

Permit to be produced and access to be given.

See Q., 1897, No. 17, s. 16.

Amended by No. 43 of 1936, ss. 3 and 19.

Formerly s. 28, 1913 re-print.

29. Every employer shall—

- (1) produce to an inspector or a protector or police officer or officer appointed by the Commissioner on demand, the permit, or permit and agreement as the case may be, under which any native is employed; and
- (2) allow an inspector or a protector or police officer or officer appointed by the Commissioner to have access to any native employed, or to any house, ship, boat, or premises where such native may happen to be, at all reasonable times, for such inspection and inquiry as he may deem necessary.

Agreements may be cancelled.

Amended by No. 43 of 1936, s. 3.

Formerly s. 29, 1913 re-print.

30. An agreement may be cancelled at any time by a protector; and such cancellation shall not entitle an employer to claim or recover compensation for the loss of service of the native, or to maintain any action in respect of any loss or damage occasioned thereby.

Leave of absence.

50 Vict., No. 25, s. 22.

Amended by No. 43 of 1936, s. 3.

Formerly s. 30, 1913 re-print.

31. The employer of any native engaged under an agreement made under this Act shall grant to the native, at his request, at some time during the term of service, leave to absent himself from his work or service under such agreement—

- (1) for not less than fourteen days, if the agreement is for a term of three months, and not exceeding six months;
- (2) for not less than thirty days, if the agreement is for a term exceeding six months.

Penalty for neglect to convey native back to place agreed upon.

See 50 Vict., No. 25, s. 9.

51 Vict., No. 18, s. 4.

Amended by No. 43 of 1936, s. 3.

Formerly s. 31, 1913 re-print.

32. Any master of a ship or vessel or other person who shall neglect or refuse to convey or cause to be conveyed any native who has been party to any agreement with him back, before the expiration of such agreement, to the place or district to which such native belongs, shall be guilty of an offence against this Act.

Any person convicted of such offence may be ordered, at his own expense, to convey such native back to the place or district to which he belongs, by such route as to the justices shall seem fit, or may be required to pay such sum as to the justices shall seem fit for the purpose

of paying for the conveyance of such native, and such sum shall, for all purposes, be and be deemed to be added to the fine imposed so as to become a part thereof.

33. If a native dies during the period of his employment, the employer, forthwith after the death, or if the deceased was employed on board of any ship, vessel, or boat, forthwith after the arrival of such ship, vessel, or boat at any port in Western Australia shall transmit to the Commissioner notice in writing of such death under the hand of the employer, and containing such particulars as will enable the deceased to be identified.

Death of employed natives.

See Q., 1902. No. 1, s. 11.

Amended by No. 43 of 1936, s. 3.

Formerly s. 32, 1913 reprint.

34. The Commissioner may undertake the general care, protection, and management of the property of any native, and may—

Commissioner to manage property of natives.

Q., 1902, No. 1, s. 13.

Amended by No. 43 of 1936, s. 3.

Formerly s. 33, 1913 reprint.

- (1) take possession of, retain, sell, or dispose of any such property, whether real or personal;
- (2) in his own name sue for, recover, or receive any money or other property due or belonging to or held in trust for the benefit of a native, or damages for any conversion of or injury to any such property;
- (3) exercise in the name of a native any power which the native might exercise for his own benefit;
- (4) in the name and on behalf of a native, appoint any person to act as attorney or agent for any purpose connected with the property of the native;
- (5) require a statement in writing from any person who has had any contractual transaction or financial dealing or dealings in property with a native of any such transaction or dealing during the period of one year preceding such requisition:

Inserted by No. 43, of 1936, s. 20.

Provided that the powers conferred by this section shall not be exercised, except in the case of minors, without the consent of the native except so far as may be necessary to provide for the due preservation of such property.

Amended by No. 43 of 1936, s. 20.

Inserted by  
No. 43 of  
1936, s. 20.

Any person who fails to supply a statement when required by the Commissioner so to do, or who wilfully gives or supplies any false information in any such statement commits an offence against this Act.

The Commissioner shall keep proper records and accounts of all moneys and other property, and the proceeds thereof received or dealt with by him under the provisions of this section, and shall, for such purpose, be deemed to be a public accountant within the meaning of the Audit Act, 1904.

Inserted by  
No. 43 of  
1936, s. 20.

The Commissioner may expend or apply any money in his possession or standing to the credit of any native for his maintenance, education, advancement or benefit.

Commissioner  
may obtain  
letters of ad-  
ministration  
with will  
annexed.

**35.** (1.) The Commissioner may obtain letters of administration or letters of administration with the will annexed of the estate of any deceased native.

Compare  
Queensland,  
25 Geo. V.,  
No. 38, s. 26  
(5).

New section  
inserted by  
No. 43 of  
1936, s. 21.

(2.) Notwithstanding the provisions of any Act or law to the contrary regulating in the absence of a will any succession to and the administration of the estate of any deceased or missing native, all property and rights of property vested in any native other than a native exempted from the provisions of this Act who dies intestate shall vest in the Commissioner upon trust to pay the just debts of the deceased and to distribute the balance between the widow or husband of the deceased and/or the next of kin, if the same or some of them can be ascertained, according to the laws of the State, in accordance with and in the manner prescribed for the administration of the estates of persons dying intestate by the Administration Act, 1903, and if such widow, husband, and/or next of kin cannot be so ascertained, amongst those persons who may by regulation be prescribed as the persons entitled to succeed to the property of the deceased: Provided that, where there is no person entitled to succeed to such property under the regulations, the proceeds of the estate of the deceased shall be paid to a special trust account and be utilised by the Commissioner for the benefit of natives generally: Provided further, that a certificate under the hand of the Commissioner shall be conclusive evidence as to the person or persons entitled under the regulations to succeed to the estate of any deceased or missing native or that there is no such person or persons so entitled.

36. (1.) (a) Every holder of a permit to employ a native shall pay to the Commissioner as a contribution to a medical fund to be kept at the Treasury in the name of the Commissioner contributions on a prescribed scale.

Sickness and accident fund.

New section inserted by No. 43 of 1936, s. 21.

(b) Such fund shall, subject to the provisions of this section, be used to defray the medical and hospital expenses and the maintenance of natives who fall ill or become diseased or who suffer any injury or accident.

(2.) The holder of a permit shall as soon as possible notify in writing the nearest or most accessible protector when any native in his employ becomes sick or affected by any disease or suffers any injury.

(3.) Whenever any native is sick, affected by disease, or injured, and it is expedient in his interests that he should be removed to some place for medical attention or treatment, the holder of a permit under which he is employed shall as soon as is reasonably possible—

- (a) provide free transport for the native and send him to the nearest and most accessible hospital; or
- (b) at the option of a protector provide free transport for the native to the protector, and thence provide free transport for the native to the nearest and most accessible hospital.

(4.) The holder of a permit shall keep and use for the benefit of any native in his employ a reasonable supply of drugs, dressings, and instruments for rendering first aid.

(5.) The holder of a permit who complies with the provisions of this section shall not be under any liability for worker's compensation to an injured native in his employ or to the dependants of any such injured native under the provisions of the Workers' Compensation Act, 1912-1934.

37. (1.) Whenever a male child whose age does not exceed sixteen years or a female child whose age does not exceed eighteen years, and who in either case is the offspring of a native and some person other than a native is being maintained in a native institution or at the cost of the Government, a protector may, with the approval of the Minister, apply to a justice of the peace for a summons to be served on the alleged father of such child for the purpose of obtaining contribution to the support of the child.

Father liable to contribute to support of child.

See Q., 1902, No. 1, s. 19.

Amended by No. 43 of 1936, ss. 3 and 22.

Formerly s. 34, 1913 reprint.

(2.) On the return of such summons any two justices of the peace shall proceed to hear the matter of the complaint, and if the paternity of the defendant and his ability to contribute to the support of such child are proved to the satisfaction of the justices, they may order the defendant to pay a reasonable sum for the confinement and hospital expenses of the mother and for the past maintenance of the child, not exceeding six months in the case of the child, and such weekly sum (not exceeding ten shillings) for the maintenance of the child as such justices think fit:

Provided that no man shall be taken to be the father of any such child upon the evidence of the mother, unless her evidence is corroborated in some material particular.

(3.) Any two justices of the peace, on the complaint of any such father or of a protector, while the first or any subsequent order continues in force, may make further inquiry into such father's ability to contribute as aforesaid, and may remit or lessen the amount of the weekly payment that has been adjudged by the last preceding order, or may increase the same, if they see cause so to do, so that the amount shall not in any case exceed the weekly sum hereinbefore mentioned.

(4.) Whenever, after the making of any such order as aforesaid, it is made to appear to any justice of the peace, by a complaint in writing and upon oath, that any weekly sum to be paid in pursuance thereof has not been paid, or that any father named in such order is about to leave Western Australia, or remove from his usual place of residence, without having first notified his intention to the clerk of petty sessions at the court where the order was made, or without having made due provision for the payment of such weekly sum, such justice may, by warrant, cause such father to be brought before him or some other justice to answer the complaint.

(5.) On the return of such warrant the justice of the peace shall proceed to hear the matter of the complaint, and if the same is proved to be true, shall proceed to levy or enforce payment of the said weekly sums by distress or imprisonment for any period not exceeding three months.

(6.) All contributions and enforced payments under this section towards the support of a child shall be paid and expended as the Colonial Treasurer may direct.

**38.** (1.) Any native in custody under sentence of imprisonment may, by order of the Governor, be employed outside the limits of a prison in such suitable labour in the service of the State as the Governor may direct; but no such prisoner who has not been sentenced to hard labour shall be set to any labour which is severe.

Native prisoners may be employed outside prison.

See 50 Vict., No. 25, s. 32.

Amended by No. 43 of 1936, s. 3.

See 50 Vict., No. 25, s. 33.

Amended by No. 43 of 1936, ss. 3 and 23.

Formerly s. 35, 1913 re-print.

(2.) Any native in custody under sentence of imprisonment may, by order of the Governor, be placed under custody of any officer or servant of the State, who shall be responsible for the safe custody of such prisoner, and he shall thereupon, for all purposes, be deemed in legal custody, wherever he may be employed or detained.

(3.) The gaoler having the charge of the prison wherein such prisoner may be sentenced to imprisonment shall not be responsible for the safe custody of any such prisoner during the time he may be removed, under order as aforesaid from such prison.

See 50 Vict., No. 25, s. 34.

**39.** It shall not be lawful for any person, other than a superintendent or protector, or a person acting under the direction of a superintendent, or under a written permit of a protector, without lawful excuse, to enter or remain or be within or upon any place where natives are camped or where any natives may be congregated or in the course of travelling in pursuance of any native custom.

Persons prohibited from frequenting camps.

Q., 1902, No. 1, s. 16.

Amended by No. 43 of 1936, ss. 3 and 24.

Formerly s. 36, 1913 re-print.

Any person, save as aforesaid, who, without lawful excuse, the proof whereof shall lie upon him, is found in or within five chains of any such camp shall be guilty of an offence against this Act; but no person shall be prosecuted for an offence under this section except by the direction of a protector.

**40.** If at any time he thinks it necessary so to do, a protector may cause any natives who are camped or are about to camp within or near the limits of any town or municipal district to remove their camp, or proposed camp, at such distance from such town or municipality as he may direct; and all police officers shall assist the protector in carrying out the provisions of this section.

Removal of camps near townships.

See Q., 1902, No. 1, s. 17.

Amended by No. 43 of 1936, s. 3.

Formerly s. 37, 1913 re-print.

Any native neglecting or refusing to obey such order shall be guilty of an offence against this Act.

Justices may order natives out of town.

50 Vict., No. 25, s. 43.

Amended by No. 43 of 1936, s. 3.

Formerly s. 38, 1913 reprint.

41. Any justice of the peace or police officer may order any native found loitering in any town or municipal district, or being therein and not decently clothed, forthwith to leave such town or municipal district.

Any native neglecting or refusing to obey such order shall be guilty of an offence against this Act.

Prohibited areas.

Amended by No. 43 of 1936, s. 3.

Formerly s. 39, 1913 reprint.

42. The Governor may, by proclamation, whenever in the interest of the natives he thinks fit, declare any municipal district or town or any other place to be an area in which it shall be unlawful for natives, not in lawful employment, to be or remain; and every such native who, after warning, enters or is found within such area without the permission, in writing, of a protector or police officer, shall be guilty of an offence against this Act.

Females not to remain after sunset at creeks used by pearlers.

Amended by No. 43 of 1936, s. 3.

Formerly s. 40, 1913 reprint.

43. Any female native who, between sunset and sunrise, is found within two miles of any creek or inlet used by the boats of pearlers or other sea boats shall be guilty of an offence against this Act.

Forbidding female children to be brought to creeks used by pearlers.

Amended by No. 43 of 1936, s. 3.

Formerly s. 41, 1913 reprint.

44. Any native who, being the parent or having the custody of any female child apparently under the age of sixteen years, allows that child to be within two miles of any creek or inlet used by the boats of pearlers or other sea boats shall be guilty of an offence against this Act.

Amended by No. 43 of 1936, s. 25. For former provision see s. 42, 1913 reprint.

45. (1.) No marriage of a native according to the laws of the State shall be celebrated unless and until the prescribed notice in writing has been given to the Commissioner.

(2.) On receipt of any notification under the provisions of this section, the Commissioner may object to the marriage by notice in writing, to be given in the prescribed time and manner, on all or any of the following grounds:—

(a) that the marriage is inadvisable as being in contravention of tribal custom; or

- (b) that one of the parties is afflicted with any communicable or hereditary disease; or
- (c) that it is inadvisable that the marriage should take place owing to any gross disparity in the ages of the parties; or
- (d) that there are any other circumstances which render it advisable that the marriage should not take place.

Provided that any native who is aggrieved on account of any objection by the Commissioner under this section may appeal to a magistrate in the magisterial district in which he resides. Such appeal shall be in accordance with the regulations, which may prescribe the time for appealing and the procedure to be followed.

(3.) Any person who celebrates any marriage in respect of which the prescribed notice has not been given to the Commissioner, or which the Commissioner has objected to under the provisions of this section, or who falsely induces any native to believe that he is married, shall be guilty of an offence against this Act.

46. (1.) Any person (except a native)—

- (a) who habitually lives with natives or with any native not his wife or her husband; or
- (b) who cohabits with or has sexual intercourse with any native who is not his wife or her husband

shall be guilty of an offence against this Act, and shall be liable to imprisonment for a period not more than two years, or to a penalty not more than one hundred pounds.

Every person who is not a native and who without the permission in writing of a protector lives or resides with, either temporarily or continually, or who travels accompanied by a native of the opposite sex shall be presumed, in the absence of proof to the contrary, to be cohabiting with her or him, and it shall be presumed in the absence of proof to the contrary that she is not his wife or that he is not her husband.

(2.) Any person who persuades or solicits any native to cohabit with or have sexual intercourse with any person who is not a native, or who persuades or solicits any person who is not a native to cohabit with or have sexual intercourse with any native contrary to the provisions of

Offence of cohabiting with natives.

Amended by No. 43 of 1936, s. 26.

For former provision see s. 43, 1913 reprint.



this section commits an offence against this Act and shall be liable—

- (a) in the case of a first offence, to imprisonment for a period of not less than three months and not more than twelve months, or to a penalty not less than twenty-five pounds nor more than fifty pounds;
- (b) for a second offence, to imprisonment for a period not less than six months and not more than two years, or to a penalty not less than fifty pounds nor more than one hundred pounds.

(3.) All offences under this section shall be tried and determined by a Resident Magistrate.

(4.) No complaint shall be made under this section without the authority of the Commissioner.

Provided that an averment in the complaint that it is made with the authority of the Commissioner shall be deemed to be proved in the absence of proof to the contrary.

Added by No. 42 of 1911, s. 8.

Amended by No. 43 of 1936, s. 3.

Enticing aborigines from service. See 8 Vict., No. 6, s. 1.

Amended by No. 42 of 1911, s. 9, and No. 43 of 1936, s. 27.

Formerly s. 44, 1913 reprint.

**47.** Any person who entices or persuades a native to leave any lawful service without the consent of a protector shall be guilty of an offence against this Act.

Penalty for supplying liquor to natives.

Inserted by No. 42 of 1911, s. 10.

Amended by No. 43 of 1936, s. 3.

Formerly s. 45, 1913 reprint.

**48.** (1.) Any person who sells, supplies, or gives any fermented, spirituous, or other intoxicating liquor, in any quantity whatsoever, either alone or mixed with any other substance, or any opium, to any native shall be guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred pounds, or to any term of imprisonment not exceeding six months, or to both.

(2.) Any native who knowingly receives any such liquor or opium shall be guilty of an offence, and liable on summary conviction to a penalty not exceeding five pounds or to imprisonment not exceeding one month.

(3.) It is immaterial whether the liquor or opium was sold, supplied, or given to such native for himself or for any other person.

(4.) The minimum penalty, pecuniary or other, for an offence under this section shall be one-fifth the maximum, and such minimum penalty shall not be liable to reduction under any power of mitigation which would but for this subsection be possessed by the Court.

49. (1.) Any person being the holder of any license under the Licensing Act, 1911-1922, for the sale of spirituous or fermented liquors who shall permit or suffer any native not exempted from the provisions of this Act to remain in or loiter about his licensed premises shall be guilty of an offence against this Act.

Prohibition of natives on premises licensed for sale of liquor  
New section inserted by No. 43 of 1936, s. 28.

(2.) Any native not exempted from the provisions of this Act who enters, remains on, or loiters about premises in respect of which any such license is held shall be guilty of an offence against this Act.

Provided that this section shall not apply to any native employed on the licensed premises under a permit granted by the Commissioner.

50. All blankets, bedding, clothing, and other articles issued or distributed to the natives by or by the direction of the department shall remain the property of His Majesty; and it shall not be lawful for a native receiving such bedding, clothing, or other articles to sell or otherwise dispose of the same to any person other than a native, without the sanction of a protector.

Prohibition against disposal of articles issued to natives.  
50 Vict., No. 25, ss. 40, 41.  
Amended by No. 43 of 1936, s. 3  
Formerly s. 46, 1913 re-print.

Any person not being a native who, without such sanction, takes, whether by purchase or otherwise, or is found in possession of any goods or chattels issued or distributed to a native by or by the direction of the department shall be guilty of an offence against this Act.

51. In every prosecution for an offence against this Act or the regulations, the averment in the complaint that any person referred to therein is a native shall be deemed to be proved in the absence of proof to the contrary.

Presumption of person being a native.  
Amended by No. 43 of 1936, s. 3.  
Formerly s. 52, 1913 re-print.

Facilitating  
proof of age.  
Amended by  
No. 43 of  
1936, s. 3.  
Formerly s.  
53, 1913 re-  
print.

52. At the hearing of any prosecution under this Act, the justices may decide, upon their own view and judgment, whether any native child before them has attained any specified age; but nothing herein shall be construed so as to prevent the age of such native child being proved.

Actions for  
recovery of  
wages may be  
brought in  
name of pro-  
tector.  
Amended by  
No. 43 of  
1936, s. 3.  
Formerly s.  
52, 1913 re-  
print.

53. All actions and other proceedings against any person for the recovery of wages due to a native who is, or has been, employed by such person, or for any breach of an agreement made with a native, may be instituted and carried on by, or in the name of, a protector, or any other person authorised by the Minister.

Arrest with-  
out warrant.  
Amended by  
No. 43 of  
1936, s. 3.  
Formerly s.  
54, 1913 re-  
print.

54. It shall be lawful to arrest without warrant any native who offends against any of the provisions of this Act.

Application  
of provisions  
of Child Wel-  
fare Act.  
Inserted by  
No. 42 of  
1911, s. 11.  
Amended by  
No. 43 of  
1936, ss. 3  
and 35.  
Formerly s.  
55a, 1913 re-  
print.

55. The governing authority of a native institution shall have and may exercise, in respect of any native child sent to the institution, all the rights and powers conferred upon such governing authority in respect of wards under the provisions of the Child Welfare Act, 1907-1927.

Jurisdiction  
of justices,  
etc.  
See Q., 1902,  
No. 1, s. 18.

56. Any resident magistrate or, in his absence, any two justices of the peace may hear and determine any complaint for any offence against the provisions of this Act or the regulations thereunder, at any place within the State where the offender may be, or where any ship or boat connected with such offence may be found, or at any place appointed for the holding of courts of petty sessions, and may make orders for the detention of such ship, vessel, or boat as they think fit.

If any person appears to a protector, police officer, or other person acting under the authority of a protector to have committed any such offence, the protector, police officer, or other person as aforesaid may, by written order under his hand, direct the offender, and if neces-