

(2) A person who seeks to enter on a reserve for any purpose of prospecting or mining may make application to the trustee of the reserve for a permit in that behalf.

(3) The trustee of a reserve to whom application is made may grant or refuse a permit and at any time may revoke a permit granted by him.

(4) If the trustee of a reserve refuses a permit or revokes a permit the applicant or, as the case may be, permittee may apply to the Minister for a permit to enter on the reserve concerned for any purpose of prospecting or mining.

Upon application made to him the Minister may grant or refuse a permit and he may at any time revoke a permit granted by him.

(5) A person shall not be entitled to be on a reserve for any purpose of prospecting or mining unless—

- (a) he is the lessee under a lease, duly granted, that entitles him to a mining tenement situated on that reserve, or he is there bona fide as agent (authorized for that purpose) of such a lessee; or
- (b) he is authorized so to be by a subsisting permit granted by the trustee of the reserve or, as prescribed by this section, the Minister, or he is there bona fide as agent (authorized for that purpose) of a person so authorized.

30. Agreements concerning mining on reserves. (1) The trustee of a reserve to whom application for a permit is made under section 29 of this Act or the Minister where such an application is made to him may, as a condition precedent to his granting a permit or otherwise in connexion with his granting a permit, enter into and require the applicant and any other persons to enter into such agreement as the trustee or, as the case may be, the Minister thinks fit.

(2) An agreement shall provide for such terms and conditions as the parties thereto agree upon, and may include provision for participation by the trustee or any other persons in the profits of the mining venture or ventures to be carried on in the reserve, if the permit is granted, for the benefit of Aborigines resident on the reserve, or other Aborigines as the agreement provides.

31. Aboriginal Councils. (1) An Aboriginal Council established for a reserve or for a community of Aborigines under the repealed Acts and that is in existence at the date of commencement of this Act is hereby preserved and continued in existence for the purposes of this Act until it is dissolved as prescribed.

(2) The Governor in Council may, by regulation, establish for a reserve or community of Aborigines a council, which shall be called an Aboriginal Council.

(3) In respect of the reserve or community for which it is established an Aboriginal Council shall have and may exercise such functions, duties, and powers of local government as are prescribed.

32. Aboriginal Courts. (1) An Aboriginal Court established for a reserve or community of Aborigines under the repealed Acts and that is in existence at the date of commencement of this Act is hereby preserved and continued in existence for the purposes of this Act.

(2) The Governor in Council may, by regulation, establish for a reserve or community of Aborigines a court, which shall be called an Aboriginal Court.

(3) In respect of the residents of the reserve or community for which it is established an Aboriginal Court shall have and may exercise such jurisdiction, functions, duties, and powers as are prescribed.

For the purpose of determining the extent of the jurisdiction of an Aboriginal Court only those persons who are on a reserve or in a community pursuant to a permit granted under section 21 of this Act shall be taken to be residents of the reserve or community.

33. Aboriginal Advisory Council. (1) There shall be established and maintained an Aboriginal Advisory Council, which shall be constituted by all the persons who, at the material time, are the chairmen of Aboriginal Councils established for the reserves.

(2) The functions of the Aboriginal Advisory Council are—

(a) to consider and advise the Minister on matters affecting the progress, development and well-being of Aborigines, which matters are referred to the Council by the Minister or by the Director;

(b) to make recommendations to the Minister concerning matters affecting the progress, development and well-being of Aborigines and the administration of this Act.

(3) The members of the Aboriginal Advisory Council shall meet at such times and places as are approved by the Minister and may meet at such other times and places as they determine.

34. Supply of beer on reserves. (1) The Director acting in conjunction with the Aboriginal Council (if any) established for a reserve may cause to be established and maintained in the reserve premises for the sale and supply of beer to persons lawfully on the reserve.

(2) If the business of selling and supplying beer is conducted at premises established on a reserve it shall be conducted by the Director and his servants and the Director may at any time discontinue such business and shall discontinue such business if the Aboriginal Council established for the reserve so recommends.

(3) The business of selling and supplying beer from premises established on a reserve and the consumption of beer so sold or supplied shall be in accordance with regulations made under this Act.

(4) The provisions of the *Liquor Act* 1912–1970, other than section 81 thereof, shall not apply in respect of the sale, supply or consumption in a reserve of beer that is sold, supplied or, as the case may be, consumed in accordance with this Act.

35. Police jurisdiction and power in reserves. (1) Members of the Police Force of Queensland have and may exercise in any part of the State that is a reserve and in respect of persons therein the functions, duties, and powers imposed or conferred on them by law as if that part were not a reserve and in relation to the performance or exercise therein of any function, duty, or power have the protection accorded by law to a member of the Police Force in the performance or exercise by him of that function, duty, or power elsewhere in the State.

(2) Members of the Police Force of Queensland are authorized to perform such acts and do such things in a reserve as may be authorized or required to be done by Aboriginal police under the by-laws of the Aboriginal Council established for the reserve as if such by-laws were part of the law of the State and, in relation thereto, have the protection accorded by law to a member of the Police Force of Queensland in the performance or exercise by him of his functions, duties and powers elsewhere in the State.

(3) A member of the Police Force is entitled to enter on and to be in a reserve for the purpose of performing a function or duty or of exercising a power imposed or conferred on him by law or which by this Act he is authorized to perform or exercise under a by-law of an Aboriginal Council.

(4) Right of access to or use of any place in a reserve by the general mass of persons resident in a reserve shall be deemed to be right of access or use by the public and where any place would, but for its being in a reserve, be taken to be in law a public place, road, park, or place of any other status or description it shall be taken so to be notwithstanding that it is in a reserve.

PART IV—ASSISTANCE SOUGHT BY ABORIGINES

36. Grant of aid. (1) Subject to and in accordance with any regulations made under this Act and applicable to the grant in question, the Director may grant aid to any Aborigine who applies to him therefor and, where necessary, may apply therein money appropriated by Parliament for the purpose or money held by him for the benefit of Aborigines generally.

(2) Subject as prescribed by the preceding subsection, aid granted under that subsection may be of such a type (in money, in kind, or by way of services) and may be granted in such circumstances, on such terms and conditions and, where granted by way of secured loan, on such security as the Director thinks fit.

37. Management of property. (1) Upon application made to him by an Aborigine who usually resides in the district of the district officer to whom application is made the district officer may, if he is satisfied that the circumstances of the applicant or of any member of his family who should be supported by him warrant it, undertake and maintain the management of the property of the applicant.

(2) If a person whose property is being managed by a district officer takes up residence of a permanent nature in another district and does not seek to terminate the management of his property the district officer of that other district shall undertake and maintain management of his property.

38. Powers and duties incidental to management of property. (1) Subject to subsection (2) of this section, a district officer who is maintaining the management of the property of any person, having regard to the best interests of that person and of any member of his family who should be supported by him, may—

- (a) take possession of, retain, invest, sell, or otherwise dispose of any of such property;
- (b) in his own name, sue for and recover, or receive any property to which that person is or becomes entitled;

- (c) in his own name, sue for and recover, settle for, and receive damages for conversion of or injury to any of the property of that person;
- (d) in the name of that person, exercise any power that that person might exercise for his benefit;
- (e) use and apply such property in connexion with the conduct by or on behalf of that person of any business;
- (f) in the name of that person, appoint any person to act as attorney or agent of that person for any purpose connected with the property of that person;
- (g) require any person who, within twelve months last preceding the date of such requisition, had any contractual, financial, or property dealing with that person to furnish to the district officer such details of the dealing or dealings as the district officer requires.

(2) When the district officer who is maintaining the management of the property of any person is a person other than the Director he may exercise any of the powers conferred on him by the preceding subsection only with the approval of the Director first had and obtained.

(3) A district officer who is maintaining the management of the property of any person shall keep proper and accurate records and accounts of all such property and of the proceeds of the sale or disposal of any of such property received or dealt with by him in the course of such management and for this purpose shall be deemed to be a public accountant within the meaning of the *Audit Act* 1874-1968.

39. Offence to fail to supply true details. A person who, when required by a district officer to furnish details pursuant to paragraph (g) of subsection (1) of section 38 of this Act—

(a) fails to furnish the details so required; or

(b) furnishes details that are false in a material particular,

commits an offence against this Act save where he shows, in relation to the furnishing of false details, that he did not know of, and could not by the exercise of proper diligence have discovered the falsity in question.

40. Administration of certain estates. (1) Notwithstanding the provisions of any Act, or rule of law or practice to the contrary the Director—

- (a) shall administer the estate of a deceased or missing Aborigine whose property was, at the time of his death or disappearance, being managed under section 37 of this Act and, if the nature or value of the estate requires a grant of probate or of letters of administration to be made, shall be entitled to that grant in priority to all other persons:

Provided that the Director may renounce the rights conferred on him by this paragraph in favour of The Public Curator of Queensland who shall thereupon be entitled to an order to administer such estate or, as the case may be, to file an election to administer such estate, to the exclusion of all other persons, and shall administer such estate; and

- (b) whether or not he is administering such estate, in the absence of a testamentary instrument duly made and if it should prove impracticable to ascertain the person or persons entitled in law to succeed to such estate or any part of it, may determine which person or persons shall be entitled to so succeed or if any person is so entitled.

The persons determined by the Director to be entitled to succeed to such estate or to any part of it shall succeed to the estate or, as the case may be, part in the order and proportions determined by the Director.

(2) A certificate purporting to be signed by the Director that the person or persons named therein is or are entitled to succeed to the estate or any part of the estate of the person named therein (being a person to whose estate subsection (1) of this section applies), or that there is no person so entitled shall be conclusive evidence of the matters contained therein.

(3) Where there is no person entitled to succeed to the estate or part of the estate of a person to whose estate subsection (1) of this section applies the estate or, as the case may be, part shall vest in the Director who shall pay the same into the Aborigine's Welfare Fund for the benefit of Aborigines pursuant to section 36 of this Act.

41. Validity of certain instruments affected. (1) Notwithstanding the provision of any Act or rule of law or practice to the contrary an instrument executed after the date of commencement of this Act by an Aborigine at a time when his property is being managed under section 37 of this Act is of no validity or effect unless the execution thereof has been approved of and witnessed by a district officer or by another officer authorized in that behalf by the Director.

(2) A person who knowingly causes or induces an Aborigine whose property is at the time being managed under section 37 of this Act to execute an instrument without the approval of and witnessing by a district officer or other officer referred to in the preceding subsection commits an offence against this Act.

42. Restriction on creditors' rights. No right or remedy shall be had by any person to or against the property or the estate of an Aborigine on account of money lent or goods supplied to or to the order of that Aborigine at a time when his property was being managed under section 37 of this Act unless the loan or supply was made with the consent of a district officer or of another officer authorized in that behalf by the Director.

43. Supervision over certain agreements. (1) The terms of an agreement made by an Aborigine other than at a time when his property is being managed under section 37 of this Act may be submitted to the Director.

(2) If the Director is of the opinion—

- (a) that any term or terms of an agreement duly submitted to him is or are, as against the Aborigine, harsh and unreasonable, having regard to his circumstances at the time the agreement was made;

(b) that the Aborigine did not understand the meaning or effect of the term or terms at that time; and

(c) that the parties can be restored substantially to the positions they respectively held before the agreement was made,

he may, by notice in writing given to the other party or parties to the agreement call upon him or them to show cause at a time and place therein specified why the agreement should not be cancelled or varied.

Where the Aborigine on whose behalf an agreement is submitted under this section is resident on a reserve for which an Aboriginal Council is established the Director shall act in conjunction with that council in forming his opinion for the purpose of this subsection.

(3) If at the time and place so specified or to which the hearing is adjourned it is shown to the satisfaction of the Director that—

(a) the term or terms in issue of the agreement is or are not, as against the Aborigine, harsh or reasonable having regard to his circumstances at the time the agreement was made or that the Aborigine did understand the meaning or effect thereof at that time; or

(b) the parties cannot be restored substantially to the positions they respectively held before the agreement was made,

the Director shall take no further action in respect of the agreement but otherwise he may, if he is satisfied that the agreement is one that may properly be submitted to him under this section and of the matters referred to in paragraphs (a), (b) and (c) of subsection (2) of this section, by his order in writing cancel or, as the case requires in his opinion, vary the agreement in such manner as he thinks fit and require such restitution and other adjustments to be made as in his opinion are calculated to render his making the order just and equitable.

(4) An order made by the Director under this section—

(a) shall be directed to the parties to the agreement in question, and a copy of the order shall be given to each such party;

(b) shall be given effect to by each party to the agreement in question and by all courts.

44. Breach of Director's order concerning agreement. A person, being a party to an agreement cancelled or varied by the order of the Director under section 43 of this Act or an assignee of or successor to such a party in respect of the agreement or of property the subject of the agreement, who fails to comply with any requirement of the order commits an offence against this Act, which shall be a continuing offence, and may be prosecuted in respect thereof from time to time for as long as his failure continues.

In addition to any other penalty to which he is liable as for an offence against this Act a person who commits the offence defined in this section is liable to a penalty of \$10 for each day during which his failure to comply continues.

45. Termination of management of property. (1) An Aborigine who wishes to terminate the management of his property under section 37 of this Act may make application to the district officer who then is maintaining the management of the property that the management be terminated.

(2) The district officer to whom the application is made shall forthwith refer the matter of the application together with his recommendation thereon to the Director who shall grant the application if he is satisfied that termination of the management will not be detrimental to the best interests of the applicant or of any member of his family who should be supported by him but, if he is not so satisfied, shall proceed as prescribed by section 46 of this Act.

(3) As soon as practicable after the application is granted the Director and a district officer in whose hands the property then is shall take all necessary steps to transfer, deliver and secure to the Aborigine that property and all other property of the Aborigine that may subsequently come into his hands on behalf of the Aborigine if—

- (a) the Aborigine is competent in law to give to the Director a valid discharge therefor; and
- (b) the Aborigine's interest therein consists of an estate or interest in possession other than a limited estate or interest.

46. Magisterial hearing re termination of management. (1) If the Director does not grant an application made under section 45 of this Act he shall, within 28 days after the date of his decision in that behalf, institute a reference to a Stipendiary Magistrate who constitutes the Magistrates Court in the district wherein the management of the applicant's property was being maintained at the date of his application, for the purpose of that magistrate determining the matter of the application.

The reference shall be instituted by lodging an application for a determination signed by or on behalf of the Director with the clerk of the court in such district.

(2) Upon the hearing of a reference any member of the family of the Aborigine, the applicant for termination of management, who should be supported by him is entitled to be present thereat and to be heard.

(3) Upon the hearing of a reference the Stipendiary Magistrate—

- (a) shall grant the application for termination of management if he is satisfied that termination of management will not be detrimental to the best interests of the applicant for such termination or of any member of his family who should be supported by him;
- (b) shall refuse the application for termination of management if he is not satisfied of the matters specified in the preceding paragraph (a),

and, if he grants the application, the provisions of subsection (3) of section 45 of this Act shall apply accordingly.

(4) The director shall not institute a reference under this section in relation to an application for termination of management made within six months after a like reference in respect of the same applicant but may, in lieu thereof, if he does not grant the application, refuse it.

47. Management once terminated not to be resumed. The management of property of an Aborigine who has terminated management of his property shall not be again undertaken pursuant to section 37 of this Act unless the Director is satisfied that there is special cause for so doing, and directs that the management be undertaken accordingly.

PART V—GENERAL PROVISIONS

48. When female Aborigine not compellable witness. (1) When a male Aborigine and a female Aborigine are cohabiting otherwise than in lawful marriage at the time when, according to the charge relevant thereto, the male Aborigine commits an offence and it appears to the manager of the reserve wherein they usually reside or, if there be no manager or they do not usually reside on a reserve, to the district officer of the district wherein they usually reside—

(a) that they are so cohabiting in accordance with recognized traditional racial practice or due to recognizable traditional racial influence; and

(b) that they are likely to continue in that relationship,

the female Aborigine shall not be a compellable witness against the male Aborigine.

(2) In any proceeding evidence of the manager's or, as the case may be, district officer's belief as to the matters referred to in the preceding subsection shall be admissible and evidence in rebuttal thereof shall be admissible notwithstanding in either case that it is wholly or partially in the nature of hearsay evidence.

49. Consequences of traditional racial union. (1) When any Aborigine has lived in a connubial relationship with another person in accordance with recognized traditional racial practice the children of the union, whether born before or after the date of commencement of this Act, shall be deemed to be legitimate and the fact that such union was not created in any way authorized by law to create a lawful marriage or was not at any material time registered in accordance with law shall not prejudice the claim of the surviving partner of such union or of any child of such union to succeed to the estate of the deceased partner of such union or to the benefit of any damages, or any right of action therefor, or of workers' compensation that would be payable in respect of the death of the deceased partner of such union to the surviving partner of such union or to any child of such union were such union a lawful marriage.

(2) A certificate purporting to be that of the Director that any Aborigine has lived with another person in accordance with recognized traditional racial practice shall be conclusive evidence of the matters contained therein.

50. Court appearance on behalf of certain Aborigines. Notwithstanding the provisions of any other Act or rule of practice where an Aborigine who usually resides on a reserve or whose property is being managed under section 37 of this Act is charged with any offence or is otherwise a party to proceedings before any court or tribunal the manager of the reserve or, if there be no manager or the Aborigine does not usually reside on a reserve, the district officer of the district wherein the Aborigine usually resides, or of the district wherein he is before the court or tribunal, or any officer of the Department of Aboriginal and Island Affairs authorized in writing by the Director may appear on behalf of the Aborigine and may examine and cross-examine witnesses in the proceeding and may address the court (including the jury) or tribunal on behalf of the Aborigine.

51. Obstruction, intimidation, assault prohibited. A person shall not wilfully obstruct, or intimidate, or assault, or attempt so to do, another in the exercise or performance by that other of his powers, duties or functions under this Act.

52. General offence. A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and, save where another penalty is expressly provided, is liable to a penalty of \$200 or to imprisonment for six months or to both such penalty and imprisonment.

53. Proceedings for offences. (1) Save as it is otherwise in this section provided a proceeding to enforce a penalty for an offence against this Act shall be by way of summary proceeding under *The Justices Acts 1886 to 1968* on the complaint of a district officer or a person authorized in writing in that behalf by the Director.

(2) Where it is prescribed that proceedings in respect of a particular offence against this Act shall be taken before an Aboriginal Court a proceeding against a person who is subject to the jurisdiction of an Aboriginal Court in respect of that offence shall not be cognizable by a Magistrates Court.

(3) In any proceeding before a Magistrates Court in respect of an offence alleged to have been committed by a person who in relation to that offence is subject to an Aboriginal Court it shall be a defence to prove that the defendant has already been dealt with by an Aboriginal Court of competent jurisdiction for the act or omission that constitutes the offence.

54. Evidentiary aids. (1) In any proceeding to enforce a penalty for an offence against this Act—

- (a) the averment in the complaint that a person named therein usually resides on a reserve specified therein, or is on a reserve specified therein pursuant to a permit granted under section 21 of this Act shall be conclusive evidence of the matter averred until the contrary is proved;
- (b) it shall not be necessary to prove the signature of the Director or the appointment of any person as a district officer or assistant district officer;
- (c) it shall not be necessary to prove the limits of any reserve.

(2) A certificate purporting to be that of the Director—

- (a) that a person named therein is, or was at the time specified therein, one who usually resides or resided on a reserve specified therein, or whose property is or was being managed under section 37 of this Act; or
- (b) that a permit granted under this Act to or in relation to a person named therein was revoked on the date specified therein,

shall for all purposes be conclusive evidence of the matter contained therein until the contrary is proved.

55. Powers of magistrate on reference. (1) A Stipendiary Magistrate to whom is instituted a reference under this Act—

- (a) may, subject to the next succeeding subsection, determine who should be permitted to be present at the hearing of the reference;
- (b) shall not be bound by rules of evidence or practice of any court, but may conduct the proceedings and inform himself on any matter relevant thereto as he thinks fit; and
- (c) shall receive such evidence relevant to the reference as may be adduced before him.

(2) The Director and every person likely to be directly affected by the decision of a magistrate in a reference instituted to him under this Act shall be entitled to be present at the hearing of the reference and every person entitled to be so present may appear in person or by counsel or solicitor, or by any agent acceptable to the magistrate.

56. Power to make regulations. The Governor in Council may make regulations not inconsistent with this Act providing with respect to—

- (1) the powers, duties and functions of the Director, district officers, and other officers appointed for the purposes of this Act and the manner of exercising and performing such powers, duties and functions;
- (2) the establishment of Aboriginal courts; the constitution, jurisdiction, powers, duties, and functions of such courts; the practice of such courts or, as the regulations may provide, the manner in which rules governing the practice of all or any of such courts shall be made; the carrying out of sentences imposed by such courts and the enforcement and appropriation of penalties imposed by such courts; appeals from decisions of such courts;
- (3) the development, assimilation, integration, education, training and preservation of Aborigines;
- (4) the employment of and serving of apprenticeships by Aborigines;
- (5) the health and medical treatment (preventive and curative) of Aborigines who usually reside on reserves;
- (6) the care of children (being Aborigines) other than those who are in the care and protection or control of the Director of Children's Services;
- (7) the peace, order and proper discipline of reserves;
- (8) the establishment of Aboriginal councils; the composition of and manner of constituting such councils; the powers, duties and functions of such councils; the procedural rules of such councils or, as the regulations may provide, the manner in which rules governing the procedure of all or any of such councils shall be made; the dissolution of such councils;
- (9) the establishment of police on reserves; the composition of and conditions of service in such police; the powers, duties and functions of such police;
- (10) the establishment of gaols on reserves and the conduct and control of such gaols;

- (11) the establishment on reserves of premises from which beer may be sold or supplied; the sale, supply and consumption of beer on reserves; the conduct of such premises;
- (12) the inspecting of reserves;
- (13) the grant of aid to Aborigines; the conditions of such grant and the obligations of those to whom aid is granted;
- (14) the establishment, maintenance, management and control of a welfare fund called the Aborigines' Welfare Fund for the general benefit of Aborigines;
- (15) the establishment, maintenance, management and control of such trust funds as may be necessary or desirable for the management of property of Aborigines or for the administration of the estates of Aborigines and of unclaimed moneys;
- (16) the powers, duties and functions of the Director in relation to the administration of estates of Aborigines;
- (17) the classes of persons who should succeed to the estates of Aborigines where it proves impracticable to ascertain the person or persons entitled in law to so succeed and the order and proportions in which members of such classes shall so succeed;
- (18) the forms to be used for the purposes of this Act and the purposes for which they are to be used;
- (19) the procedure to be adopted in relation to any application or reference made or proceeding taken under this Act;
- (20) the fees to be paid for the purposes of this Act and the purposes for which they are to be paid;
- (21) penalties for breaches of the regulations not exceeding in any case \$50;
- (22) all matters required or permitted by this Act to be prescribed and in respect of which the manner of prescription is not otherwise provided for; and
- (23) all matters and things for which it is necessary or convenient to provide for the proper administration of this Act or for achieving the objects and purposes of this Act.

Regulations may be made so as to apply throughout the whole of the State or within such part or parts of the State as are therein specified.

Where any regulation made or deemed to have been made under and for the purposes of this Act with respect to the employment of or the serving of apprenticeships by Aborigines is inconsistent in any respect with a provision of *The Industrial Conciliation and Arbitration Acts 1961 to 1964* or of an Award made under those Acts by The Industrial Conciliation and Arbitration Commission, or continued in force by those Acts, the regulation shall, to the extent of the inconsistency, prevail.

57. Publication of regulations. (1) Every regulation—

- (a) shall be published in the Gazette;
- (b) shall, upon its publication, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
- (c) shall take effect on and from the date of such publication unless a later date is therein specified for its commencement when in such event it shall take effect on and from that later date; and

(d) shall be laid before the Legislative Assembly within 14 sitting days after such publication if it is in session and, if not, then within 14 sitting days after the commencement of its next session.

(2) If the Legislative Assembly disallows a regulation or any part thereof by resolution of which notice has been given at any time within 14 sitting days after the regulation has been laid before it that regulation or part shall thereupon cease to have effect but without prejudice to the validity of anything done or omitted thereunder in the meantime or to the making of a further regulation.

SCHEDULE

[s. 4]

Title of Act	No. of Act
<i>The Aborigines' and Torres Strait Islanders' Affairs Act of 1965</i>	No. 27 of 1965
<i>The Aborigines' and Torres Strait Islanders' Affairs Act Amendment Act of 1967</i>	No. 32 of 1967
Paragraph (ii) of subsection (1) of section 4 of the <i>Vagrants, Gaming, and Other Offences Act 1931-1971</i>	

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