

## ABORIGINES PROTECTION (AMENDMENT) ACT.

Act No. 12, 1940.

An Act to provide for the dissolution of The Board for the Protection of Aborigines and for the constitution of an Aborigines Welfare Board; to amend the Aborigines Protection Act, 1909-1936, in certain respects; and for purposes connected therewith. [Assented to, 22nd May, 1940.]

George VI.  
No. 12, 1940.

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Aborigines Protection (Amendment) Act, 1940."

Short title,  
commencement  
and citation.

(2) This Act shall commence on a date to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Aborigines Protection Act, 1909-1936, as amended by this Act, may be cited as the Aborigines Protection Act, 1909-1940.

**2.** (1) The Aborigines Protection Act, 1909-1936, is amended by omitting sections four, five and six and by inserting in lieu thereof the following sections:—

Amendment  
of Act No.  
25, 1909.  
Substituted  
secs. 4, 5 and 6.

4. (1) There shall be a board to be called the "Aborigines Welfare Board" which shall consist of ten members.

Aborigines  
Welfare  
Board.

(2) (a) The person for the time being holding the office of Under Secretary, Chief Secretary's Department, shall be a member of the board and shall be the chairman.

(b) The remaining members of the board (in this section referred to as "appointed members") shall be appointed by the Governor.

Of

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Of the appointed members—

- (i) one shall be the Superintendent of Aborigines Welfare;
- (ii) one shall be an officer of the Department of Public Instruction;
- (iii) one shall be an officer of the Department of Public Health;
- (iv) one shall be a member of the police force of or above the rank of inspector;
- (v) one shall be an expert in agriculture;
- (vi) one shall be an expert on sociology and/or anthropology;
- (vii) **three shall be persons nominated by the Minister for appointment.**

(3) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to the appointment of appointed members, nor shall any member of the board, in his capacity as such member, be subject to the provisions of any such Act.

(4) An appointed member shall be deemed to have vacated his office if he—

- (a) dies;
- (b) resigns his office by writing under his hand **addressed to the Governor;**
- (c) ceases to reside in the State;
- (d) becomes bankrupt, compounds with his creditors or makes an assignment of his estate for their benefit;
- (e) becomes an insane person or patient, or an incapable person within the meaning of the Lunacy Act of 1898;
- (f) absents himself from two consecutive ordinary meetings of the board except on leave granted by the board.

(5) The board shall annually elect one of its members to be vice-chairman.

(6) (a) The procedure for the calling of meetings of the board and for the conduct of business at such meetings shall, subject to this Act and to any regulations made in relation thereto be as determined by the board.

(b)

(b) Four members of the board shall form a quorum and any duly convened meeting of the board at which a quorum is present shall be competent to transact any business of the board.

(c) At any meeting of the board the chairman or in his absence the vice-chairman shall preside.

If both the chairman and the vice-chairman are absent the members present shall elect one of their number to preside at the meeting.

(7) No act or proceeding of the board shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member of the board.

(8) Each member of the board shall be entitled to receive allowances to cover expenses incurred by him for conveyance and subsistence in travelling upon business of the board at such rates and in such circumstances as may be prescribed.

Except as provided in this subsection no fees or remuneration of any kind shall be paid to a member in respect of his services as such member.

5. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint a Superintendent of Aborigines Welfare and such other officers and employees as may be necessary for the administration of this Act.

Superintendent and other officers and employees.

(2) The Superintendent of Aborigines Welfare and other officers and employees shall be subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, during their tenure of office.

6. The board may appoint committees at such times and for such purposes as the board may think fit.

Committees.

Each committee shall exercise and discharge such functions and duties as the board may determine.

(2) Upon the commencement of this Act The Board for the Protection of Aborigines shall be dissolved and the members of that board shall cease to hold office as such members.

3.

**Aborigines Protection (Amendment) Act.****No. 12, 1940.**Further  
amendment of  
Act No. 25,  
1909.Sec. 3.  
(Defini-  
tions.)**3.** The Aborigines Protection Act, 1909-1936, is further amended—

- (a) (i) by omitting from section three the definition of “Board” and by inserting in lieu thereof the following definition:—

“Board” means the Aborigines Welfare Board, constituted under this Act.

- (ii) by inserting in the same section after the definition of “Board” the following new definition:—

“Child” means an aborigine under eighteen years of age.

- (iii) by omitting from the same section the definition of “Local Committee”;

- (iv) by inserting in the same section after the definition of “Stations” the following new definition:—

“Ward” means a child who has been admitted to the control of the board or committed to a home constituted and established under section eleven of this Act.

Sec. 7.  
(Duties of  
board.)

- (b) (i) by omitting from paragraph (a) of section seven the words “of aborigines” and by inserting in lieu thereof the words “or benefit of aborigines or for the purpose of assisting aborigines in obtaining employment and of maintaining or assisting to maintain them whilst so employed, or otherwise for the purpose of assisting aborigines to become assimilated into the general life of the community”;

- (ii) by omitting from paragraph (c) of the same section the words “maintenance and education” and by inserting in lieu thereof the words “and maintenance”;

- (iii) by inserting at the end of section seven the following new paragraph and subsection:—

(f) to arrange for the inspection at regular intervals of each station  
and

and training school under the control of the board, by the Superintendent of Aborigines Welfare and one or more of the other members of the board, or by one or more of such other members.

(2) The board may on the application of the parent or guardian of any child admit such child to the control of the board.

- (c) by inserting in subsection one of section eight after the word "regulations" the words "or a member of the police force"; Sec. 8 (1).  
(Control of Reserves.)
- (d) by inserting in subsection one of section 8A after the word "conditions" the words "or should in the opinion of the board be placed under control"; Sec. 8A (1).  
(Removal to reserve, etc.)
- (e) by omitting sections eleven, 11A, 11B, twelve, thirteen, and 13A and by inserting in lieu thereof the following sections:— Substituted  
secs. 11, 11A,  
11B, 12, 13,  
and 13A.

11. The board may constitute and establish under this Act homes for the reception, maintenance, education and training of wards and may assign a name or names to such homes. Constitution  
and  
establish-  
ment of  
homes.

11A. (1) The board may, by indenture, bind or cause to be bound any ward as an apprentice or may, where apprenticeship conditions are not applicable or desirable, place any ward in other suitable employment. Apprentice  
ship and  
placing in  
employment.

(2) The indentures of apprenticeship and agreements shall be in the forms prescribed and shall contain provisions to the satisfaction of the board for the maintenance, training, care and religious instruction of any ward concerned and for the due payment of any wages payable thereunder. Such indentures and agreements shall be exempt from the provisions of the Stamp Duties Act, 1920-1939.

(3) All wages earned by any ward except such part thereof as the employer is required to pay to the ward personally as pocket money, shall be paid by the employer to the board on behalf of such ward and shall be applied as prescribed. (4)

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(4) The wages due by any employer or person on account of any ward may be sued for and recovered in the name of the board, or any officer authorised by the board in that behalf, in any court of competent jurisdiction, for the benefit of such ward.

Placing of wards in homes pending apprenticeship or employment.

11B. (1) Where a ward is not regarded by the board as ready for placement in employment or for apprenticeship, such ward may be placed in a home for the purpose of being maintained, educated and trained.

(2) Where the board is satisfied that any ward is not likely to succeed in his employment or as an apprentice, the board may, with the approval of the employer or guardian of such ward, cancel any indenture of apprenticeship or agreement, and may place such ward in a home for the purpose of being maintained, educated and trained.

Securing observance of conditions of apprenticeship.

11c. Upon complaint made by the board or any officer authorised by the board in that behalf, that any person with whom any ward has been placed in employment or apprenticed is not observing or performing the conditions of any indenture of apprenticeship or agreement or is unfit to have the further care of such ward any magistrate or justice may call upon such person to answer such complaint, and on proof thereof a children's court established under the Child Welfare Act, 1939, may order such agreement to be terminated and may direct that the ward be sent to a home constituted and established under section eleven of this Act pending arrangements for further employment or apprenticeship.

Wards absconding, etc.

12. (1) If any ward placed in a home constituted and established under section eleven of this Act, or any ward placed in employment or apprenticed, is absent without the leave of the board, or of any officer authorised in that behalf by the board, any member of the police force or any

any officer of the board may apprehend such ward and convey him to such home or back to his employer.

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(2) Any magistrate or justice may issue a warrant for the arrest of any ward who has absconded or been illegally removed from his proper custody.

(3) Where any ward who has absconded or has been illegally removed from his proper custody is arrested, he shall, as soon as practicable, be brought before a children's court established under the Child Welfare Act, 1939.

(4) Any ward who absconds from his proper custody shall be guilty of an offence against this Act, and such court may—

- (a) order the offender to be punished by one or more of the methods of punishment referred to in Part XI of the Child Welfare Act, 1939;
- (b) exercise any of the powers enumerated in subsection one, subsection two, or subsection three of section eighty-three of the Child Welfare Act, 1939; but where it decides to exercise the power referred to in paragraph (d) of subsection one or paragraph (c) of subsection two of that section it shall commit the child to the care of the board to be dealt with as a ward admitted to the control of the board; and where it decides to exercise the power referred to in paragraph (c) of subsection one or paragraph (d) of subsection two of that section, the court shall commit the child to a home constituted and established under section eleven of this Act;  
or
- (c) return the ward to his former custody.

13. (1) Whosoever without the consent of the board or of any officer authorised by the board in that behalf or of the officer-in-charge of any home constituted and established under section

Protection  
of wards.

section eleven of this Act, as the case may be, holds or attempts to hold any communication with any ward who is an inmate of such home or enters or attempts to enter any such home or any premises belonging thereto or used in connection therewith, and does not depart therefrom when required to do so, or after being forbidden so to do by the board or any officer so authorised or of the officer-in-charge of such home, as the case may be, holds or attempts to hold any communication, directly or indirectly, with any ward who is an inmate of such home, shall be guilty of an offence against this Act.

(2) A person shall be guilty of an offence against this Act if he—

- (a) ill-treats, terrorises, overworks or injures any ward; or
- (b) counsels, or causes or attempts to cause, any ward to be withdrawn or to abscond from any home constituted and established under section eleven of this Act, or from the charge of any person with whom he is placed or to whom he is apprenticed or to escape from his proper custody; or
- (c) knowing any ward to have so been withdrawn or to have so absconded or escaped harbours or conceals such ward or prevents him from returning to such home or person or to his proper custody; or
- (d) having the care of any ward—
  - (i) illegally discharges or dismisses or attempts to discharge or dismiss him from any home constituted and established under section eleven of this Act,
  - (ii) illegally detains him in any home constituted and established under section eleven of this Act,
  - (iii)



- (iii) neglects him, or
- (iv) does not well and truly observe, perform and keep all the covenants, conditions and agreements contained in any indenture or agreement entered into by him respecting any ward, and which by such indenture or agreement he has bound himself or agreed, to observe, perform or keep.

13A. (1) Any justice may, upon oath being made before him by any officer authorised by the board in that behalf, or by any member of the police force, that having made due inquiry he believes any child to be a neglected or uncontrollable child—

Neglected  
and uncontrol-  
lable  
children.

- (a) issue his summons for the appearance of such child before a children's court established under the Child Welfare Act, 1939; or
- (b) in the first instance issue his warrant directing such child to be apprehended.

(2) Any person having the care, custody or control of a child may apply to a children's court established under the Child Welfare Act, 1939, to commit the child to the control of the board or to a home constituted or established under section eleven of this Act upon the ground that he is an uncontrollable child.

(3) The expressions "neglected child" and "uncontrollable" shall respectively have the meanings given to those expressions in the Child Welfare Act, 1939.

(4) Any officer authorised by the board in that behalf or any member of the police force may, although the warrant is not at the time in his possession, apprehend any child for whose apprehension a warrant has been issued under this section.

(5)

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(5) Any child apprehended as a neglected or uncontrollable child shall be taken to a place of safety or to a shelter constituted or established under the Child Welfare Act, 1939, and as soon as practicable thereafter shall be brought before a children's court established under that Act.

(6) Any child charged as a neglected or uncontrollable child shall be brought before a children's court established under the Child Welfare Act, 1939.

(7) The provisions of sections eighty-one and eighty-two of the Child Welfare Act, 1939, shall apply, mutatis mutandis, to and in respect of any proceedings against a child under this section:

Provided that where the court decides to exercise the power referred to in paragraph (d) of section eighty-two of that Act, it shall commit the child to the care of the board to be dealt with as a ward admitted to the control of the board, and where the court decides to exercise the power referred to in paragraph (e) of that section it shall commit the child to a home constituted and established under section eleven of this Act.

Sec. 13c.  
(Payment  
of wages  
by  
employer.)

- (f) (i) by inserting in section 13c after the word "concerned" the words "and/or of his wife and/or children";
- (ii) by omitting from the same section the word "secretary" and by inserting in lieu thereof the words "Superintendent of Aborigines Welfare";
- (iii) by inserting in the same section after the word "due" the words "and/or of his wife and/or children";

Substituted  
secs. 16, 17  
and 18.

- (g) by omitting sections sixteen, seventeen and eighteen and by inserting in lieu thereof the following sections:—

Maintenance  
of children  
under sixteen  
years by near  
relatives.

16. (1) Where an aborigine under sixteen years of age has been admitted to the control of the board and is a ward, or where any order  
has

has been made by a children's court established under the Child Welfare Act, 1939, committing an aborigine under sixteen years of age—

- (a) to the care of any person; or
- (b) to the control of the board; or
- (c) to a home constituted and established under section eleven of this Act,

the near relatives shall be liable to pay for or to contribute towards his maintenance.

(2) The provisions of Part XII of the Child Welfare Act, 1939, shall, mutatis mutandis, extend to and in respect of the maintenance of any such aborigine and the liability of the near relatives in respect of such maintenance.

For the purposes of such extension—

- (a) a reference in that Part to the Minister shall be construed as a reference to the board,
- (b) a reference in that Part to an institution shall be construed as a reference to a home constituted and established under section eleven of this Act, and
- (c) a reference in that Part to the Director shall be construed as a reference to the Superintendent of Aborigines Welfare.

17. (1) Any person guilty of an offence against this Act shall be liable, upon summary conviction, unless some other penalty or punishment is expressly provided, to a penalty not exceeding twenty pounds or to imprisonment for one month, or to both such penalty and imprisonment. Penalties,  
etc.

(2) Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions.

18. Proceedings for an offence against this Act or the regulations may be instituted in the name of the board by any officer or employee of the board or member of the police force. Proceedings.

(h)

**Aborigines Protection (Amendment) Act.****No. 12, 1940.**

**Sec. 19.**  
(Inspection  
of  
aboriginal  
stations.)

(h) by omitting from section nineteen the words "on the authority of the board by any member of a local committee, guardian, or by any member of the police force if such member is also authorised by the Commissioner of Police" and by inserting in lieu thereof the words "or by any person authorised by the board in that behalf";

**New secs.**  
**19A and 19B.**

(i) by inserting next after section nineteen the following new sections:—

**Delegation.**

19A. (1) The board may, from time to time, by resolution delegate to any person either generally or in any particular case or class of cases such of the powers, authorities, duties or functions of the board as may be specified in the resolution: Provided that no such delegation shall have any force or effect unless and until the same has been approved by the Minister.

(2) A delegate while acting within the scope of any such delegation to him shall be deemed to be the board.

(3) The board may by resolution revoke any such delegation, and in such case shall submit a full report of the circumstances to the Minister.

**Annual  
report.**

19B. The board shall as soon as practicable after the first day of July in each year submit to the Minister a report of its proceedings during the next preceding year.

The Minister shall cause such report to be laid before both Houses of Parliament.

**Sec. 20.**  
(Regula-  
tions.)

(j) (i) by omitting from paragraph (a) of subsection one of section twenty the words "local committees, guardians and persons" and by inserting in lieu thereof the words "committees and persons appointed or";

(ii) by inserting in paragraph (c) of the same subsection after the words "for the" the words "relief or";

(iii)

- (iii) by omitting from paragraph (e) of the same subsection the words “custody and education” and by inserting in lieu thereof the words “and custody”;
- (iv) by omitting paragraph (f) of the same subsection and inserting in lieu thereof the following paragraph:—
  - (f) Prescribing the conditions on which wards may be apprenticed or placed in employment under this Act, the form and contents of agreements, appointments, apprenticeship articles, and other instruments and documents, the minimum rates of wages of wards so apprenticed or placed in employment, and the liabilities of persons in respect of the welfare of wards apprenticed to or placed in their care.
- (v) by omitting from paragraph (h) of the same subsection the word “children” and by inserting in lieu thereof the words “wards placed in employment or.”

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