



ELIZABETHAE SECUNDAE REGINAE

No. 59 of 1971

An Act to provide for the conduct of reserves for Aborigines and for the admission thereto of persons who wish to reside there; for the grant of assistance to Aborigines who seek it; for the repeal of certain provisions of law; and for related purposes

[ASSENTED TO 16TH DECEMBER, 1971]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title and commencement. (1) This Act may be cited as the *Aborigines Act 1971*.

(2) This Act shall come into operation on a date appointed by the Governor by Proclamation published in the Gazette.

2. Duration of Act. (1) Save where this Act otherwise expressly provides, this Act shall cease to be in force upon the expiration of five years from the date of its commencement unless it is continued in force as prescribed by this section.

(2) The Governor in Council may from time to time, during the continuance in force of this Act, by Proclamation continue the Act or any provision thereof in force for a further period specified therein but not exceeding five years from the date on which the Act or the provision would otherwise have ceased to be in force pursuant to the preceding subsection or, as the case may be, pursuant to a Proclamation made for the purposes of this subsection, and in such case this Act or the provision shall cease to be in force upon the expiration of the period specified in the Proclamation last duly made.

(3) A Proclamation made for the purposes of subsection (2) of this section shall be published in the Gazette and shall, as soon as practicable thereafter, be tabled by the Minister in the Legislative Assembly.

3. Arrangement of Act. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-6);

PART II—ADMINISTRATION (ss. 7-14);

PART III—RESERVES (ss. 15-35);

PART IV—ASSISTANCE SOUGHT BY ABORIGINES (ss. 36-47);

PART V—GENERAL PROVISIONS (ss. 48-57);

SCHEDULE.

4. Repeals and savings. (1) The Acts and the enactment specified in the schedule to this Act are repealed and, in this Act, the Acts so repealed are referred to as the repealed Acts.

(2) An area that, at the date of commencement of this Act, is a reserve or is an area set apart and reserved for Aborigines for the purposes of the repealed Acts shall be deemed to have been so reserved for the purposes of this Act.

(3) A community for Aborigines under the repealed Acts that exists at the date of commencement of this Act shall be deemed to have been established under this Act.

(4) A person who, at the date of commencement of this Act, holds an appointment for the purposes of the repealed Acts, if the appointment is material to the purposes of this Act, shall, subject to the conditions of his appointment thereto, continue to hold the appointment for the purposes of this Act.

(5) An agreement made by the Director as a condition precedent to or otherwise in connexion with his granting a permit under section 36 of *The Aborigines' and Torres Strait Islanders' Affairs Act of 1965* shall be enforceable by and against any party thereto according to its terms and the making by the Director of such an agreement that provides for participation by the Director or any other person in the profits of a mining venture or mining ventures carried on in a reserve is hereby declared to be and shall be deemed to have always been a valid exercise by the Director of his powers and authorities, notwithstanding the

provisions of *The Mining Acts 1898 to 1967* or of any Act passed in amendment thereof or in substitution therefor, or of any other Act relating to mining.

The provisions of this subsection, as subsequently amended, shall continue in force until they are repealed.

(6) A management of property of an assisted Aborigine undertaken under the repealed Acts and maintained at the date of commencement of this Act shall be deemed to be a management of property under section 37 of this Act and, unless it is terminated in accordance with this Act, shall be maintained in accordance with this Act.

5. Meaning of terms. Save where the contrary appears—

- “ Aborigine ” means a person who is a descendant of an indigenous inhabitant of the Commonwealth of Australia other than the Torres Strait Islands;
- “ child ” includes any person to whom another stands in *loco parentis*;
- “ Corporation ” means the corporation sole preserved, continued in existence and constituted under this Act by the name and style The Corporation of the Director of Aboriginal and Island Affairs;
- “ Director ” means the person who holds the appointment of Director of Aboriginal and Island Affairs and includes a person temporarily discharging the functions of the Director;
- “ district officer ” includes the Director, the Deputy Director, an assistant district officer, and any person duly acting as district officer;
- “ instrument ” means any document, of a testamentary nature or otherwise, whereby property or any interest therein is disposed of or charged or agreed so to be;
- “ Minister ” means the Minister for Conservation, Marine and Aboriginal Affairs or other Minister of the Crown charged with the administration of this Act and includes a person temporarily performing the duties of the Minister;
- “ premises ” means any land and any building or part thereof;
- “ reserve ” means any land reserved and set apart by the Governor in Council for the benefit of Aborigines under the provisions of law relating to Crown lands;
- “ Stipendiary Magistrate ” includes any person duly acting as a Stipendiary Magistrate;
- “ Torres Strait Island ” means an island lying north of 11 degrees South latitude that is part of the State of Queensland.

6. Abolition of status “ assisted Aborigine ”. On and from the date of commencement of this Act a person who immediately before that date was an assisted Aborigine shall cease to be an assisted Aborigine.

PART II—ADMINISTRATION

7. Director. (1) The Governor in Council may appoint a person to be Director of Aboriginal and Island Affairs.

(2) The Director—

- (a) may exercise such powers and shall perform such functions and duties as are conferred or imposed on him by this Act or as are necessary or expedient to effect the purposes of this Act;
- (b) may of his own motion and shall at the direction of the Minister make or cause to be made such inspections, investigations and inquiries as touch upon matters material to the administration of this Act;
- (c) shall, at least once in each year, inspect every mission conducted by a church, religious body, or secular organization for the benefit of Aborigines;
- (d) shall report fully to the Minister on every inspection, investigation, or inquiry made for the purposes of this Act.

8. Incorporation of Director. (1) The corporation sole constituted under section 10A of *The Aborigines' and Torres Strait Islanders' Affairs Act of 1965* as subsequently amended is preserved, continued in existence and constituted under this Act under the name and style The Corporation of the Director of Aboriginal and Island Affairs.

(2) The Corporation is constituted by the person who at the material time holds the appointment of Director of Aboriginal and Island Affairs and, under the name and style assigned to it by this section,—

- (a) has perpetual succession and a common seal;
- (b) is capable in law of suing and being sued, of compounding or proving in a court of competent jurisdiction all debts or sums of money due to it;
- (c) is capable in law, as trustee or as beneficial owner, of acquiring, holding, letting, leasing, alienating, conveying and otherwise dealing with property, real and personal, situated within or outside the State;
- (d) is capable in law of doing and suffering all such other things as bodies corporate may in law do and suffer.

(3) All courts, judges, justices and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to any writing and, until the contrary is proved, shall presume that it was duly affixed to the writing in question.

(4) With respect to the exercise of any of its powers and with respect to any matter arising in connexion therewith the Corporation has all the privileges, rights and remedies of the Crown.

(5) The provisions of this section, as subsequently amended, shall continue in force until they are repealed.

9. Deputy Director. (1) The Governor in Council may appoint a person to be Deputy Director of Aboriginal and Island Affairs.

(2) The Deputy Director may exercise such powers and shall perform such functions and duties as the Director from time to time directs and, when there is no Director or the Director is not available to exercise and perform his powers and functions, may exercise the powers and shall perform the functions and duties of the Director.

10. Districts and district officers. (1) A part of the State that is a Magistrates Courts District for the purposes of *The Justices Acts 1886 to 1968* shall, on and from the date of commencement of this Act, without further or other appointment, be a district called by the same name for the purposes of this Act.

(2) The Governor in Council may appoint a person to be a district officer or an assistant district officer.

A district officer or an assistant district officer may be appointed in relation to one or more districts.

(3) On and from the date of commencement of this Act unless and until the Governor in Council otherwise appoints—

- (a) in relation to the Magistrates Courts District of Somerset, the manager of the Department of Aboriginal and Island Affairs at Thursday Island shall be district officer and each of the persons who hold the appointments Assistant Manager of that department at Thursday Island shall be assistant district officer;
- (b) in relation to every other Magistrates Courts District, the person who is clerk of the court for the purposes of *The Justices Acts 1886 to 1968* shall be district officer in relation to the district for which he is such clerk.

(4) A district officer, in respect of his district, may exercise such powers and shall perform such functions and duties as are conferred or imposed on him by this Act or as the Director directs and, subject to the Director, shall be responsible for the administration of this Act within his district.

11. Visiting justices. (1) The Governor in Council may appoint a justice to be a visiting justice in relation to one or more reserves.

(2) At least once in every period of three months the visiting justice shall visit every reserve in relation to which he is so appointed and shall—

- (a) inspect all premises in the reserve in which Aborigines are accommodated;
- (b) investigate any complaints by Aborigines resident on the reserve concerning the conduct of the reserve;
- (c) inspect the record of punishment inflicted on Aborigines on the reserve by any court that functions on the reserve;
- (d) hear and determine summarily complaints against Aborigines on the reserve in cases where a court does not function on the reserve;
- (e) report to the Director as soon as practicable after the completion of his inspection on—

- (i) the condition of all premises inspected by him on the reserve;
- (ii) sanitation on the reserve;
- (iii) the general condition of Aborigines on the reserve;
- (iv) the conduct of all persons concerned in the management of the reserve;
- (v) such other matters as the Director directs.

12. Power of delegation. (1) The Director may, either generally or otherwise as provided by the instrument of delegation, by writing delegate to any person all or any of his powers, functions and duties except this power of delegation.

(2) A power, function or duty so delegated, if exercised or performed by the delegate, shall be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation may be made subject to such terms and limitations as the Director thinks fit including a requirement that the delegate shall report to the Director upon his exercise or performance of the delegated power, function or duty.

(4) Where pursuant to this Act the exercise or performance of any power, function or duty, the subject of a delegation, is made to depend upon the opinion or belief of the Director in relation to any matter, that power, function or duty may be exercised or performed upon the opinion or belief of the delegate who is considering the exercise or performance of that power, function or duty.

(5) The Director may make such and so many delegations of the same power, function or duty and to such number of persons as he considers necessary or desirable.

(6) A delegation is revocable at the will of the Director and does not prevent the exercise of a power or the performance of a function or duty by him.

13. Conduct of inspections, etc., by Director or his delegate. (1) For the purpose of making an inspection, investigation or inquiry for the purposes of this Act the Director, his delegate, and any person whom the Director causes to make such an inspection, investigation or inquiry;

- (a) may, subject to this subsection, enter and inspect any premises;
- (b) may exercise and shall have the powers, authorities, protection and jurisdiction of a commission under *The Commissions of Inquiry Acts 1950 to 1954* and of a chairman of such a commission except such as are by those Acts confined to a chairman of such a commission who is a Judge of the Supreme Court.

Before entering any dwelling house that is in the occupation of any person, the person seeking entry for the purposes of an inspection, investigation or inquiry shall obtain the consent of the occupier thereof or obtain from a justice a warrant that authorizes such entry.

Any justice who is satisfied upon complaint made that it is desirable for the welfare of Aborigines or for the good order of a reserve or for the proper administration of this Act that any dwelling house should be entered may issue his warrant directed to the complainant authorizing him together with such persons as may act in his aid to enter the dwelling house specified in the warrant.

A warrant issued under this subsection shall, for a period of one month from the date of its issue, be sufficient authority to the person to whom it is directed and all persons acting in aid of him to enter the dwelling house specified therein and inspect the same.

(2) When the Director causes another person to make an inspection, investigation, or inquiry for the purposes of this Act that person shall, as soon as practicable after its completion, make a full report thereon to the Director.

14. Annual report by Director. As soon as practicable after the completion of each year the Director shall report in writing on the administration of this Act during the preceding year to the Minister who shall lay the report before the Legislative Assembly.

PART III—RESERVES

15. Reserves and managers. (1) Every reserve shall be conducted and regulated in accordance with this Act.

(2) The Governor in Council—

(a) may appoint a manager of a reserve;

(b) may place a reserve under the management of a religious organization.

(3) A manager of a reserve or, in the case of a reserve placed under the management of a religious organization, the person in charge of that organization within the reserve shall, without further or other appointment be an assistant district officer in relation to the reserve.

A person who is an assistant district officer by virtue of this subsection shall be subject in the administration of this Act to the Minister and the Director but to no other person concerned in the administration of this Act.

16. Communities. The Governor in Council may establish on a reserve a community for Aborigines and may appoint such officers, resident or visiting, as he thinks necessary for the well-being of the persons within the community.

In no case shall a community for Aborigines be established on a Torres Strait Island.

17. Presence on reserve restricted. (1) A person shall not be on a reserve unless he is entitled under this Act so to be.

Penalty: \$200.

(2) A person who contravenes the preceding subsection, irrespective of whether he is prosecuted in respect thereof, may be ejected (together with his belongings) from the reserve in question by or at the direction of the Aboriginal Council established for that reserve or of the Director, with such force as is reasonably necessary to effect the purpose.

(3) A person who, having been convicted of an offence against subsection (1) of this section, persists in or again commits the contravention in respect of the same reserve commits a continuing offence against this Act, may be prosecuted therefor from time to time for as long as his contravention continues, and is liable to a penalty of \$10 for each day during which his contravention continues.

18. Person entitled to be on reserve without further authority. (1) The following persons are entitled to be on a reserve for as long as the proper administration of this Act requires their presence thereon—

- (a) the Minister;
- (b) the Director and the Deputy-Director;
- (c) a person who is acting in the exercise of a power or the discharge of a function or duty conferred or imposed on him by or under this Act;
- (d) a person who is a member of the household of a person who is for the time being entitled to be on a reserve pursuant to the preceding provision (c).

(2) A person who is empowered or required by law to exercise a power or perform a function or duty and any member of the household of that person is entitled to be on a reserve for as long as the proper exercise or performance of that power, function or duty requires his presence thereon.

(3) A member of the Parliament of the State or of the Commonwealth whose electorate includes a reserve is entitled to be on the reserve

19. Entitlement to be on reserve under authority of permit. A person specified in a permit duly granted by an Aboriginal Council or the Director under this Act or a person who belongs to a class of children specified in such a permit is entitled to be on the reserve to which the permit relates—

- (a) for the limited time specified in the permit or, if no time is specified, indefinitely; or
- (b) until the permit is revoked in respect of that person,

whichever is the shorter period.

20. Application for authority to reside on reserve. (1) Any Aborigine who desires to reside on a reserve for a period exceeding one month may make application—

- (a) where the reserve is one for which an Aboriginal Council is established, to the chairman of the council;
- (b) where the reserve is one for which an Aboriginal Council is not established, to the Director,

for a permit to reside on the reserve.

(2) An application may include the applicant's spouse and children under the age of seventeen years and future children but otherwise shall relate to one person only.

21. Determination of application under s. 20. (1) A permit to reside on a reserve shall be granted to an applicant if and only if the Director is or, where the reserve is one for which an Aboriginal Council is established, the Council and the Director are satisfied—

- (a) that residence on the reserve is in the best interests of the applicant or, as the case may be, the applicant and the other persons included in the application; and
- (b) that such residence by the applicant or, as the case may be, the applicant and of such persons will not be detrimental to other residents of the reserve or to the reserve itself,

and in all other cases shall be withheld.

(2) A permit to reside on a reserve granted otherwise than in accordance with subsection (1) of this section or with section 27 of this Act shall be of no force or effect.

22. Scope and authority of permit to reside. A permit to reside on a reserve granted by an Aboriginal Council or the Director upon an application therefor duly made to it or him under section 20 of this Act—

- (a) may include within its scope not only the applicant but all or any of the persons properly included in his application;
- (b) may be granted, according as the application therefor seeks, for a limited time specified in the permit or for an indefinite period;
- (c) shall be deemed to have been granted to each person specified in the permit or belonging to a class of children specified therein.

23. Permit to visit reserve. (1) Any person, whether an Aborigine or not, who desires to be on a reserve for a period not exceeding one month may make application—

- (a) where the reserve is one for which an Aboriginal Council is established, to the chairman of the council or to the Director;
- (b) where the reserve is one for which an Aboriginal Council is not established, to the Director,

for a permit to visit the reserve.

(2) An application may include any number of persons particularized therein as seeking the permit.

24. Determination of application under s. 23. (1) A permit to visit a reserve may be granted to an applicant if the Aboriginal Council for the reserve to which the application relates or, where the application is made to the Director, the Director is satisfied that the presence on the reserve of the applicant and of the other persons (if any) included in the application will not be detrimental to the residents of the reserve or to the reserve itself.

(2) In no case shall it be obligatory on an Aboriginal Council or the Director to grant a permit to visit a reserve.

(3) A permit, if granted—

- (a) may be granted in respect of all or any of the persons particularized in the application therefor as seeking the permit;
- (b) shall be of force and effect for the limited time specified therein in relation to the reserve specified therein unless it is sooner revoked as prescribed;
- (c) shall be deemed to have been granted to each of the persons in respect of whom it is granted.

25. Summary revocation of permit. (1) The Aboriginal Council established for the reserve to which the permit relates or the Director may—

- (a) of its or his own motion, revoke a permit granted under section 24 of this Act in respect of all or any of the persons to whom it was granted;

- (b) at the request of a person to whom a permit is granted under section 21 or 24 of this Act, revoke that permit in respect of the person who makes the request and in respect of all or any other persons to whom that permit is granted and the request relates.

For the purpose of exercising the power conferred by this subsection it is immaterial that the permit in question was not granted by an Aboriginal Council or, as the case may be, the Director.

(2) A revocation of permit under this section shall be by way of written notice given to the person or persons affected by the revocation.

26. Revocation of permit by "show cause" procedure. (1) An Aboriginal Council established for a reserve to which the permit relates or the Director may in accordance with this section revoke a permit granted under section 21 of this Act.

For the purpose of exercising the powers conferred by this section it is immaterial that the permit in question was not granted by an Aboriginal Council or, as the case may be, the Director.

(2) The chairman of the Aboriginal Council concerned or the Director shall cause to be given to each person in respect of whom the council or, as the case may be, the Director seeks to revoke the permit a notice in writing requiring him to show cause at the time and place therein appointed why the permit should not be revoked in respect of him.

A copy of a notice given by the chairman of an Aboriginal Council shall be given to the Director and a copy of a notice given by the Director shall be given to the chairman of the Aboriginal Council (if any) established for the reserve to which the permit relates.

(3) If at the time and place appointed in the notice to show cause, or at any other time or place to which the matter is adjourned, cause is not shown to the satisfaction of the Aboriginal Council or, as the case may be, the Director why the permit should not be revoked in respect of any person or persons to whom the notice relates the council or, as the case may be, the Director may revoke the permit in respect of that person or those persons.

(4) A revocation of permit under this section shall be in writing and a copy thereof shall be given to the person or persons affected by the revocation.

27. Reference from refusal or revocation of permit. (1) An Aborigine aggrieved by—

- (a) the withholding by an Aboriginal Council or by the Director of a permit applied for under section 20 of this Act; or
(b) the revocation by an Aboriginal Council or by the Director under section 26 of this Act of a permit granted under section 21 of this Act,

may institute a reference therefrom by way of application to a Stipendiary Magistrate who constitutes the Magistrates Court in the district in which is situated the reserve for residence on which the permit was sought or, as the case may be, on which the aggrieved person was resident at the time of the revocation.

A reference shall be instituted within 28 days after the decision of the Aboriginal Council or, as the case may be, the Director is furnished to the person thereby aggrieved by lodging the application signed by the applicant with the clerk of the court in such district.

(2) The due institution of a reference against revocation of a permit shall have the effect of suspending the revocation until the reference is determined or otherwise disposed of in accordance with this section.

If the Stipendiary Magistrate who has jurisdiction to determine the reference is at any time satisfied upon the application of the chairman of the Aboriginal Council concerned or of the Director that a reference against revocation of a permit is not being prosecuted by the person who instituted it without sufficient reason for such default he shall strike out and thereby dispose of the reference and thereupon the revocation of the permit shall be restored to full force and effect.

(3) If upon the hearing of a reference the Stipendiary Magistrate is satisfied, having regard to the provisions of this Part of this Act, that a permit should have been granted or, as the case may be, should not have been revoked he shall order the chairman of the Aboriginal Council or, as the case requires, the Director to take all steps necessary to grant the permit that in his opinion should have been granted or, as the case may be, to restore the permit that in his opinion should not have been revoked and his order shall be given effect to accordingly but otherwise the Stipendiary Magistrate shall dismiss the reference.

(4) Neither the institution of a reference nor the decision of the Stipendiary Magistrate therein shall render unlawful any action taken prior to the institution of the reference in reliance on the absence or revocation of a permit.

28. Presence on reserves voluntary. A person who is on a reserve pursuant to a permit granted under section 21 or 24 of this Act may depart the reserve at any time, save where he is being lawfully detained for any reason, but—

- (a) where a person who resides on a reserve pursuant to a permit granted under section 21 of this Act departs the reserve the permit shall thereupon cease to be of further force or effect in relation to him unless his departure is at all times for the purpose of a temporary absence from the reserve;
- (b) where a person who is on a reserve pursuant to a permit granted under section 24 of this Act departs the reserve the permit shall thereupon cease to be of further force or effect in relation to him unless it shows on its face in respect of that person that his departure from the reserve shall not have the consequence prescribed by this paragraph (b).

29. Regulation of mining in reserves. (1) Notwithstanding the provisions of *The Mining Acts 1898 to 1967* or of any Act passed in amendment thereof or in substitution therefor or of any other Act relating to mining—

- (a) a lease that would entitle the lessee to a mining tenement situated on a reserve shall not be granted unless the trustee of the reserve or the Minister has approved;
- (b) a person who holds a miner's right or to whom an authority to prospect or other mining entitlement, other than a mining lease, is granted, whether before or after the date of commencement of this Act, is not thereby entitled to be on a reserve for any purpose of prospecting or mining, and such a right, authority or entitlement shall be construed as including a condition that it is granted subject to this section.

(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>	