



ABORIGINES ACT, 1934-1939.

BEING

ABORIGINES ACT, 1934, No. 2154 OF 1934

[ASSENTED TO 18TH OCTOBER, 1934.]

AS AMENDED BY

ABORIGINES ACT AMENDMENT ACT, 1939, No. 14 OF 1939

[ASSENTED TO 22ND NOVEMBER, 1939.]

An Act to consolidate certain Acts relating to the protection and control of the aboriginal and half-caste inhabitants of South Australia.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Aborigines Act, 1934-1939", and shall come into operation on a day to be fixed by proclamation. Short title and commencement.

2. This Act is a consolidation of the Acts mentioned in the first schedule, and the said Acts are hereby repealed. Acts consolidated and repealed.

Interpretation.

3. In this Act, unless inconsistent with the context or subject matter— Interpretation. 1048, 1911, s. 8.

"aboriginal institution" means any mission station, reformatory, orphanage, school, home, reserve, or other institution for the benefit, care, or protection of the aboriginal inhabitants of the State : Amended by 14, 1939, ss. 4, 6, 42.

"board" means the Aborigines Protection Board :

"chairman" means the chairman of the board :

"contagious disease" means venereal disease, including gonorrhoea :

"department" means the Aborigines Department :

"district" means a district declared under this Act :

Commencement : The Aborigines Act, 1934, was proclaimed to commence on 1st April, 1937 (*Gazette* 11th February, 1937, p. 285) and the Aborigines Act Amendment Act, 1939, was proclaimed to commence on 1st February, 1940 (*Gazette* 25th January, 1940, p. 117).

“lock-hospital” means a hospital or other institution, or the part of a hospital or other institution, declared a lock-hospital for the purposes of this Act :

“Minister” means the Minister of the Crown to whom for the time being the administration of this Act is committed by the Governor :

“protector” means a protector of aborigines appointed under this Act :

“reserve” means a reserve for aborigines declared under this Act :

“secretary” means the secretary to the board :

“superintendent” means a superintendent appointed under this Act for a reserve.

Definition of aborigine.

Cf. W.A. 48, 1936, s. 2.

Substituted by 14, 1939, s. 5.

4. (1) Every person—

(a) who is of the full blood descended from the original inhabitants of Australia ; or

(b) who being of less than full blood is descended from the original inhabitants of Australia,

shall, unless exempted pursuant to section 11a, be deemed to be an aborigine within the meaning of this Act.

(2) In this Act “aboriginal” means appertaining or relating to an aborigine.

Aborigines Protection Board.

Constitution of board.

Inserted by 14, 1939, s. 7.

4a. (1) There is hereby constituted, for the purposes of this Act, a board to be called the “Aborigines Protection Board”.

(2) The board shall be a body corporate, and by the name aforesaid shall have perpetual succession and a common seal.

Judicial notice of seal.

Inserted by 14, 1939, s. 7.

4b. Judicial notice shall be taken of the incorporation and of the common seal of the board ; and the production of any deed, instrument, or writing, if sealed with the said seal, shall be sufficient evidence of the due making and execution of that deed, instrument, or writing.

Membership of board.

Inserted by 14, 1939, s. 7.

4c. The board shall consist of—

(a) the Minister ; and

(b) six other members appointed by the Governor.

Two of the members shall be women.

4d. (1) Three members of the board first appointed by the Governor pursuant to this Act shall, subject to this Act, hold office for two years.

Term of office.
Inserted by
14, 1939, s. 7.

(2) The other three members of the board first appointed by the Governor pursuant to this Act, and all other members of the board appointed by the Governor shall, subject to this Act, hold office for four years.

(3) At the time of the first appointment of members of the board by the Governor, the Governor shall nominate which of the members first appointed by the Governor shall hold office for the term provided by subsection (1).

(4) Any member of the board may from time to time, at the expiration of his term of office, be re-appointed for a further term of four years.

(5) Whenever a vacancy occurs in the office of a member of the board whether by expiration of the member's term of office or otherwise, the Governor shall appoint a person to fill the vacancy: Provided that the person appointed to fill the vacancy caused otherwise than by the expiration of the term of office of a member shall hold office only for the unexpired portion of the term of office of the member in whose place he is appointed, and that any retiring member whose term of office expires by effluxion of time shall hold office until his successor is appointed.

(6) The provisions of the Public Service Act, 1936-1938, shall not apply to any member of the board by virtue only of his appointment as a member.

4e. In addition to the retirement of members of the board by the expiration of their terms of office, the seat of a member (other than the Minister) shall become vacant on—

Casual
vacancies.
Inserted by
14, 1939, s. 7.

- (a) his death, lunacy, or bankruptcy, or his executing a statutory deed of assignment for the benefit of his creditors, or compounding with his creditors for less than twenty shillings in the pound, or his being convicted of an indictable offence; or
- (b) his resignation by notice in writing posted or delivered to the Minister; or
- (c) his absence from three consecutive meetings of the board without the leave of the board.

4f. A member of the board shall, at the discretion of the Minister, be reimbursed any expenses incurred in the exercise of his office.

Expenses of
members.
Inserted by
14, 1939, s. 7.

Effect of defects in appointment of members of board.

Inserted by 14, 1939, s. 7.

4g. (1) No act or proceeding of the board shall be invalid or illegal in consequence only of the number of the members of the board not being complete at the time of the act or proceeding.

(2) All acts and proceedings of the board shall, notwithstanding the discovery of any defect in the appointment of any member, or that any member was disqualified or disentitled to act, be as valid as if the member had been duly appointed and was qualified and entitled to be and to act, and had acted, as a member, and as if the board had been properly and fully constituted.

Secretary and officers.

Inserted by 14, 1939, s. 7.

4h. (1) The Governor may appoint a secretary to the board, and any other necessary officers and servants.

(2) Any person so appointed shall be appointed pursuant and be subject to the Public Service Act, 1936-1938.

Chairman.

Inserted by 14, 1939, s. 7.

4i (1) The Minister shall be the chairman of the board.

(2) The Minister may appoint any member of the board to be the deputy chairman of the board.

Meetings and quorum.

Inserted by 14, 1939, s. 7.

4j. (1) At any meeting of the board, the chairman, if present, shall preside and, in the absence of the chairman, the deputy chairman shall preside. If at any meeting both the chairman and deputy chairman are absent, the members present shall elect a member to preside at the meeting.

(2) The person presiding at any meeting of the board shall have both a deliberative and a casting vote.

(3) Any four members of the board shall constitute a quorum of the board.

Reports by board.

Inserted by 14, 1939, s. 7.

4k. (1) The board shall, on or before the first day of October in every year, report to the Governor on the working of this Act during the preceding financial year, and shall in any such report set out a summary of the receipts and expenditure during the said period and any other particulars which the board may from time to time consider fit to be included in the report.

(2) All such reports shall be laid before Parliament.

Administration.

Duty of board.

Substituted by 14, 1939, s. 8.

5. The board shall be charged with the duty of controlling and promoting the welfare of aborigines.

6. The Treasurer of the State shall, in every year, place at the disposal of the board such sums as are provided by Parliament, to be applied to the purposes of the board.

Funds to be provided by Parliament.
1048, 1911, s. 6
Amended by 14, 1939, s. 9

7. It shall be the duty of the board—

Duties of board.
1048, 1911, s. 7.
Amended by 14, 1939, ss. 19, 42.

- (a) to apportion, distribute, and apply, as seems most fit, the moneys at the disposal of the board :
- (b) in its discretion, to apply part of the moneys at its disposal in the purchase of stock and implements to be loaned to aborigines to whom land has been allotted under section 18, and may supply the same accordingly either without payment or on such terms as are approved by the board, and no person shall, except with the approval of the board, acquire any title to any goods or chattels so loaned as aforesaid :
- (c) to distribute blankets, clothing, provisions, and other relief or assistance to the aborigines :
- (d) to provide, as far as practicable, for the supply of food, medical attendance, medicines, and shelter for the sick, aged, and infirm aborigines :
- (e) to provide, when possible, for the custody, maintenance and education of the children of aborigines :
- (f) to manage and regulate the use of all reserves for aborigines :
- (g) to exercise a general supervision and care over all matters affecting the welfare of the aborigines, and to protect them against injustice, imposition, and fraud.

8. (1) Upon the recommendation of the board, the Minister may from time to time appoint such persons as he deems proper to be protectors of aborigines, who shall, within the districts respectively assigned to them, have and exercise the powers and duties given or imposed by this Act.

Appointment of protector.
Substituted by 14, 1939, s. 11.

(2) Every protector of aborigines at the commencement of the Aborigines Act Amendment Act, 1939, shall, without any further appointment, continue to be a protector of aborigines within the district assigned to him at the said commencement.

(3) Every member of the board shall, without any further appointment, be a protector of aborigines for the whole of the State.

(4) The secretary shall, without any further appointment, be a protector of aborigines for the whole of the State.

Permanent head.

Substituted by 14, 1939, s. 13

9. The secretary of the board shall be the permanent head of the department and shall be responsible for the administration of the department.

Legal guardian. 1048, 1911, s. 10.

Amended by 14, 1939, ss. 6, 13.

10. (1) The board shall be the legal guardian of every aboriginal child, notwithstanding that any such child has a parent or other relative living, until such child attains the age of twenty-one years, except whilst such child is a State child within the meaning of the Maintenance Act, 1926.

(2) Every protector shall, within his district, be the local guardian of every such child within his district.

(3) Such local guardian shall have and exercise the powers and duties prescribed.

Districts. 1048, 1911, s. 11.

11. The Governor may, by proclamation—

- (a) declare any portion of the State to be a district for the purposes of this Act, and shall by such proclamation assign a name to such district :
- (b) alter the boundaries of any district :
- (c) abolish any district.

Exemptions from Act.

Exemption of aborigine from operation of Act.

Inserted by 14, 1939, s. 14.

11a. (1) In any case where the board is of opinion that any aborigine by reason of his character and standard of intelligence and development should be exempted from the provisions of this Act, the board may, by notice in writing, declare that the aborigine shall cease to be an aborigine for the purposes of this Act. Any such declaration may be made by the board whether or not an application is made by the person to whom the declaration refers.

(2) Any such declaration may be made unconditionally by the board and any unconditional declaration shall not be revocable. The board may, in any case it thinks fit, make a limited declaration subject to such conditions as are thought fit by the board. If any such limited declaration is made and the board is subsequently of opinion that the person referred to in the declaration is not of the character or standard of intelligence or development to justify the continuance of the declaration, the board may, by notice in writing, revoke the limited declaration. If during the period of three years

after the making of a limited declaration, the board does not revoke the limited declaration, the board shall, at the expiration of the said period, make an unconditional declaration in respect of the person referred to in the limited declaration. The board may, if it thinks fit, at any time prior to the expiration of the said period of three years, make an unconditional declaration.

(3) During the time any such unconditional or limited declaration is in force the person to whom it refers shall not be deemed to be an aborigine for the purpose of this Act or any other Act. If any unconditional declaration is made in respect of any person, the descendants of that person who are born after the making of the declaration, shall not be deemed to be aborigines for the purpose of this or any other Act by reason of their relationship to the person in respect of whom the declaration is made.

In any proceedings before any court under this or any other Act where it is material for any purpose to prove whether or not a person is an aborigine and the court could, apart from this section, infer by reason of evidence before the court or otherwise that the said person was an aborigine, the onus of proving that a declaration was, at the relevant time, in force as regards the said person or any ancestor of the said person, as the case may require, shall be upon the party to the proceedings seeking to prove that the said person was not an aborigine.

This subsection shall have application with respect to any provision in any other Act where reference is made to a person (however described in such provision) who is included within the definition of "aborigine" as defined by subsection (1) of section 4 of this Act.

(4) If, on the application of any aborigine, the board refuses to make a declaration under this section, or if the board revokes any such declaration, the applicant or, as the case may be, the person referred to in the declaration may appeal to a special magistrate who may make such order on the appeal as appears to him just. Every such appeal shall be made within the time and in the manner prescribed. The special magistrate by such order may make any declaration which the board could make and subsections (2) and (3) shall apply to any such declaration.

Removal of Aborigines.

12. (1) Any person who, without the authority in writing of the board, removes or causes to be removed any aborigine, from one district to another, or to any place beyond the State, shall be guilty of an offence against this Act.

Heading amended by 14, 1939, s. 42.

Unlawfully removing aborigine from district. 1048, 1911, s. 12. Amended by 14, 1939, ss. 6, 15, 42.

(2) This section shall not apply to the removal by any person of any child, of whatever age, of such person.

Recognizance
before
removal.
1048, 1911,
s. 13.

Amended by
14, 1939, ss.
6, 16 (a), 42.

13. (1) Before authority is given under section 12 the person desiring the removal shall enter into a recognizance, with such surety or sureties as the board approves, in a sum which the board considers sufficient to defray the expense of the return of the aborigine to the place from which he is to be removed.

Subsec. (2)
substituted by
14, 1939, s. 16
(b).

(2) Every such recognizance shall be in the prescribed form, and shall be taken in duplicate by a member of the board, the secretary to the board, a protector, or a member of the police force. One part shall be forthwith forwarded to the board.

A recognizance may be renewed from time to time, at the discretion of the board.

Subsec. (3)
substituted by
14, 1939, s. 16
(c)

(3) The board may, in its discretion, dispense with any such recognizance.

Reserves and Institutions.

Reserves for
aborigines.
1048, 1911,
s. 14.

Amended by
14, 1939, ss.
17, 42.

14. The Governor may by proclamation—

- (a) declare any Crown lands to be a reserve for aborigines :
- (b) alter the boundaries of any reserve :
- (c) abolish any reserve.

Superinten-
dents of
reserves.
1048, 1911,
s. 15.

15. The Governor may appoint such person as he deems proper to be the superintendent of a reserve.

Leases to
institutions.
1048, 1911,
s. 16.

Amended by
14, 1939,
ss. 6, 18, 42.

16. (1) The Governor may grant leases of any Crown lands to any mission or other aboriginal institution for any term not exceeding twenty-one years, at such rent and on such terms as he thinks fit, in blocks not exceeding in any case one thousand square miles.

(2) Every such lease may grant a right of renewal : Provided it can be shown to the satisfaction of the Minister that the lands therein described are required for and applied to the use and entirely for the benefit of aborigines.

Power to
remove
aborigines to
reserves.
1048, 1911,
s. 17.

Amended by
14, 1939,
ss. 6, 19, 42.

17. (1) The board may cause any aborigine to be kept within the boundaries of any reserve or aboriginal institution, or to be removed to and kept within the boundaries of any reserve or aboriginal institution, or to be removed from one reserve or aboriginal institution to another reserve or aboriginal institution, and to be kept therein.

(2) No aborigine shall be kept within the boundaries of an aboriginal institution or removed from any such institution without the consent of the governing body of the institution concerned.

(3) Any aborigine who refuses to be so removed, or resists such removal, or who refuses to remain within or attempts to depart from any reserve or institution to which he has been so removed, or within which he is being kept as aforesaid, shall be guilty of an offence against this Act.

18. The Minister may on the recommendation of the board and Surveyor-General allot to any aborigine any Crown lands available for settlement, or may, on such recommendation as aforesaid, purchase land for occupation by aborigines, and allot the same, and any such allotment shall be upon such terms and subject to such conditions as may be prescribed by regulation.

Power of Minister to allot or purchase land. 1048, 1911, s. 18.
Amended by 14, 1939, ss. 19, 20, 42.

19. Every aborigine—

- (a) who is lawfully employed by any person ; or
- (b) who is the holder of a permit to be absent from the reserve in question ; or
- (c) who is a female lawfully married to and residing with a husband who is not himself an aborigine ; or
- (d) for whom, in the opinion of the board, satisfactory provision is otherwise made,

Exemptions from liability to removal to reserve. 1048, 1911, s. 19.
Amended by 14, 1939, ss. 19, 42.

shall be exempt from the provisions of section 17.

20. Any person, who, without valid and reasonable excuse, enters or remains or is within the boundaries of a reserve or aboriginal institution, unless he is—

- (a) an aborigine ; or
- (b) the Minister ; or
- (b1) a member or secretary of the board ; or
- (c) a protector, or superintendent, or member of the police force ; or
- (d) a person authorised in that behalf by the Minister or by the board, or by a protector, or by the superintendent of the reserve or institution in question ; or
- (e) a person authorised in that behalf by or under the regulations,

Unlawfully entering reserve or institution. 1048, 1911, s. 20.
Amended by 14, 1939, ss. 21, 42.

shall be guilty of an offence against this Act.

Unlawfully removing or enticing aborigine from reserve. 1048, 1911, s. 21.

Amended by 14, 1939, ss. 22, 42.

21. Any person who removes an aborigine, or causes, assists, entices, or persuades an aborigine to remove, from a reserve or aboriginal institution, unless such person is—

- (a) the Minister ; or
- (a1) a member or secretary of the board ; or
- (b) a protector ; or
- (c) the superintendent of such reserve or institution ; or
- (d) a person authorised in that behalf by the Minister or by the board or by a protector or by the superintendent of the reserve or institution in question ; or
- (e) a person authorised in that behalf by or under the regulations,

shall be guilty of an offence against this Act.

Onus of proof of authority. 1048, 1911, s. 22. 1565, 1923, s. 3.

22. In any proceedings in respect of an offence under section 20 or section 21 the onus of proving that the person charged was authorised as mentioned in paragraphs (d) or (e) of either of the said sections shall be upon such person.

Mining on reserves. 1048, 1911, s. 23.

Amended by 14, 1939, ss. 23 (a), 42.

Subsec. (2) repealed by 14, 1939, s. 23 (b)

23. (1) Notwithstanding the provisions of the Mining on Private Property Act, 1909, and the Mining Act, 1930, or either of the said Acts, no holder of a miner's right shall be entitled to enter, or remain, or be within the limits of any reserve for aborigines except under the written permit of the board.

* * * * *

(3) Any such holder who, without such permit, the proof of which shall lie upon him, is found on any such reserve shall be guilty of an offence against this Act.

Hospital Accommodation.

Power to establish hospitals for aborigines. 1048, 1911, s. 24.

Amended by 14, 1939, ss. 6, 42.

24. The Governor may establish and maintain hospitals in such places as he deems proper for the purpose of treating the sick, diseased, and infirm aborigines, and may appropriate any parts of any public hospitals for the said purpose, and may cause such aborigines to be treated therein.

Provisions for Treating Contagious Diseases.

Proclamation of lock-hospitals. 1048, 1911, s. 25.

25. (1) The Governor may, by proclamation, declare that any public hospital or other institution, or any part of any public hospital or other institution, shall be a lock-hospital for the purposes of this Act.

(2) The Governor may, in like manner, vary any proclamation made under subsection (1) of this section, or close any lock-hospital; and may direct the removal of the patients in any lock-hospital so closed to any other lock-hospital, and the Governor's direction shall be sufficient authority for the removal of the patients as directed.

(3) The Governor may appoint any legally qualified medical practitioner to be the surgeon in charge of any lock-hospital: Provided that if it has been declared a lock-hospital for the purpose of any other Act, the surgeon in charge thereof under that Act shall also be the surgeon in charge thereof under this Act, unless some other person is appointed to that office under this Act.

26. (1) The board by notice in writing may authorise any legally qualified medical practitioner therein named to medically examine any aborigine.

**Detention in
lock-hospitals
of aborigines.**
1048, 1911,
s. 26.

(2) Such writing shall be sufficient authority to the practitioner to enter any premises where such aborigine is, or is suspected to be, and to medically examine such aborigine in such manner as the practitioner deems necessary.

**Amended by
14, 1939,
ss. 6, 24, 42.**

(3) If the practitioner on such examination finds that the aborigine is suffering from a contagious disease he may, by order signed by him, direct that such aborigine be removed to and detained in a lock-hospital until discharged therefrom as hereinafter provided.

(4) Such order concerning any aborigine shall be sufficient authority for any protector or any member of the police force to take and remove such aborigine to any lock-hospital, and to the surgeon thereof to receive, detain, and treat such aborigine therein until discharged as hereinafter provided.

(5) It shall be the duty of the surgeon in charge of a lock-hospital, as soon as any aborigine detained therein under this section is free from contagious disease, to report that fact to the board, whereupon the board may, by notice in writing, discharge such aborigine from the lock-hospital.

(6) Any aborigine who refuses to be examined or to be taken or removed as aforesaid, or to enter, remain, or be treated in any lock-hospital after order made as aforesaid, or attempts to depart from any lock-hospital until discharged as aforesaid, shall be guilty of an offence against this Act.