on a reserve with an islander as so defined as wife or husband or any such person other than an official or person authorised by the protector who habitually associates on a reserve with islanders as so defined ;
- “ Minister ”—The Secretary for Health and Home Affairs or other Minister of the Crown charged for the time being with the administration of this Act ; Minister.
- “ Prescribed ”—Prescribed by this Act ; Prescribed.
- “ Protector ”—The Protector of Islanders : the term shall also include the Deputy Protector of Islanders ; Protector.
- “ Regulations ”—Regulations made under this Act ; Regulations.
- “ Reserve ”—Any Torres Strait island or part of a Torres Strait island heretofore or hereafter granted in trust or reserved from sale or lease by the Governor in Council for the benefit of islanders under the provision of any law in force in Queensland relating to Crown lands ; Reserve.
- “ This Act ”—This Act and all Proclamations, Orders in Council, regulations and by-laws thereunder ; This Act.
- “ Torres Strait island ”—Any island north of eleven degrees south latitude which is part of the State of Queensland. Torres Strait island.

PART II.—CENTRAL AUTHORITY.

PART II.—
CENTRAL
AUTHORITY.

4. (1.) The Director, subject to the Minister, shall be charged with the administration of this Act. Director of Native Affairs.

(2.) The person for the time being holding office as the Protector of Aboriginals, Somerset District, shall *ex officio* be the Protector of Islanders for the purposes of this Act. Protector of Islanders.

The protector shall, subject to the Director, have and exercise such powers and duties as may be prescribed, and be responsible to the Director for the administration of this Act.

The Governor in Council may from time to time appoint a Deputy Protector of Islanders.

Officers.

(3.) The Minister may from time to time appoint such medical officers, teachers, and other officers for the medical care, education, and social welfare of islanders as may be necessary.

Reserves for
swim-divers.

5. The Governor in Council may from time to time by Proclamation set apart areas within the territorial waters of Queensland and reserve the same solely for islanders and/or aboriginals as defined by **“The Aboriginals Preservation and Protection Act of 1939”* for getting by swim-diving pearl-shell, bêche-de-mer, or trochus shell from any port, bank, channel, reef, or cluster of reefs, or any part of the same within any such area. Any person other than an islander or aboriginal aforesaid who gets pearl-shell, bêche-de-mer, or trochus shell from any area so reserved shall be liable to a penalty not exceeding fifty pounds, and in addition any pearl-shell, bêche-de-mer, or trochus shell so got and found in his possession shall be forfeited to the Crown by the court which convicts the defendant.

Regulations.

6. The Governor in Council may from time to time make regulations providing for all or any purposes whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to further and carry out the objects and purposes of this Act and, where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency.

Without limiting the generality of the foregoing provisions, regulations may be made for all or any of the following purposes, that is to say—

Care of
Islanders.

(i.) Providing for the medical care, education, and social welfare of islanders.

Apprentice-
ship.

(ii.) Prescribing the conditions on which children of islanders may be apprenticed or placed in service.

* 3 Geo. VI. No. 6, *supra*, page 17455.

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- (iii.) Providing for the inspection of reserves and for the control and supervision of islanders employed under this Act. Control and supervision.
- (iv.) The form and manner in which the annual budget of island reserve revenue and expenditure shall be framed and the books of the island council shall be kept. Annual budget.
- (v.) Providing for the civil and/or criminal jurisdiction of island courts and the procedure in respect of their jurisdiction, either civil or criminal: Island courts.
- Provided that the maximum pecuniary penalty which may be inflicted by any such court for any offence or breach of duty shall not exceed five pounds and the maximum term of imprisonment which may be imposed by any such court (either in lieu of or on default in payment of a pecuniary penalty or on default in payment of a sum of money) shall not exceed three months.
- (vi.) Authorising the establishment of and regulating island gaols on reserves, and the carrying out therein of sentences of imprisonment or detention imposed upon islanders or inmates of a reserve by an island court. Gaols, &c.
- (vii.) Providing for the establishment of insurance funds for the purpose of indemnifying against the loss of or damage to vessels or plant the property of islanders used for fishing or other purposes, and compensating islanders or dependents of islanders engaged on vessels or plant in such industries who may suffer personal injury which is not otherwise covered by **"The Workers' Compensation Acts, 1916 to 1936"* (or any Act amending or in substitution for such Acts), setting out the basis on which such indemnity or compensation shall be paid and the manner in which such funds shall be maintained by contributions from the earnings of islanders or of such vessels or plant.
- (viii.) All matters required or permitted by this Act to be prescribed in so far as not required or permitted to be otherwise prescribed.

* 6 Geo. V. No. 35 and amending Acts, *supra*, pages 9851 *et seq.*

Orders in
Council and
regulations.

7. All Proclamations, Orders in Council, and regulations made or purporting to be made under this Act shall upon being published in the *Gazette* have the same effect as if they were enacted in this Act and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

The publication in the *Gazette* of any such Proclamation, Order in Council, or regulation shall be conclusive evidence of the matters contained therein, and of the power and authority to make such Proclamation, Order in Council, or regulation, as the case may be.

All such Proclamations, Orders in Council, and regulations shall be laid before Parliament forthwith if then sitting; and, if not then sitting, within fourteen days after the commencement of the next ensuing session.

If the Legislative Assembly, within the next fourteen sitting days after any Proclamation, Order in Council, or regulation has been so laid before such House, resolves that such Proclamation, Order in Council, or regulation ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such Proclamation, Order in Council, or regulation or to the making of any new Proclamation, Order in Council, or regulation.

For the purpose of this section the term "sitting days" shall mean days on which the House actually sits for the despatch of business.

Protector
may
intervene.

8. (1.) The protector may at any time suspend any resolution or order of the island council or prohibit the expenditure of any moneys from the Island Fund which in his opinion are unnecessary or unauthorised or not in the interests of the residents of the reserve.

Extravagant
payments.

(2.) If, whether in pursuance of any resolution or order of the council or otherwise, any payment of money has been made to any person out of the Island Fund which the protector considers to be unnecessary, extravagant, or is not authorised by this Act, the protector may order such person to repay such money to the island council forthwith or within such time as the protector allows, and any person who fails to comply with such order shall be guilty of an offence.

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9. (1.) The council shall furnish the protector Returns. at his request from time to time with such information relating to matters under its jurisdiction as he may require, and the protector shall fix a reasonable time within which such information so required shall be furnished.

(2.) Any person appointed by the protector for that purpose shall at any time have access to all records of the council and may examine such records for the purpose of ascertaining if information furnished is correct.

(3.) The clerk, chairman, and every other member of a council which neglects or refuses to furnish any information required as aforesaid or furnishes any such information which is false, who causes or is privy to any such neglect, refusal, or falsity, and any person who impedes or obstructs any person appointed by the protector to perform any duty under this section shall be each liable to a penalty not exceeding five pounds.

10. (1.) Notwithstanding anything in this Act Dissolution
of council. contained the Director may upon the petition of at least two-thirds of the electors of the reserve at any time, if in his opinion circumstances have arisen rendering it necessary so to do, by notice in writing dissolve any council, whereupon the following consequences shall ensue :—

- (a) The chairman and members of the council shall forthwith go out of office ;
- (b) A fresh election of the chairman and members of the council shall be held at such time as the protector may appoint.

(2.) In the event of any delay in holding a fresh election the protector may make such arrangements as he considers necessary for carrying on the essential services of the reserve.

PART III.—ISLAND LOCAL GOVERNMENT.

Constitution of the Council.

PART III.—
ISLAND
LOCAL
GOVERNMENT.

11. (1.) Every island reserve shall be governed by a Constitution
of council. council comprised of such number of members (not exceeding five, including the chairman) as the protector shall fix from time to time.

The members of the council shall be called “councillors.”

Qualification
and election
of chairman
and
members.

(2.) Every male islander who is eighteen years of age or over and who resides on the reserve and is qualified under this Act to vote shall be qualified under this Act to be nominated as a candidate and to be elected or appointed and to act as chairman or member of the council but only so long as he continues to hold such qualifications.

Disqualifi-
cation.

(3.) No person who—

(a) Is undergoing a sentence of imprisonment whether or not the execution of such sentence has been suspended under section six hundred and fifty-six of “*The Criminal Code*”; or

(b) Has been convicted of an offence against this Act or the by-laws of the island council within the period of two years next preceding his election; or

(c) Holds an appointment as island policeman, shall be capable of being or continuing as chairman or a member.

Tenure of
office.

(4.) (i.) Subject to this Act, the chairman and every member of the council shall hold office for three years. The office of chairman or member shall—

(a) Commence on the day of his election; and

(b) Become vacant at the conclusion of the next triennial election under this Act unless sooner vacated as hereinafter provided.

When office
is vacant.

(ii.) The office of chairman or member of a council shall be vacated—

(a) If he is or has become disqualified or has ceased to be qualified under the provisions of this Act; or

(b) If he ceases for any reason to hold office before the day on which the office would ordinarily become vacant.

Disqualified
person
acting.

(iii.) If a chairman or member before he is capable of acting as such or after his office has become vacated acts or continues to act as chairman or member knowing that he is not capable or that his office has become vacated he shall be liable to a penalty not exceeding five pounds.

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(5.) The chairman shall be elected by the electors Voters.
of the reserve.

(6.) (i.) At any election under and for the purpose One vote
of this Act each elector shall have one vote only. only.

(ii.) The voting shall be by ballot.

(iii.) The election shall be held on a day to be fixed
by the protector during the month of January during
the year of the triennial election.

(7.) The election of chairman and members shall be
held in the month of January, one thousand nine
hundred and forty, on a day to be fixed by the protector,
and thereafter on such day in January in every third
year as the protector appoints.

(8.) The teacher, or such other person as the
protector may appoint, shall be the returning officer for
every election held under this Act.

(9.) For the purpose of every election, the returning Voters'
officer shall compile a roll of residents of the reserve roll.
qualified to vote at such election.

Every islander who is eighteen years of age or over,
and who resides upon the reserve, and who is not for
the time being subject to the disqualification mentioned
in paragraph (a) of subsection three of this section, shall
be qualified to vote.

(10.) (i.) In every reserve a triennial election of the Triennial
chairman and members shall be held. elections.

(ii.) At every triennial election the chairman and
the whole number of members shall be elected.

(iii.) Elections held in pursuance of this Act shall be Rules as to
conducted in accordance with such rules, forms, and elections.
directions as may be prescribed by the protector.

(11.) A chairman or any member may resign his Resignation.
office by notice orally or in writing to the protector
and such resignation shall be complete and shall take
effect from the time when it is received by the protector.

(12.) (i.) Save as hereinafter provided, when any Vacancy.
vacancy arises in the office of chairman or member an
election shall be held to fill such vacancy on a day to be
fixed by the protector.

(ii.) A person elected under this subsection to fill
any vacancy shall subject to this Act hold office for the
remainder of the period for which his predecessor was
elected.