



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 This Act is a consolidation of the Acts mentioned in the first schedule, and the said Acts are hereby repealed. Acts consolidated and repealed.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. 3.

"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. 43,
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, 18, 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.

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.

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 (2) repealed by 14, 1939, s. 23 (b)

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(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.

Heading amended by 14, 1939, s. 42.

Inspection by protector, etc. 1048, 1911, s. 27.

Amended by 14, 1939, ss. 6, 25, 42.

Employment of Aborigines.

27. Every person shall allow any member of the board, protector, or member of the police force to have access to any aborigine employed by such person, and to enter any house, vessel, boat, or premises where such aborigine is or is employed, at all reasonable times, for the purposes of inspection and inquiry.

Enticing to leave employment. 1048, 1911, s. 28.

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

Death in employment. 1048, 1911, s. 29.

Amended by 14, 1939, ss. 6, 26, 42.

28. Any person who entices or persuades any aborigine to leave his or her lawful employment shall be guilty of an offence against this Act.

29. If an aborigine dies whilst in the service of any person, such person shall forthwith, after the death, or, if the deceased was employed on any vessel or boat, forthwith after the arrival of such vessel or boat at any port in the State, transmit to the nearest protector, if practicable, or, if not, then to the board, notice of the death in writing signed by such person; and shall forward to such protector or to the board any wages due to the deceased, and any moneys in the possession of the deceased at the time of his death.

Heading amended by 14, 1939, s. 42.

Property in blankets, etc., issued to aborigines. 1048, 1911, s. 30.

Amended by 14, 1939, ss. 27, 42.

Blankets, Etc., supplied to Aborigines.

30. (1) All blankets, bedding, clothing, and other articles or property issued by or under the direction of the board to any aborigine or aborigines shall be and remain the property of His Majesty.

(2) Any aborigine receiving any such blanket or other article or property who sells or otherwise disposes of the same without the sanction of the board, and any person who, without such sanction, takes, whether by purchase or otherwise, or is found in possession of, any such blanket or other article or property, shall be guilty of an offence against this Act.

Aboriginal Camps and Prohibited Areas.

Aborigines camping in townships. 1048, 1911, s. 31.

Amended by 14, 1939, ss. 6, 28, 42.

31. (1) If at any time the board or a protector thinks it necessary so to do, the board or protector may order and cause any aborigines who are camped, or are about to camp, within the limits of or near any municipality, town, or township, to remove their camp or proposed camp to such distance from such municipality, town, or township as the board or protector directs; and all members of the police force shall assist the board or protector in carrying out the provision of this section.

(2) Any aborigine who neglects or refuses to obey such order shall be guilty of an offence against this Act.

32. (1) Any justice or member of the police force may order any aborigine found loitering in any municipality, town, or township, or being therein and not decently clothed, forthwith to leave such municipality, town, or township.

Loitering in townships.
1048, 1911, s. 32.
Amended by 14, 1939, ss. 6, 42.

(2) Any aborigine who neglects or refuses to obey such order shall be guilty of an offence against this Act.

33. (1) The Governor may by proclamation, whenever in the interest of aborigines he thinks fit, declare any municipality, town, township, or other place to be an area in which it shall not be lawful for aborigines, not in lawful employment, to be or remain.

Prohibited areas.
1048, 1911, s. 33.
Subsec. (1) amended by 14, 1939, ss. 6, 42.

(1a) The Governor may by proclamation revoke or vary any such proclamation.

Inserted by 14, 1939, s. 29 (a).

(2) Every aborigine who, after warning, given in writing or verbally, enters or is found within such area without the permission in writing of a member of the board, protector or member of the police force shall be guilty of an offence against this Act.

Amended by 14, 1939, ss. 29 (b), 42.

Female Aborigines in Male Attire.

34. If any female aborigine is found dressed in male attire and in the company of any male person other than an aborigine, she and the person in whose company she is so found shall each be guilty of an offence against this Act.

Heading amended by 14, 1939, s. 42.

Female aborigines in male attire.
1048, 1911, s. 34.

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

Offences against Female Aborigines.

34a. Any male person, other than an aborigine, who, not being lawfully married to the female aborigine (proof whereof shall lie upon the person charged)—

Penalties for offences against female aborigines.

Inserted by 14, 1939, s. 30.

- (a) habitually consorts with a female aborigine ; or
- (b) keeps a female aborigine as his mistress ; or
- (c) has carnal knowledge of a female aborigine,

shall be guilty of an offence against this Act.

Curatorship of Aborigines' Estates

35. (1) The board may undertake the general care, protection, and management of the property of any aborigine, and may—

Heading amended by 14, 1939, s. 42.

Appointment of board as curator of aborigines' estates.

1048, 1911, s. 35.

Amended by 14, 1939, ss. 6, 31, 42.

- (a) take possession of, retain, sell, or dispose of any such property, whether real or personal, and on any sale or disposition as aforesaid a valid title to the property shall pass :

Aborigines Act, 1934-1939.

- (b) in its corporate name sue for, recover, or receive any money or other property due or belonging to or held in trust for the benefit of any aborigine, or damages for any conversion of or injury to any such property :
- (c) exercise, in the name of any aborigine, any power which the aborigine might exercise for his own benefit :
- (d) in the name and on behalf of an aborigine, appoint any person to act as attorney or agent for any purpose connected with the property of such aborigine :

Provided that the powers conferred by this section shall not be exercised without the consent of the aborigine or unless upon the order of a special magistrate, which order a special magistrate may make in any case in which he is of opinion that for the protection of or to conserve the interests of the aborigine the order should be made.

(2) The board shall keep proper records and accounts of all moneys and other property, and the proceeds thereof, received or dealt with by the board under the provisions of this section ; and such accounts shall be audited by the Auditor-General who shall have and exercise, in respect of such records, accounts, moneys, and other property, and the persons dealing therewith, the same powers as are vested in the Auditor-General in respect of the public revenue by the Audit Act, 1921.

Heading amended by 14, 1939, s. 6.

Contribution to maintenance of aboriginal child.
1048, 1911, s. 36.

Amended by 14, 1939, ss. 6, 32.

Maintenance of Aboriginal Children.

36. (1) Whenever an aboriginal child who is not of the full blood descended from the original inhabitants of Australia and whose age does not exceed eighteen years is being maintained at any aboriginal institution, or at the cost of the Government of the State, the secretary or a protector may apply to a justice for a summons to be served on the alleged father of such child to show cause why he should not contribute towards the support of such child.

(2) On the return of such summons any court of summary jurisdiction 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 the child are proved to the satisfaction of the court, the court may order the defendant to pay such weekly sum, not exceeding ten shillings, for the maintenance of such child as the court think fit : Provided that no person shall be taken to be the father of such child unless the evidence of the mother be corroborated in some material particular.

(3) Any court of summary jurisdiction, on the complaint of any such father or of the secretary or 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 to do so, but so that the amount shall not in any case exceed the weekly sum of ten shillings.

(4) Whenever, after the making of such order as aforesaid, it is made to appear to any justice, by a complaint in writing and upon oath, that any weekly sum or sums to be paid in pursuance of such order has or have not been paid, or that the father named in such order is about to leave the State, or to remove from his usual place of residence, without having first notified his intention to the protector for the district in which such usual place of residence is situated, or to the board, or without having made due provision for the payment of such weekly sums, such justice may, by warrant under his hand, cause such father to be brought before a court of summary jurisdiction to answer the complaint.

(5) On the return of such warrant the court shall proceed to hear the matter of the complaint, and, if the same is to the satisfaction of the court shown to be true, shall proceed to levy or enforce payment of the weekly sums then due by distress or imprisonment for any term not exceeding three months, and may also order such father to make such provision for the payment of all such weekly sums thereafter to become due as the court deems sufficient.

(6) If after such order to make provision has been made such father leaves, or attempts to leave the State, or removes, or attempts to remove, from his usual place of residence, without having made such provision, he shall be guilty of an offence against this Act.

(7) All contributions and enforced payments under this section towards the support of an aboriginal child shall be paid and expended as the Treasurer of the State directs.

Training and Control of Aboriginal Children.

37. In the next three succeeding sections "aboriginal child" means every person who is under the age of eighteen years, and who—

(a) is an aborigine; and

(b) in the opinion of the board, ought to be dealt with under the next three succeeding sections.

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Application of sections 36 to 40 to children. Substituted by 14, 1939, s. 6.

Power of board to place aboriginal child under control of Children's Welfare and Public Relief Board.
1565, 1923, s. 6.
Amended by 14, 1939, s. 33.

38. (1) The board may, with the approval of the Children's Welfare and Public Relief Board constituted under the Maintenance Act, 1926, commit any aboriginal child to any institution within the meaning of the Maintenance Act, 1926, under the control of the Children's Welfare and Public Relief Board, to be there detained or otherwise dealt with under the said Act until such child attains the age of eighteen years.

(2) Such approval and commitment shall be in writing in the form of the transfer of control contained in the second schedule, or in a form to the like effect.

Effect of execution of transfer of control.
1565, 1923, s. 7.
Amended by 14, 1939, s. 34.

39. (1) Upon the execution of the said transfer of control with respect to any aboriginal child, such child shall become a State child within the meaning of the Maintenance Act, 1926, and all the provisions of the said Act shall apply to and in respect of such child as if such child were a neglected child committed under the said Act to the institution specified in the said transfer, and as if the said transfer were the mandate issued under the said Act for the taking of such child to such institution and for the detention of such child until such child attains the age of eighteen years, subject to the said Act.

(2) Nothing in this Act shall be so construed as to derogate from the power of the Governor, upon the recommendation of the Children's Welfare and Public Relief Board, to order that the period of supervision of any female aboriginal child shall be extended until such child attains the age of twenty-one years, or for any shorter period.

Condition before transfer.
1565, 1923, s. 8
Amended by 14, 1939, s. 35.

40. Unless the board otherwise directs with respect to any particular aboriginal child, the provisions of sections 37, 38, and 39 shall apply only to—

(a) legitimate aboriginal children who have either—

(i.) obtained a qualifying certificate within the meaning of the Education Act, 1915 ; or

(ii.) attained the age of fourteen years ; and

(b) illegitimate aboriginal children who, irrespective of their age are, in the opinion of the board and the Children's Welfare and Public Relief Board, neglected or otherwise proper persons to be dealt with under this Act.

Attendance at school.
Inserted by 14, 1939, s. 36.

40a. (1) This section shall apply to every aboriginal child above the age of fourteen years and under the age of sixteen years, who resides at any aboriginal institution.

(2) The parent of every child to whom this section applies who fails to cause the child to attend at a school on every occasion when the school is open for instruction shall be guilty of an offence against this Act and liable to a penalty not exceeding five shillings unless the superintendent of the institution certifies in writing that—

- (a) the child had obtained suitable employment and was engaged in that employment during the occasion when the child was absent ; or
- (b) the child failed to attend because of sickness, infirmity, or any other similar reason ; or
- (c) the child's absence was justified by any other reason ; or
- (d) the child was absent with the consent of the superintendent.

(3) The provisions of this section are in addition to and not in substitution for any provisions of the Education Act, 1915-1935.

Accounts of Department.

41. (1) The secretary shall cause accounts to be kept of all moneys received and expended by, and all assets and liabilities of the board, and such other accounts and records (if any) as are prescribed.

Accounts of the board and audit.
1048, 1911, s. 37.

Amended by 14, 1939, s. 37.

(2) The accounts of the board shall once at least in every year, and also whenever the Governor directs, be audited by the Auditor-General.

(3) The Auditor-General shall, in respect of such accounts and audit, have all the powers conferred on him by the Audit Act, 1921.

Regulations.

42. (1) The Governor may on the recommendation of the board make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are contemplated, required, or permitted to be prescribed, or which may be necessary or convenient to be prescribed for the effectual carrying out of this Act, including regulations for the following, amongst other purposes :—

Power of Governor to make regulations.
1048, 1911, s. 38.

Amended by 14, 1939, ss. 6, 38, 42.

- i. Prescribing the duties of protectors and superintendents, and any other persons appointed or employed under this Act :

S. 42. BRAY v. MILEEA (1935) S.A.S.R. 210. Regulations empowering the chief protector, in certain cases, to prohibit an aborigine from being within an institution held valid.

Paras. 1a.
and 1b. inserted
by 14, 1939,
s. 28 (b).

- 1a. Regulating the meetings and proceedings of the board :
- 1b. Prescribing the time and manner of making appeals under section 11a. and any other matter relating to such appeals :
- II. Providing for the care, custody, and education of the children of aborigines :
- III. Enabling any aboriginal child to be sent to and detained in an aboriginal institution or industrial school :
- IV. For the control, care, and education of aborigines in aboriginal institutions and for the supervision of such institutions :
- V. Prescribing the conditions on which aboriginal children may be apprenticed to or placed in service with suitable people :
- VI. Prohibiting the apprenticing or placing in service of aboriginal children to or with persons of specified trades, or businesses, or races :
- VII. Prescribing the conditions on which any aboriginal prisoner may be placed under the custody of any officer or servant of the State, and for the employment of aboriginal prisoners undergoing sentences of imprisonment, with or without hard labour :
- VIII. Providing for the control of aborigines residing upon a reserve, and for apportioning amongst them, or for their benefit, the net produce of their labour :
- IX. For the maintenance of discipline and good order upon a reserve :
 - x. Authorising entry upon a reserve by specified persons or classes of persons for specified objects, and the conditions under which such persons may enter or remain on a reserve, and providing for the revocation of such authority in any cases :
- XI. For the control of the receipt and payment of money, the keeping of accounts and records, expenditure of money, and all matters pertaining to the accounts and records of the board :
- XII. Regulating the exercise and discharge of all or any of the powers, duties, and functions of the board :
- XIII. Imposing, and authorising a protector to inflict, summary punishment by way of imprisonment, not exceeding fourteen days, upon aborigines living upon a reserve or within the district under his

charge, who, in the judgment of such protector, are guilty of any crime, serious misconduct, neglect of duty, gross insubordination, or wilful breach of any regulation.

(2) Regulations so made may impose penalties for the breach of the same or other regulations, not exceeding for any one offence the sum of twenty-five pounds, or imprisonment for any term not exceeding three months.

Obstructing Officers.

43. Any person who obstructs or hinders any member of the board, the secretary, any protector, superintendent, member of the police force, medical practitioner, surgeon in charge of a lock-hospital, or other person in the exercise or execution of any power or duty under this Act, or in carrying out any provision of this Act, shall be guilty of an offence against this Act.

Obstructing officers.
1048, 1911,
s. 40.
Amended by
14, 1939, s. 39.

Legal Proceedings and Penalties.

44. Any member of the police force may arrest without warrant any person whom he has just cause to suspect of having committed or being about to commit any offence against this Act.

Arrest.
1048, 1911, s.
41.

45. It shall not be obligatory upon any member of the police force to serve any summons, or to execute any warrant of arrest, against an aborigine in respect of any offence against this Act beyond a distance of fifty miles from the place where such summons or warrant was issued, except when specially so directed by a special magistrate.

Service of
summons, etc.
1048, 1911,
s. 42.
Amended by
14, 1939,
ss. 6, 42.

46. At the hearing of any proceedings in respect of an offence against this Act the court may permit any person to address the court and examine and cross-examine witnesses on behalf of any aborigine.

Person appearing on behalf of aborigines.
1048, 1911,
s. 43.
Amended by
14, 1939,
ss. 6, 42.

47. In any proceedings for an offence against this Act, the allegation in the complaint that any person named or referred to therein is an aborigine, or is of or under an age specified therein, or the reference in the complaint to such person as an aborigine, or as being of or under an age specified therein, shall be sufficient evidence of the truth of such allegation or reference, unless the contrary is shown to the satisfaction of the court.

Presumption as to person being aborigine.
1048, 1911,
s. 44.
Amended by
14, 1939,
ss. 6, 42.

Power of tribunal to determine on own opinion whether aborigine, and as to age.
1048, 1911, s. 45.
Amended by 14, 1939, ss. 6, 42.

48. In any legal proceedings or inquiry, whether under this Act or otherwise, if the court, judge, coroner, special magistrate, justice, or justices do not consider that there is sufficient evidence to determine the question whether a person concerned in or in any way connected with the proceedings or inquiry is or is not an aborigine, or whether, being or being determined to be an aborigine, such person is or is not of or under a specified age, such court, judge, coroner, special magistrate, justice, or justices, having seen such person, may determine the question according to his or their own opinion.

Penalty for offences against Act.
1048, 1911, s. 46.

49. Any person who in any way contravenes any provision of this Act, whether by act or omission, shall be guilty of an offence against this Act, and any person convicted of an offence against this Act shall, except in cases where a different penalty is specifically provided, be liable to a penalty not exceeding fifty pounds, or to imprisonment for any period not exceeding six months.

Proceedings for offences.
1048, 1911, s. 47.

50. All proceedings for offences against this Act shall be disposed of summarily.

Moneys to be provided by Parliament.
1048, 1911, s. 50.

51. The moneys required for any purpose of this Act shall be paid out of moneys provided by Parliament for the purposes of this Act.

Repeal of regulations.
Inserted by 14, 1939, s. 40.

52. The regulations relating to the Advisory Council of Aborigines made under The Aborigines Act, 1911, on the twenty-fourth day of January, nineteen hundred and eighteen, the sixth day of May, nineteen hundred and twenty-five, and the eighth day of March, nineteen hundred and thirty-three, are hereby repealed.

s. 48. AMESBURY v. COPELAND (1928) S.A.S.R. 485. Person determined by the court to be an aborigine upon examination by the court.

THE FIRST SCHEDULE.
Acts Repealed.

Section 2.

Number of Act.	Short Title.
No. 1048 of 1911	The Aborigines Act, 1911
No. 1565 of 1923	Aborigines (Training of Children) Act, 1923

THE SECOND SCHEDULE.

Section 38.
Amended by
14, 1939, s. 41.

TRANSFER OF CONTROL OF ABORIGINAL CHILD FROM THE ABORIGINES PROTECTION BOARD TO THE CHILDREN'S WELFARE AND PUBLIC RELIEF BOARD.

To _____, Esquire, Commissioner of Police, and all constables in the State of South Australia, and to the Superintendent (*or Matron*) of the Industrial School at Magill [*or other institution, as the case may be*], in the said State :

Whereas the Aborigines Protection Board is desirous of committing _____, a _____ child of whom he is the legal guardian, to the institution hereafter mentioned, being an institution under the control of the Children's Welfare and Public Relief Board, constituted under the Maintenance Act, 1926, to be there detained or otherwise dealt with as a neglected child under the said Act, until the said child attains the age of eighteen years : And whereas the Children's Welfare and Public Relief Board has approved of the said child being committed as aforesaid, and whereas the said child is of the age of _____ years and _____ months, and of the religion : Now therefore the Aborigines Protection Board with the approval of the said Children's Welfare and Public Relief Board (which approval the said board hereby gives) do hereby commit the said child to the Industrial School at Magill [*or other institution*], to be there detained or otherwise dealt with as a neglected child under the Maintenance Act, 1926, until he (*or she*) attains the age of eighteen years :

These are therefore to require you, to whom this transfer of control is directed, to take the said child to the said institution and there to deliver him (*or her*) to the Superintendent (*or Matron*) thereof, together with the duplicate of this transfer, and the said Superintendent (*or Matron*) is hereby required to receive the said child into the said school, there to be detained or otherwise dealt with as if such child were a neglected child under the Maintenance Act, 1926, until he (*or she*) attains the age of eighteen years, unless he (*or she*) shall in the meantime be discharged in due course of law.

In witness whereof the seal of the Aborigines Protection Board has been hereunto affixed and the seal of the Children's Welfare and Public Relief Board has been hereunto affixed.

The seal of the Aborigines Protection Board was here- }
unto affixed on the _____ day of _____ }
193 in the presence of _____ (L.S.) }
.....Chairman (or Deputy Chairman).
.....Member of the Board.

The seal of the Children's Welfare and Public Relief }
Board was hereunto affixed on the _____ day of _____ }
193 in the presence of _____ (L.S.) }
.....Chairman.
.....Member of the Board.