



ANNO UNDECIMO

ELIZABETHAE II REGINAE

A.D. 1962

No. 45 of 1962

An Act to repeal the Aborigines Act, 1934-1939, and to promote the welfare and advancement of Aborigines and of persons of Aboriginal blood in South Australia and for other purposes.

[Assented to 15th November, 1962.]

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

Short title.
Commence-
ment.

1. This Act may be cited as the "Aboriginal Affairs Act, 1962", and shall come into operation on a day to be fixed by proclamation.

Repeal.

2. The Aborigines Act, 1934, and the Aborigines Act Amendment Act, 1939, are repealed.

Interpretation.

Interpretation.

3. In this Act, unless inconsistent with the context or subject matter—

"Aboriginal institution" means any mission station, orphanage, school, home, reserve, or other institution for the benefit, care, or promotion of the welfare of the Aboriginal inhabitants of the State :

"board" means the Aboriginal Affairs Board :

"chairman" means the chairman of the board :

“department” means the Department of Aboriginal Affairs :

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

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

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

4. (1) Every person who is of the full blood descended from the original inhabitants of Australia, other than a person whose name is removed from the Register of Aborigines in pursuance of section 17 of this Act, shall be deemed to be an Aboriginal within the meaning of this Act or any other Act.

Aboriginals and persons of Aboriginal blood.

(2) Every person who, being of less than full blood, is descended from the original inhabitants of Australia, and every person whose name is removed from the Register of Aborigines in pursuance of section 17 of this Act and his direct descendants, shall be deemed to be a person of Aboriginal blood within the meaning of this Act.

Aboriginal Affairs Board.

5. There is hereby constituted for the purposes of this Act, a board to be called the “Aboriginal Affairs Board”.

Constitution of board.

6. The board shall consist of—

Composition of board.

- (a) a chairman appointed by the Governor ;
- (b) six other members appointed by the Governor.

7. (1) The appointment of the chairman of the board shall be for five years ; he shall be eligible for reappointment from time to time.

Tenure of office.

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

(3) 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, except the chairman, shall, subject to this Act, hold office for four years.

(4) 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 (2).

(5) Any member of the board (other than the chairman) may, at the expiration of his term of office, be reappointed for one further term of four years: Provided that a member (other than the chairman) who has held office for two consecutive terms shall not be eligible for appointment or re-appointment until the expiration of four years after ceasing to hold office for two consecutive terms.

(6) 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.

(7) The provisions of the Public Service Act, 1936-1960, shall not apply to any member of the board by virtue only of his appointment as a member.

Retirement of members.

8. In addition to the retirement of members of the board by the expiration of their terms of office, the seat of a member shall become vacant on—

- (a) his death, lunacy, 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.

Remuneration of board.

9. Each member of the board shall be paid, out of the funds of the board, such remuneration for his services and such travelling and other allowances, if any, as the Governor approves.

Validity of acts of board.

10. (1) No act or proceeding of the board shall be invalid or illegal in consequence only of the number of 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, entitled to be, and to act, and had acted as, a member, and as if the board had been properly and fully constituted.

11. (1) At any meeting of the board, the chairman, if present, shall preside and, in the absence of the chairman, the members shall elect a member to preside at the meeting. Meetings and quorum.

(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.

12. (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. Annual report.

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

Administration.

13. The board shall be charged with the duty of advising the Minister on the operation of this Act and on measures for promoting the welfare of Aborigines and persons of Aboriginal blood. Function of board.

14. The Treasurer of the State may in every year place at the disposal of the Minister such sums as are provided by Parliament to be applied to the purposes of the Minister. Funds to be provided by Parliament.

15. It shall be the duty of the Minister— Duties of Minister.

- (a) to apportion, distribute, and apply as seems most fit, the moneys at the disposal of the Minister ;
- (b) to manage and regulate the use of all reserves, but not so as to alienate any portion of such reserves from use by Aborigines or persons of Aboriginal blood ;
- (c) to exercise general supervision and care over all matters affecting the welfare of Aborigines and persons of Aboriginal blood ;
- (d) in his absolute discretion to distribute blankets, clothing, provisions and other relief or assistance to Aborigines and persons of Aboriginal blood ;
- (e) in his absolute discretion to provide, in cases of need, when possible, for the maintenance and education of the children of Aborigines and persons of Aboriginal blood ;
- (f) in his absolute discretion to apply part of the moneys at its disposal for the provision of housing and for

the purchase of stock and implements to be lent to Aborigines or persons of Aboriginal blood to whom land has been allotted under section 21, and to apply the same accordingly either without payment or on such terms as are approved by the Minister, and no person shall, except with the approval of the Minister, acquire any title to any goods or chattels so lent as aforesaid ;

- (g) to promote the social, economic and political development of Aborigines and persons of Aboriginal blood until their integration into the general community ;
- (h) to collect information concerning the regional distribution of Aborigines in South Australia and to promote research into the problems of Aborigines.

Department of
Aboriginal
Affairs.

16. (1) There shall be a department under the Minister to be called the Department of Aboriginal Affairs.

(2) The Governor may appoint a Director of Aboriginal Affairs who shall be the permanent head of the department and shall be responsible for the administration thereof.

(3) The Director of Aboriginal Affairs and other necessary officers for the purposes of this Act shall be appointed under and subject to the Public Service Act, 1936-1959.

(4) The Minister shall be a corporation sole under the name of "Minister of Aboriginal Affairs" and on the passing of this Act all property of the Aborigines Protection Board instituted under the Aborigines Act, 1934-1939, shall vest in the Minister.

(5) The Minister may, from time to time, delegate to the Director or any officer of the Department of Aboriginal Affairs such powers and functions as the Minister deems fit.

Register of Aborigines.

Register of
Aborigines.

17. (1) The board shall compile and maintain as accurately as possible, a Register of Aborigines. The omission of the name of any person from such Register shall not be deemed to be evidence that such person is not an Aboriginal within the meaning of this Act.

(2) The board shall keep the Register under review and shall from time to time remove therefrom the names of those persons who, in its opinion, are capable of accepting the full responsibilities of citizenship : Provided that the name of any person shall not be removed from the Register unless such person shall have been previously notified in writing given to him by an officer of the department of the intention of the board to remove his name.

(3) If on the application of any Aboriginal the board refuses to remove the name of such person from the Register, the applicant 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 manner prescribed. The special magistrate may order the removal of the applicant's name from the Register and the board shall forthwith comply with any such order.

(4) The board shall maintain a list of the names of all persons whose names are removed from the Register in pursuance of this section.

Reserves and Institutions.

18. The Governor may by proclamation—

- (a) declare any Crown lands to be reserved for Aborigines ;
- (b) alter the boundaries of any reserve ;
- (c) with the consent of the owner declare any other lands to be a reserve for Aborigines.

Proclamation
of reserves.

19. The Governor may appoint a person to be the superintendent of a reserve.

Appointment
of superin-
tendents.

20. (1) In order to promote the welfare or to facilitate the training of Aborigines, the Minister, may refuse the entry of any Aboriginal or group of Aborigines into an institution.

Power to
remove
Aborigines to
reserves or
Aboriginal
institutions.

(2) If an Aboriginal or person of Aboriginal blood agrees to enter or remain within an institution with the approval of the Minister for the purposes of training, the Minister may declare him a trainee.

(3) An Aboriginal who enters an institution after a refusal of his entry by the Minister, and any trainee declared under subsection (2) of this section who refuses to remain within an institution until he completes his training to the satisfaction of the Minister, shall be guilty of an offence.

(4) No Aboriginal 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.

21. The Minister may, on the recommendation of the board and the Surveyor-General, allot to any Aboriginal or person of Aboriginal blood, any Crown lands available for settlement, or may, on such recommendation as aforesaid, purchase land for occupation by Aborigines or persons of Aboriginal blood, and

Power of
Minister to
allot or
purchase land.

allot the same, and any such allotment shall be upon such terms and subject to such conditions as may be prescribed by regulation.

Power to provide such assistance.

22. The board may, subject to the approval of the Minister, provide special assistance, either financial or otherwise, on such terms as it thinks fit, to an Aboriginal or a person of Aboriginal blood, to assist him to establish himself in primary, mechanical or business pursuits.

Unlawfully entering reserve or institution.

23. (1) Any person who enters or remains or is within the boundaries of an Aboriginal institution, without the written permission of the board, unless he is—

- (a) an Aboriginal or the wife or child of an Aboriginal residing with him thereon ; or
- (b) the Minister ; or
- (c) a member of the board ; or
- (d) an officer of the department or the superintendent or a member of the police force ; or
- (e) a person authorized in writing in that behalf by the Minister or by the Director,

shall be guilty of an offence against this Act : Provided that the superintendent of such Aboriginal institution may—

- (a) admit other persons or groups of persons to a specified area of the institution during specified hours for the purposes of organized sport ;
- (b) grant permission in writing for other persons to enter such institution in the course of their regular visitations for specified purposes ;
- (c) grant permission for the entry of other persons for particular purposes, provided that any such persons shall immediately upon entry report to the superintendent or his deputy giving the reason for their entry and shall comply with any instructions then given by the said superintendent or his deputy as to their movements in or about the institution and the time of their departure therefrom. A person who fails or neglects so to report on entry, or to comply with any instructions given by the superintendent or his deputy as aforesaid, shall be guilty of an offence under this Act.

(2) In any proceedings for an offence under this section the onus of proving that the person charged was authorized to enter shall be upon such person.

24. (1) Notwithstanding the provisions of the Mining Act, 1930-1958, no holder of a miner's right shall be entitled to enter, or remain, or be, within the limits of any Aboriginal institution except with the written permit of the Minister.

Mining on
Aboriginal
institutions.

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

Provisions for Treating Contagious or Infectious Diseases.

25. (1) The board may, by notice in writing, authorize any legally qualified medical practitioner therein named to medically examine any Aboriginal.

Medical
examination of
Aborigines.

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

(3) If the practitioner on such examination finds that the Aboriginal is suffering from a contagious or infectious disease he may order the Aboriginal to undergo such treatment in any hospital or otherwise as he may direct.

(4) Such order shall be sufficient authority for any officer of the department or any member of the police force to take such action as will enable a legally qualified medical practitioner to treat such Aboriginal until such practitioner shall discharge him.

(5) It shall be the duty of such practitioner, when in his opinion the Aboriginal is free from such contagious or infectious disease, to report the fact to the board.

(6) Any Aboriginal who refuses to be examined or to be treated after order made as aforesaid, or who attempts to avoid treatment as aforesaid, shall be guilty of an offence against this Act.

Employment of Aborigines.

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

Access to
employed
Aborigines.

27. If an Aboriginal dies whilst in the service of any person, or while located within the boundaries of the property of any person, such person shall forthwith, after the death, advise the

Death in
employment.

nearest police officer and the board of the death verified by such person, and shall forward to the board any wages due to the deceased and any moneys in the possession of the deceased at the time of his death.

Blankets, etc., Supplied to Aborigines.

Property in
blankets, etc.,
issued to
Aborigines.

28. (1) All blankets, bedding, clothing, and other articles or property, issued by or under the direction of the Minister to any Aboriginal or Aborigine or person or persons of Aboriginal blood shall be and remain the property of the Minister.

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

Curatorship of Aborigines' Estates.

Power of
Minister as
curator of
Aborigines,
estates.

29. (1) Subject to the consent of the Aboriginal or person of Aboriginal blood the Minister may undertake the general care, protection, and management of his property, and may—

- (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 ;
- (b) in his 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 Aboriginal, or person of Aboriginal blood, or damages for any conversion of or injury to any such property ;
- (c) exercise, in the name of any Aboriginal, or person of Aboriginal blood, any power which the Aboriginal or person of Aboriginal blood as the case may be might exercise for his own benefit ;
- (d) in the name and on behalf of an Aboriginal, or person of Aboriginal blood, appoint any person to act as attorney or agent for any purpose connected with his property.

(2) The Minister 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.

30. (1) Section 172 of the Licensing Act, 1932-1960, is amended by striking out the words "aboriginal native of Australia or half-caste of that race" therein and inserting in lieu thereof the words "Aboriginal or person of Aboriginal blood".

Amendment of ss. 172 and 173 and 179 of the Licensing Act.

(2) Section 173 of the Licensing Act, 1932-1960 is amended by striking out the words "aboriginal native of Australia or any half-caste of that race" therein and inserting in lieu thereof the words "Aboriginal or person of Aboriginal blood".

(3) The Governor may by proclamation declare that the provisions of sections 172 and 173 of the Licensing Act, 1932-1960 shall not apply in any area or place specified in such proclamation and may from time to time by further proclamation add to any area or place so specified.

(4) The provisions of sections 172 and 173 of the Licensing Act, 1932-1960 shall not apply within any area or place so specified in any such proclamation.

(5) Section 179 of the Licensing Act, 1932-1960 is amended as follows:—

(a) By inserting the following words after the word "family" in the fifth line of subsection (1) thereof—"or is a person who lives in primitive conditions and appears to require protection from the consumption of alcohol."

(b) By adding the following words at the end of subsection (2) (c) thereof—"or until further order."

(6) Any person who has prior to the passing of this Act obtained exemption from the provisions of the Aborigines Act, 1934-1939, shall not be deemed to be an Aboriginal or person of Aboriginal blood for the purposes of the Licensing Act, 1932-1960.

Obstructing Officers.

31. Any person who obstructs or hinders any member of the board, the director, officer of the department, superintendent, member of the police force, medical practitioner, or other person in the exercise or execution of any power or duty under this Act, or in carrying out any provisions of this Act, shall be guilty of an offence against this Act.

Obstructing officers.

Legal Proceedings and Penalties.

32. 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.

Service of
summons.

33. 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 Aboriginal 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.

Director or
officer
appearing in
the interest of
Aborigines.

34. At the hearing of any proceedings in respect of an offence against this Act the court shall permit the Director or any officer of the department to address the court and examine and cross-examine witnesses in the interests of any Aboriginal.

Evidence.

35. (1) In any legal proceedings or inquiry, whether under this Act or otherwise—

(a) a certificate under the hand of the Director of Aboriginal Affairs that the name of a person is included in the Register of Aborigines maintained under section 17 of this Act shall be *prima facie* evidence that that person is an Aboriginal ;

(b) a certificate under the hand of the Director of Aboriginal Affairs that the name of a person has been removed from the Register of Aborigines shall be conclusive evidence of such removal.

(2) In any such legal proceedings or inquiry the court, judge, coroner, special magistrate, justice or justices shall not determine that a person concerned in or in any way connected with the proceedings or inquiry is an Aboriginal in the absence of sufficient evidence given by at least two officers of the department. Subject to the provisions of subsection (1) of this section, the opinion of two such officers given on oath that a person is or is not an Aboriginal shall be *prima facie* evidence that such person is or (as the case may be) is not an Aboriginal.

General
penalty for
offences.

36. 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 specially provided, be liable to a penalty not exceeding one hundred pounds or to imprisonment for any period not exceeding six months.

Summary
procedure.

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

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

Regulations.

39. The regulations made under the Aborigines Act, 1934-1939 and in force at the commencement of this Act are repealed. Repeal.

40. (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 to make regulations.

- I. Prescribing the duties of superintendents, and any other persons appointed or employed under this Act :
- II. Regulating the meetings and proceedings of the board :
- III. Prescribing the time and manner of making appeals under section 17, and any other matter relating to such appeals :
- IV. Providing for the care, maintenance and education of the children of Aborigines and persons of Aboriginal blood :
- V. For the care, and education of Aborigines in Aboriginal institutions and for the supervision of such institutions :
- VI. Prescribing the conditions on which Aboriginal children may be apprenticed to or placed in service with suitable people :
- VII. For the maintenance of discipline and good order in Aboriginal institutions :
- VIII. Authorizing entry to an Aboriginal institution by specified persons or classes of persons for specified objects, and the conditions under which such persons may enter or remain in or upon an Aboriginal institution and providing for the revocation of such authority in any cases :

s. 40. BRAY v. MILERA (1935) S.A.S.R. 210. Regulations under the Aborigines Act, 1934, empowering the Chief Protector of Aborigines, in certain cases, to prohibit an Aborigine from being within an institution held to be valid.

ix. 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 :

x. Regulating the exercise and discharge of all or any of the powers, duties and functions of the board.

(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 one hundred pounds, or imprisonment for any term not exceeding six months.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

EDRIC BASTYAN, Governor.