

1904.
—
WESTERN AUSTRALIA.

R E P O R T

OF THE

Select Committee of the Legislative Council

Appointed to report upon

THE ABORIGINES BILL.

LAI'D UPON THE TABLE OF THE HOUSE ON WEDNESDAY, 7TH DECEMBER, 1904.

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*Ordered to be printed.*  
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EXTRACTED FROM THE MINUTES.

Legislative Council.

WEDNESDAY, 2ND NOVEMBER, 1904.

7.—ABORIGINES PROTECTION BILL.—The Order of the Day for the resumption of the debate on the second reading of this Bill having been read,

Debate continued.

Question—put and passed.

Bill read a second time.

The Hon. E. M. Clarke moved, That the Bill be referred to a Select Committee.

Question—put and passed.

A ballot having been taken, the following members, in addition to the mover, were elected to serve upon the Committee:—The Honourables J. M. Drew, W. Kingsmill, R. F. Sholl, and Sir E. H. Wittenoom.

Ordered—That the Committee have power to call for persons, papers, and records; to sit on days over which the Council stands adjourned, and report to the House on Wednesday, 16th November.

(Time for bringing up Report was extended from time to time.)

WEDNESDAY, 7TH DECEMBER, 1904.

3.—ABORIGINES PROTECTION BILL.—The Hon. W. Kingsmill, on behalf of the Committee, brought up the Report of the Select Committee upon this Bill.

Report received, and ordered to be printed.

Ordered—That the consideration of the Bill in Committee be made an Order of the Day for Tuesday 13th December.

REPORT

OF SELECT COMMITTEE appointed to consider the Aborigines Bill.

Your Committee has held five (5) meetings, and has carefully considered the provisions of this Bill.

Your Committee beg to recommend the Amendments enumerated for the reasons given hereunder:—

- No. 1. Clause 4, subclause (d).—Strike out “eighteen,” and insert “sixteen.”
- „ 2. Clause 11.—Strike out “eighteen,” and insert “sixteen.”
- „ 3. Clause 12, page 4, lines 3 and 4.—Strike out “No such authority shall be given until the person desiring such removal enters,” and insert “before such authority is given the person desiring such removal shall enter.”
Add at end of clause a paragraph as follows:—“The protector may, in his discretion, dispense with such recognisance in any particular case.”
- „ 4. Clause 12.—Strike out “eighteen,” and insert “sixteen.”
- „ 5. Clause 13.—Strike out “portion of the State,” and insert “Crown lands not exceeding in any one Magisterial district an area of two thousand acres.”
- „ 6. Clause 20.—Strike out “eighteen,” and insert “fourteen.”
Insert after “permit,” “or permit.”
- „ 7. Clause 21.—Insert subclause to stand as subclause 5, as follows:—
“(5.) May, if the protector thinks fit, be granted as a general permit to employ aborigines.”
- „ 8. Clause 22.—Strike out “eighteen.” and insert “sixteen.”
- „ 9. Clause 24.—Strike out “eighteen,” in lines two and four, and insert “fourteen.”
- „ 10. Clause 25.—Strike out “eighteen,” and insert “sixteen.”
- „ 11. Clause 28.—Strike out “eighteen,” and insert “sixteen.”
- „ 12. Clause 29, line 13.—After “permit” insert “or permit,” and after “agreement” insert “as the case may be.”
- „ 13. Clause 35.—Strike out the clause.
- „ 14. Clause 36.—Strike out “sixteen” and insert “fourteen.”
Page 9, line 1.—After “may” insert “with the approval of the Minister.”
- „ 15. Clause 37, subclause 2.—Strike out “eighteen” and insert “sixteen.”
- „ 16. Clause 43.—Strike out “eighteen” and insert “sixteen.”
- „ 17. Clause 46.—Strike out “eighteen” and insert “sixteen.”
- „ 18. Clause 47.—Strike out all words after “Act” to the end of the clause.
- „ 19. Schedule.—Strike out the reference “55 Vict., No. 28.” Insert new clauses as follows, to stand as Clauses 28 and 29:—
Penalty for breach of agreement by aboriginal (55 Vict., No. 25, s. 2).
28. Any aboriginal who shall neglect or refuse to enter upon or commence his service, or shall absent himself from his service, or shall refuse or neglect to work in the capacity in which he has been engaged, or shall desert or quit his work without the consent of his employer, or shall commit any other breach of his agreement, shall be guilty of an offence against this Act, and shall be liable upon conviction to imprisonment for any term not exceeding three months, with or without hard labour.
Penalty for breach of agreement by employer.
29. Any employer of an aboriginal who shall commit any breach of an agreement under this Act shall be guilty of an offence against this Act, and shall be liable upon conviction to a fine not exceeding twenty pounds.

Amendment No. 1 (Substitution of the age of sixteen for that of eighteen).—It appears to your Committee that the age limit of employment and individual responsibility is set too high throughout the Bill. It must be remembered that the aborigines of Western Australia are a race who mature early, and that the most useful years of their life are those between fourteen and twenty-five.

In the case of females, there appear to be insufficient reasons for increasing what is practically the age of consent from sixteen to eighteen.

Amendments 2 and 3.—See above.

Amendment No. 4, Clause 12.—The first portion of the amendment to this section is necessary, that the latter amendment may not be contradictory. The second portion of the amendment confers upon the Protector the power of dispensing with the recognisances referred to in cases where, in his opinion, they are not necessary. For example, the wife of a settler who may be employing a native woman in domestic duties, and whose character as an employer of natives is above suspicion, should not be required, during a visit to another district, to comply with such formalities.

Amendment No. 5, Clause 13.—It is proposed to limit the proclamation of reserves to Crown lands (including pastoral leases and town commons), and, further, to limit the size of such reserves to an area of 2,000 acres in each district.

Your Committee, after giving the subject lengthy consideration, are of opinion that any scheme proposing to bring together in large reserves natives of different tribes is foredoomed to failure. Their minds are frequently embittered by tribal feuds and disagreements, which can only be ended by violence; and furthermore, there does not appear to be any economical method of keeping them on the reserves once they are placed there. While this system has undoubtedly been successful in the case of races belonging to a higher order of civilisation, such as the North American Indians, it is not to be hoped that the aborigines of Western Australia can be brought to observe rules and regulations keeping them within a confined area, which are directly contrary to their habits of life and tribal traditions. At the same time, it is thought that an area should be reserved for unemployed natives adjacent to every town which they are in the habit of frequenting, for the purpose of rendering easier the task of keeping them as free as possible from the malign influences of depraved whites, and to provide them with a recognised camping ground.

Amendment No. 6, Clause 20.—With regard to the amendment in the age of employment, your Committee see no reason in this connection to recommend that this age should be greater in the case of aboriginal children than in the case of white children. (See also remarks on Amendment No. 1.)

With reference to the question raised by the second amendment to this clause, your Committee recommend that it should be made possible to employ natives under a permit with or without an agreement. The granting of such permits lies with the discretion of the Protector, and they may be cancelled at any time. They should, therefore, be granted only to persons who are in such Protector's opinion, qualified by their character to become good and reasonable employers. Where further security is desired, an agreement may be executed.

Amendment No. 7, Clause 21.—The task of obtaining permits for each individual aboriginal employed would, in the remote parts of the State, be impossible. It is proposed, therefore, to render it possible for persons of suitable reputation to obtain general permits to employ aborigines.

Amendment No. 8, Clause 27.—Consequential.

Amendment No. 9, Clause 24.—Consequential.

Amendment No. 10, Clause 25.—Consequential.

Amendment No. 11, Clause 28.—Consequential.

Amendment No. 12, Clause 29.—Consequential on No. 6.

Amendment No. 13, Clause 35.—This amendment is, in the opinion of your Committee, rendered unnecessary by the presence in the Bill of Section 11, which constitutes the Chief Protector the legal guardian of aborigines up to the age of sixteen years. Further, to carry out the intention of the clause as printed, would involve a much larger expenditure than is deemed warranted.

Amendment No. 14, Clause 36.—The first amendment in this clause is consequential, and the second, to some extent, provides against the injudicious and possibly harassing use of the powers therein conferred upon Protectors.

Amendment No. 15, Clause 37.—Consequential.

Amendment No. 16, Clause 43.—Consequential.

Amendment No. 17, Clause 46.—Consequential.

Amendment No. 18, Clause 47.—It is deemed inadvisable to limit the powers of the Bench in the matter of minimum fines. Experience has shown that the placing of a minimum limit on fines has often the effect, in mild cases, of either preventing the conviction of offenders or of inflicting on them unduly harsh penalties.

Amendment No. 19 (Schedule).—Your Committee proposes to leave the system of adjusting difficulties between employer and employee as it at present stands. The provisions of the Masters and Servants Act, which it is proposed to substitute, entailing as they do the service of a summons before a warrant is issued, do not appear to be applicable to aborigines, who would not be likely to appreciate the significance of such a document.

The deletion of this portion of the schedule renders necessary the two new clauses given above, which are taken from the Aborigines Protection Act of 1892.

With the remaining portions of the Bill your Committee desire to express a general concurrence.

WALTER KINGSMILL,
Chairman.

7th December, 1904.