

Queensland

ANNO SEXAGESIMO PRIMO

VICTORIAE REGIAE

No. [17]

A Bill to make Provision for the better Protection and Care of the Aboriginal and Half-caste Inhabitants of the Colony, and to make more effectual Provision for Restricting the Sale and Distribution of Opium.

WHEREAS it is desirable to make provision for the better protection and care of the aboriginal and half-caste inhabitants of the Colony: And whereas great and widespread injury is being caused to the aboriginal and half-caste and certain other inhabitants of the Colony by the consumption of opium: And whereas the restrictions heretofore imposed by law upon the sale and distribution of opium are found to be insufficient, and it is expedient to make more effectual provision for restricting such sale and distribution, and for preventing the evils arising therefrom : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same as follows:—

Preamble.

1. This Act shall be styled, and may be cited as, "*The Aboriginals Protection and Restriction of the Sale of Opium Act, 1897*," and shall commence and take effect on and from the first day of January, one thousand eight hundred and ninety-eight.

Short title and commencement.

2. The Acts mentioned in the Schedule hereto are hereby repealed, to the extent mentioned in the third column of the said Schedule, except as to anything lawfully done thereunder before the commencement of this Act, and except so far as may be necessary for

Repeal

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the purpose of supporting and continuing any proceeding taken, or of prosecuting or punishing any person for any offence committed before the commencement of this Act.

Interpretation.

3. The following terms shall, in this Act (unless the context otherwise indicates), bear the several meanings set against them respectively:—

" Reserve"—Any reserve heretofore or hereafter granted in trust, or reserved from sale or lease by the Governor in Council, for the benefit of the aboriginal inhabitants of the Colony, under the provisions of any law in force in Queensland relating to Crown lands;

"Minister"—The Home Secretary or other Minister of the Crown administering this Act ;

"Protector"—A Protector of Aboriginals appointed under the provisions of this Act;

"Superintendent"—A Superintendent appointed under the provisions of this Act for any Reserve;

"District"—A District proclaimed under the provisions of this Act;

"Regulations"—Regulations made under this Act;

"Prescribed"—Prescribed by this Act or the Regulations under it;

"Liquor"—Liquor as defined by " *The Licensing Act of 1885*," and any Act amending the same;

"Opium"—Opium, whether in the form of gum or liquid, and every substance, whether solid or liquid, which contains opium, not being a substance compounded exclusively for medicinal purposes, and every substance which is or contains the ash of opium, or charcoal of opium;

"Half-caste"—Any person being the offspring of an aboriginal mother and other than an aboriginal father ; Provided that the term "half-caste," wherever it occurs in this Act elsewhere than in the next following section, shall, unless the context otherwise requires, be construed to exclude every half-caste who, under the provisions of the said section, is deemed to be an aboriginal.

Persons deemed to be aboriginals.

4. Every person who is—

(a) An aboriginal inhabitant of Queensland; or

(b) A half-caste who, at the commencement of this Act, is living with an aboriginal as wife, husband, or child; or

(c) A half-caste who, otherwise than as wife, husband, or child, habitually lives or associates with aboriginals; shall be deemed to be an aboriginal within the meaning of this Act.

Proclamation of Districts.

5. The Governor in Council may, by Proclamation, declare any portion or portions of the Colony to be a District, or Districts, for the purposes of this Act.

Protectors to be appointed.

6. The Governor in Council may from time to time appoint, for the purpose of carrying the provisions of this Act into effect, fit and proper persons, to be severally called " Protector of Aboriginals," who shall, within the Districts respectively assigned to them, have and exercise the powers and duties prescribed.

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- 7.** The Governor in Council may appoint such and so many Superintendents for the reserves, situated within such districts as aforesaid, as may be necessary for carrying the provisions of this Act into effect. Superintendents to be appointed.
- 8.** Every reserve shall be subject to the provisions of this Act and the Regulations. Reserves to be subject to act and Regulation.
- 9.** It shall be lawful for the Minister to cause every aboriginal within any District, not being an aboriginal excepted from the provisions of this section, to be removed to, and kept within the limits of, any reserve situated within such District, in such manner, and subject to such conditions, as may be prescribed. The Minister may, subject to the said conditions, cause any aboriginal to be removed from one reserve to another. Aboriginals may be removed to reserves.
- 10.** Every aboriginal who is— Aboriginals excepted from liability to removal to a reserve.
- (a) Lawfully employed by any person under the provisions of this Act or the Regulations, or under any other law in force in Queensland ;
 - (b) The holder of a permit to be absent from a reserve; or
 - (c) A female lawfully married to, and residing with, a husband who is not himself an aboriginal ;
 - (d) Or for whom in the opinion of the Minister satisfactory provision is otherwise made;
- shall be excepted from the provisions of the last preceding section.
- 11.** It shall not be lawful for any person other than an aboriginal, not being a Superintendent or a person acting under his direction, and not being a person authorised under the Regulations, to enter or remain or be within the limits of a reserve upon which aboriginals are residing, for any purpose whatever. Persons who are prohibited from entering a reserve.
- Any person, without lawful excuse, entering or remaining or being upon such reserve as aforesaid, shall, for every such offence, be liable on conviction to a penalty not exceeding fifty pounds, or to imprisonment for any term not exceeding three months, and the proof of such lawful excuse shall be on the person charged.
- 12.** A Protector may permit any aboriginal or half-caste who, before the commencement of this Act, was employed by any trustworthy person, to continue to be so employed by such person, and, in like manner, may permit any aboriginal or half-caste not previously employed to be employed by a like person. Aboriginals and half-castes may be employed.
- 13.** Every permit, so granted as aforesaid, shall remain in force for twelve months only, but may at any time, before the expiration of such period, be renewed for any period not exceeding twelve calendar months, to commence from the expiration of the previous period of twelve months, and so, from time to time, so long as such aboriginal or half-caste is willing to continue to be employed by such person. Any such permission as aforesaid may be revoked at any time by a Protector by writing under his hand, and thereupon, if such related to an aboriginal, such aboriginal may be removed, by order of the Protector under and subject to the conditions prescribed, to a reserve, or, at the discretion of the Protector, the aboriginal or half-caste to whom such license related may be permitted, in like manner, to enter the employment of some other such trustworthy Duration, renewal, and renovation of permit.

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person as aforesaid. Such revocation shall not entitle any such employer to claim or recover any compensation for the loss of the service of such aboriginal or half-caste, or to maintain any action in respect of any alleged loss or damage that may be occasioned by such revocation.

14. Any person who, except under the provisions of any Act or Regulations thereunder in force in Queensland, employs an aboriginal or a female half-caste, otherwise than in accordance with the provisions of this Act or the Regulations, or suffers or permits an aboriginal or a female half-caste to be in or upon any house or premises in his occupation or under his control, shall be guilty of an offence against this Act, and shall be liable, on conviction, to a penalty not exceeding fifty pounds and not less than ten pounds, or to imprisonment for any term not exceeding six months.

Harbouring of aboriginals and female half-castes prohibited.

15. Every person desirous of employing an aboriginal or female half-caste under the provisions of this Act, shall forthwith, upon permission being granted by a Protector, enter into an agreement with such aboriginal or female half-caste, in the presence of any justice of the peace or member of the Police Force, for any period not exceeding twelve months. Every such agreement shall contain particulars of the names of the parties thereto, the nature of the service to be rendered by such aboriginal or female half-caste, the period during which such employment is to continue, the wages or other remuneration to be paid or given by the employer for such service, the nature of the accommodation to be provided for such aboriginal or female half-caste, and the conditions on which the agreement may be determined by either party. Every such agreement shall be in duplicate and be attested by such justice or member of the Police Force, who shall forthwith forward one of the said agreements to the nearest Protector.

Aboriginals and female half-castes to be employed under written agreement.

16. Every aboriginal or female half-caste employed by any person, under the provisions of this Act, shall be under the supervision of a Protector, or such other person as may be authorised in that behalf by the Regulations; and every employer of such aboriginal or female half-caste shall permit any Protector, or such other person as aforesaid, to have access to such aboriginal or female half-caste at all reasonable times, for the purpose of making such inspection and inquiries as he may deem necessary.

Aboriginals and female half-castes in employment to be subject to supervision.

17. Any person who, without the authority of a Protector, by writing under his hand, removes, or causes to be removed, an aboriginal or female half-caste from one District to another District, or to any place beyond the Colony, shall be guilty of an offence against this Act, and shall be liable, on conviction, to a penalty not exceeding one hundred pounds, or to imprisonment for any term not exceeding six months.

Prohibition of removal of aboriginals from one District to another or beyond the Colony.

18. Every blanket issued by an officer of the Government to any aboriginal or half-caste shall be and remain the property of Her Majesty, and any person, other than an aboriginal or half-caste, who has in his possession or custody any such blanket or portion thereof which shall reasonably appear to the justices, from the marks thereupon or otherwise, to have been so issued for the use of an aboriginal or half-caste, shall be guilty of an offence against this Act, and shall be liable, on conviction, to a penalty not exceeding ten pounds.

Possession of blanket, &c., issued to an aboriginal or half-caste a punishable offence.

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19. Any person who supplies, or causes or permits to be supplied, any liquor to an aboriginal or a half-caste, except for *bond fide* medicinal purposes, proof of which shall be on the person accused, shall, for every such offence, be liable to a penalty not exceeding fifty pounds, or to imprisonment for any term not exceeding three months, and in every case to the costs of the conviction. In the case of a licensed victualler or wine-seller who is convicted of such offence, the penalty, by this section provided, shall be substituted for the penalty provided in respect of such offence by the sixty-seventh section of "*The Licensing Act of 1885.*"

Penalty for supplying liquor to aboriginals and half-castes.

20. Any person who supplies, or causes or permits to be supplied, any opium to an aboriginal or a half-caste, shall be guilty of an offence against this Act, and shall be liable, on conviction, for the first offence, to a penalty not exceeding one hundred pounds and not less than twenty pounds, one-half of which shall be paid to the person giving the information which leads to such conviction, or to imprisonment for any term not exceeding three months, and for the second and every subsequent offence to imprisonment for any term not exceeding six months, and in every case to the costs of the conviction.

Persons supplying opium to aboriginals or half-castes, guilty of a punishable offence, and penalty therefor.

21. Notwithstanding anything in "*The Sale and Use of Poisons Act, 1891,*" to the contrary contained, it shall not be lawful for any person, not being a legally qualified medical practitioner, or a pharmaceutical chemist, or a wholesale dealer in drugs, to sell, or in any manner dispose of, deliver, or supply, opium to any other person, or to have or keep in his possession any opium for any purpose whatever; and it shall not be lawful for any legally qualified medical practitioner or pharmaceutical chemist, residing or carrying on business at a greater distance, by the nearest-practicable road, than one hundred miles from Brisbane, Rockhampton, or Townsville, to have or keep in or upon any premises in his occupation or under his control, at any one time, any greater quantity of opium than two pounds weight avoirdupois :

Possession or sale of opium by certain persons unlawful.

Provided that it shall not be unlawful for a common carrier to have in his possession opium, for the purpose of conveying the same, for delivery to the person to whom it has been lawfully consigned.

22. Any person who unlawfully has in his possession any opium, or unlawfully sells, or in any manner disposes of, delivers, or supplies opium to any person other than an aboriginal or a half-caste, shall, for every such offence, be liable, on conviction, to a penalty not exceeding fifty pounds, one-half of which shall be paid to the person giving the information which leads to such conviction. Any legally qualified medical practitioner or pharmaceutical chemist, residing or carrying on business at a greater distance, by the nearest practicable road, than one hundred miles from Brisbane, Rockhampton, or Townsville as aforesaid, who has or keeps, in or upon any premises in his occupation or under his control, any greater quantity of opium than two pounds weight avoirdupois, shall, be liable, on conviction, for the first offence, to a penalty not exceeding fifty pounds and not less than ten pounds, and for the second, and every subsequent, offence to imprisonment for any term not exceeding six months.

Penalty for unlawful possession or sale or delivery of opium.

23. Upon complaint made or laid on oath, before any justice of the peace, by any person, that he believes that opium is kept or concealed in any house, building, or place, contrary to any of the provisions of this Act, whether by a person authorised under the

Premises may be searched for opium believed to be kept contrary to provisions of Act.

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provisions of " *The Sale and Use of Poisons Act, 1891,*" to sell or deal in poisons or not, such justice may grant a warrant, to any member of the Police Force, to enter and search such house, building, or place, between the hours of six in the morning and twelve at night, and, if admission is refused, to break into the same, and to seize and detain all opium found therein contrary to the provisions of this Act.

24. Any member of the Police Force, and any person acting under the direction and in the presence of a justice of the peace, may detain any person, found travelling, whom such member of the Police Force or such justice of the peace may suspect to have in his possession any opium contrary to the provisions of this Act, and may search such person, and may open and search any pack, swag, or other receptacle carried or conveyed by such person, and may seize any such opium as aforesaid found in the possession of such person, and may forthwith arrest such person without warrant, and detain him in custody until he can be brought before justices to be dealt with according to law.

25. If, upon the hearing of a complaint against any person, in whose possession opium has been found in contravention of any of the provisions of this Act, the justices, before whom such complaint is heard, convict such person of the offence stated in such complaint, they shall, in addition to any penalty imposed upon the offender, order that all the opium so found in his possession be forfeited to the Crown, and the same shall be forfeited accordingly.

26. In every prosecution for an offence against any of the provisions of this Act relating to an aboriginal or a half-caste, the averment in the complaint, that any person named therein is an aboriginal or a half-caste, shall be sufficient evidence of the fact unless the contrary is proved.

27. All actions and proceedings against any person for the recovery of any wages due to an aboriginal or a half-caste, who is, or has been, employed by such person under the provisions of this Act, or for any breach of an agreement entered into by such person under the provisions of this Act, may be instituted and carried on by, or in the name of, a Protector, or by, or in the name of, any other person authorised by the Minister by writing under his hand.

28. Every complaint for an offence against the provisions of this Act or the Regulations, other than the provisions contained in the twenty-second, twenty-third, twenty-fourth, and twenty-fifth sections hereof, may be made or laid by a Protector or Superintendent, or by a member of the Police Force, and the prosecution may be conducted by the person by whom the complaint is so made or laid. Every complaint for an offence against any of the provisions of this Act, contained in the sections hereinbefore in this section mentioned, shall be made or laid by a member of the Police Force or a justice of the peace only.

29. Any person who shall be convicted of an offence against this Act or the Regulations, shall, unless hereinbefore or in the Regulations otherwise provided, be liable to a penalty not exceeding ten pounds.

30. All offences against this Act, or the Regulations, not herein otherwise specially provided for, may be prosecuted in a summary way before any two justices.

Travellers suspected to be in unlawful possession of opium may be searched, &c.

Opium found in unlawful possession to be forfeited.

Averment in complaint sufficient evidence of certain matters.

Persons by whom certain proceedings may be instituted.

Persons by whom certain complaints may be made.

Provision for penalties where not specified.

Offences to be prosecuted before any two justices.

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31. The Governor in Council may from time to time, by Proclamation, make Regulations for all or any of the matters following, that is to say,—

- (1) Prescribing the mode of removing- aboriginals to a reserve, and from one reserve to another;
- (2) Defining the duties of Protectors and Superintendents, and any other persons employed to carry the provisions of this Act into effect;
- (3) Authorising entry upon a reserve by specified persons or classes of persons for specified objects, and defining those objects, and the conditions under which such, persons may visit or remain upon a reserve, and fixing the duration of their stay thereupon, and providing for the revocation of such authority in any case;
- (4) Prescribing the mode of distribution and expenditure of moneys granted by Parliament for the benefit of aboriginals;
- (5) Apportioning amongst, or for the benefit of, aboriginals or half-castes, living on a reserve, the net produce of the labour of such aboriginals or half-castes ;
- (6) Providing for the care, custody, and education of the children of aboriginals;
- (7) Providing for the transfer of any half-caste child, being an orphan, or deserted by its parents, to an orphanage ;
- (8) Prescribing the conditions on which any aboriginal or half-caste children may be apprenticed to, or placed in service with, suitable persons;
- (9) Providing for the mode of supplying to any half-castes, who may be declared to be entitled thereto, any rations, blankets, or other necessaries, or any medical or other relief or assistance;
- (10) Prescribing the conditions on which the Minister may authorise any half-caste to reside upon any reserve, and limiting the period of such residence, and the mode of dismissing or removing any such half-caste from such reserve;
- (11) Providing for the control of all aboriginals and half-castes residing upon a reserve, and for the inspection of all aboriginals and half-castes, employed under the provisions of this Act or the Regulations ;
- (12) Maintaining discipline and good order, upon a reserve ;
- (13) Imposing the punishment of imprisonment, for any term not exceeding three months, upon any aboriginal or half-caste who is guilty of a breach of the Regulations relating to the maintenance of discipline and good order upon a reserve;
- (14) Imposing, and authorising a Protector to inflict summary punishment by way of imprisonment, not exceeding fourteen days, upon aboriginals or half-castes, living upon a reserve or within the District under his charge, who, in the judgment of the Protector, are guilty of any crime, serious misconduct, neglect of duty, gross insubordination, or wilful breach of the Regulations;
- (15) Prohibiting any aboriginal rites or customs that, in the opinion of the Minister, are injurious to the welfare of aboriginals living upon a reserve;

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- (16) Providing for the due carrying out of the provisions of this Act;
 (17) Providing for all other matters and things that may be necessary to
 give effect to this Act.

32. Such Regulations, not being contrary to the provisions of this Act, shall have the force of law.

33. It shall be lawful for the Minister to issue to any half-caste, who, in his opinion, ought not to be subject to the provisions of this Act, a certificate, in writing under his hand, that such half-caste is exempt from the provisions of this Act and the Regulations, and from and after the issue of such certificate, such half-caste shall be so exempt accordingly.

THE SCHEDULE

Date of Act.	Title of Act.	Extent of Repeal.
55 Vic. No. 31 ...	<i>"An Act for Regulating the Sale and Use of Poisons"</i>	Section 13.
59 Vic. No. 29 ...	<i>"An Act to Amend the Laws relating to the Sale of Intoxicating Liquor"</i>	So much of Section 13 as is contained in the words, "aboriginal native of Australia or half-caste of that race, or to any" ; and in the further words, "of Australia or."

I hereby certify that this PUBLIC BILL has finally passed the Legislative Council and Legislative Assembly of Queensland.

[H W Radford]
Clerk of the Parliaments

*Legislative Council Chamber,
 Brisbane, [9 December 1987]
 In the name and on behalf of the Queen, I assent to this Act.*

*Government House,
 Brisbane, [15 December 1987]*

[Lamington]

[Transmitted from the Legislative Council for enrolment according to Law]

[H W Radford]
[Clerk of the Parliament]

[Legislative Council Offices,]
[Brisbane, 15th December, 1897]

[Recorded and enrolled in the Office of the Registrar of Titles of Queensland at
Brisbane this sixteenth day of December One thousand eight hundred and ninety seven.]

[J O Browne]
[Registrar of Titles]