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THE AUSTRALIAN ABORIGINES

A SUMMARY OF THEIR SITUATION IN ALL STATES

IN 1962.

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POPULATION FIGURES:

Aborigines are excluded from the Commonwealth Census by Section 127 of the Constitution, which states "In reckoning the numbers of the people of the Commonwealth or of a State, or other part of the Commonwealth, aboriginal natives shall not be counted." Population figures usually quoted are rough estimates only and are taken from figures compiled by the State Departments responsible for Aborigines.

The figures quoted here have been taken from "Our Aborigines", Government Printer, Canberra and from recent reports issued by the State Aboriginal departments. The basis on which these figures are compiled varies from state to state. Queensland figures include a rough estimate of the number of people of Aboriginal descent not under the jurisdiction of the Aboriginal department. Figures from South Australia and Western Australia do not appear to include all of these people. As the only figures available are so approximate, they have been quoted here only to the nearest hundred.

LEGISLATION:

Section 51, Clause xxvi of the Commonwealth Constitution gives the Federal Government power to make laws "with respect to:-

"The people of any race, other than the aboriginal race, in any State, for whom it is necessary to make special laws." As a result of this, each State has its own legislation relating to Aborigines, most of which include many restrictive and discriminatory laws. A summary of the main aspects of the present position is given in this leaflet..

Notes 1. As most of the legislation relating to Aborigines is extremely complicated, it is impossible to prepare a summary such as this without omitting some of the details. In particular, it is impossible to do justice to exceptions to the main laws, special cases, etc. An attempt has been made to present the general features of the legislation in each state, particularly its discriminatory and restrictive features.

2. Queensland has also some 7,300 Torres Strait Islanders who come under the Torres Strait Islanders Act of 1939. This is very similar to, but not identical with, the Aboriginal legislation in that state. It has not been possible in this summary because of lack of space to include all the details of this Act as well as those of the Queensland Act covering its Aboriginal population.

3. Aboriginal legislation in several states including, Northern Territory, Queensland and South Australia is at present under review.

SUBJECT	NORTHERN TERRITORY	QUEENSLAND
<u>ABORIGINAL POPULATION</u>		
Full Aborigines.	17,500	11,500
Part Aborigines	2,000	28,000 + 7,300 Torres Strait Islanders.
Number under provisions of Act.	Approx. 15,000 full-Aborigines.	19,500 Aborigines (+ Torres Islanders)
How are these Aborigines living?	(Those under Act):-	
1. As nomadic tribal people.	200 approx.	-
2. On Church Missions.	6,000 "	4,300
3. On Government settlements and supervised reserves.	5,000 "	3,800
4. Elsewhere (including cattle stations, "fringe" settlements, country towns and cities).	6,000 "	11,000 approx.
Name of Act.	Welfare Ordinance 1953-55 also Wards Employment Ordinance 1953-59 (and amendments)	Aboriginals Preservation and Protection Act of 1939-46. (Torres Strait Islanders Act of 1939 covers Torres Islanders, see note 2 on page 1)
Definition of those Aborigines under provisions of the Act.	A person declared by the N.T. Administrator to be a "ward" because of his special need of care and assistance. This need decided by such matters as "standard of social habit", "personal associations", "in ability, without assistance, adequately to manage his own affairs".	"Any person who has a preponderance of the blood of aboriginals ..." also any part-Aborigine who "habitually associates with aboriginals as so defined" and any resident of a reserve".
Is there any provision for exemption from the Act?.	Yes. A ward can apply to the Wards Tribunal for the revocation of his declaration as a ward. If granted, this can be cancelled at any time. (Sections 32-7,39).	Yes. The Director may grant exemptions subject to certain conditions including that all money and property held in trust will continue to be so held for any length of time the Director orders. Section 5(3). Can be revoked.
Number of such exemptions in existence.	Approx. 80.	Approx 1,100
Who administers the Act.	The Director of Welfare under the N.T. Administrator.	The Director of Native Affairs.
To whom are the powers given by the Act delegated?.	Welfare officers, superintendents of Government settlements, and Church Missions, and other persons including police officers.	Native Affairs officers, superintendents of Government settlements and Church Missions and "protectors". In country areas, protectors are often police officers.

WESTERN AUSTRALIA.	SOUTH AUSTRALIA.	N.S.W.	VIC.
10,800.	2,000	200	-
8,100.	4,000	13,400	2,500
Approx 18,900 (?).	5,500 - 6,000	13,600 (?)	2,500
1. 2,000 (estimated) 2. 3,000 (approx) 3. 200 (in Abor. institutions, no Govt. sett.) 4. 13,700 (approx).	small group in Central Reserve. 970. 1,170 4. cattle stations approx 1,000. Country towns approx. 2,400	- - 5,400 (approx) fringe approx. settle-3,000 " Sydney-2,500 " elsewhere-2,700"	- - 200 1,700-1800 *+ 400-500 in cities.
Native Welfare Act (1905-1954) and amendments.	Aborigines Act 1934-39.	Aborigines Protection Act 1909-1943.	Aborigine Act 1958.
Anyone with "more than one quarter aboriginal blood, or who, being of less than one quarter aboriginal blood, requests that he be classed as a native." Some categories of ex servicemen exempted.	All persons "descended from the original inhabitants of Australia".	"Any full blood or half-caste aboriginal who is a native of Australia and who is temporarily or permanently resident in N.S.W.	"Any person of aboriginal descent".
Aborigines can apply for full citizenship rights under the provisions of the Native Citizenship Rights Act, 1944.	Yes under Section 11a, exemption can be granted by the Board. Initially conditional, they can be revoked during the first 3 yrs, then become unconditional.	Yes. Exemptions may be granted by the Board upon application. This exemption can be cancelled at any time.	No, but the Act itself has no restrictive clauses.
Approx. 2,500	Approx. 500.	Approx. 1,000.	-
The Commissioner of Native Welfare.	The Aborigines Protection Board.	The Aborigines Welfare Board.	The Aborigine Welfare Board.
Welfare officers superintendents of Govt. institutions & Church Missions, and "Protectors" who are often police officers.	Board officers, superintendents of settlements & missions. Also protectors.	Board officers, managers of police officers who supervise reserves.	Board officers, the manager of Lake Tyers settlement, local C's.

SUBJECT.	NORTHERN TERRITORY.	QUEENSLAND
Can Aborigines move freely around the state?	NO. The Welfare Ordinance gives the Director complete authority to direct where any particular ward shall live, and can move or hold him in any area at any time. (Sections 17-23, etc).	No The Director of Native Affairs has the authority to move Aborigines from one district to another. They can be moved on and off reserves on the order of the Director but cannot enter or leave them without permission. (Section 22, etc).
Can Aborigines own property?	No. The Director of Welfare controls the property of wards. (Sections 25-29, etc).	No. The Director and protectors have complete control of the property of Aborigines. (Section 16). Even private property such as books, etc can be arbitrarily seized by a protector.
Can Aborigines handle their own money.	This is at the discretion of the Director. Wards Employment Ord. Section 41 provides that the Director may direct an employer to pay part of an Aborigine's wages to him. This is held in a trust fund and "may be expended by the ward..if the Director or an authorised welfare officer approves of the expenditure.	No. Even those in employment outside Missions and settlements have a large proportion of their money put into a trust fund. To use any of this, they must explain their needs to the local protector who may permit purchases up to £20. Sums exceeding this can only be withdrawn by permission of the Director.
Are Aboriginal workers receiving awards wages?	Not wards (except in a very few cases).	Not in the pastoral industry nor those employed on Government or Missions. Work is compulsory on settlements & missions. (Reg. 28).
Are there special wage rates for Aboriginal workers lower than award rates?	Yes. N.T. Schedule of wages for wards lays down a scale of wages much lower than those paid to other workers in the state. Pastoral workers get £2 a week & keep if men, £1 a week & keep if women, Municipal workers £3.10. a week. Building workers £5 a week.	Yes, the Director of Native Affairs fixes special rates of pay for Aboriginal workers in the pastoral industry. These vary from 25-65% of award rates. On settlements & Missions Aborigines can be required to work 32 hours per week for their keep and a few shillings pocket money.
Are Aborigines receiving social service benefits?	Usually not independently but only in the form of keep and pocket money on settlements, missions etc. Pocket money often 10/- a week although Social Service Act specified 33/- for people in institutions. Child endowment money for Aborigines living on cattle stations is paid to the employers.	Benefits are not paid direct to Aborigines but to their protectors. On settlements & missions & these being issued as keep plus small amounts of pocket money it is extremely difficult for Aborigines in some outback areas to get social services, particularly unemployment benefits.

WESTERN AUSTRALIA.	Sth AUSTRALIA.	N.S.W.	VIC.
No. Aborigines from the north cannot cross the 20th Parallel without a special permit. (Section 10). Known as the "leper-line" as this restriction is supposed to be to prevent the spread of leprosy but has no justification on medical grounds.	No. Aborigines can be sent to Reserves or institutions by the Board, expelled from them or moved from one to another by the Board. Certain towns may be declared prohibited areas for Aborigines. (Section 17 & 31).	Generally yes, but the Board has the power to expel Aborigines from Reserves. (Section 8(2)).	Yes, except for movement on and off the Lake Tyers Reserve. (Reg 11-14)
Section 35 of the Act gives the Commissioner of Native Welfare and his delegates total power over the property of any Aborigine.	Yes, except the right of ownership of the Aboriginal reserves.	Yes, except for any group ownership of their reserves and stations.	Yes, except on Lake Tyers where as well as having ^{no} rights of ownership of their reserve cannot own vehicles.
Yes, except social service benefits which in many cases are paid to trustees.	Yes, except for most social service benefits which are being handled by Board officers, protectors, or superintendents of settlements & missions.	Yes, but the Act does give the Board power to collect the wages of any Aborigine and expend it on his behalf if "it appears to the Board to be in the best interests of the Aborigine concerned" (Section 13 C).	Yes, except some social service benefits.
Not in outback areas, cattle station, etc. Wages paid to pastoral workers in the Kimberley are the lowest in Australia.	They are in the more closely settled areas, but not in the outback nor on missions & settlements.	In general, yes. (They are legally entitled to do so).	Yes, except those working on the Lake Tyers settlement.
No official rates but wages of Aboriginal pastoral workers can be as low as £1 a week and keep for men, or 2/6 a week and keep for women. (See Report of Special C'ttee on Native Affairs, 1958, W.A. Government Printer, Perth).	Only on Government settlements and Church missions.	No.	Only on Lake Tyers 7/6 to £2 a week plus keep for 34 hrs work, per week. Such work is compulsory for all "able-bodied" residents. (Reg. 9)
This varies from area to area. Unemployment benefits are extremely difficult to get in country areas.	See answer to question re handling own money - above.	Yes, except for some special benefits such as the allowance for T.B. patients.	Yes but not all handling their own money. The manager at Lake Tyers makes purchases at the request of mothers out of their child endowment money.

NORTHERN TERRITORY

QUEENSLAND

Are Aborigines free to marry?	Section 67 (2) of Wards Ordinance states that "A person shall not marry a ward without the consent of the Director". There are heavy penalties for anyone celebrating such a marriage without written permission.	No. Aborigines controlled by the Act must have written permission from the Director or from a protector. (Section 19).
Do Aborigines have control of their own children?	No. The Director is the guardian of all wards including children.	No. Section 18 states "The Director shall be the legal guardian of every aboriginal child in the state while such child is under the age of 21 years.
Can Aborigines mix freely with non-Aborigines?	No. Many sections in the Ordinance restrict this. It is an offence for other persons to be within 5 chains of where an Aborigine is camped (Sec. 51). Men who are not wards are not allowed to be in the company of female wards.	No. Many restrictions in the Act make normal friendly intercourse impossible. It is an offence to be "within or upon any place where aboriginals are camped" (Section 30) Aboriginal camps may be moved away from towns, etc.
Are there any restrictions relating to sexual relations with non-Aborigines?	Yes. Section 64(d) forbids sexual relations between "a male person other than a ward" and "a ward to whom he is not married".	Yes. Section 29 declares sexual relations between "any male person, other than an Aboriginal" and a female Aborigine to be an offence unless they are married.
Do Aborigines have full rights in a court of law including the right to plead?	No, cannot make a plea of guilty unless so advised by a Welfare Officer.	No, Aborigines cannot plead guilty nor make confessions unless done in the presence of a protector. This does not apply in the special Aboriginal courts.
Are there any special Aboriginal courts or procedures which do not adhere to the usual principles of British law?	No special courts. Persons, including both Aborigines and non-Aborigines can be arrested without a warrant if suspected of committing an offence against the Wards Ordinance. Aborigines can be taken into custody any time by the Director. (Sections 81 & 17).	Yes. Special courts can be set up on any settlement or mission by the Director, Superintendent or protector. The officials in charge of this court may, in fact, be the accusers. There is no right to a defence lawyer and no appeal. These institutions have their own lock-ups or gaols.
Can Aborigines vote?	Voting rights for Federal Parliament and N.T. Legislative Council granted in 1962.	Voting rights for Federal Parl. granted 1962. Still no vote for State Parliament.
Is there any censorship of mail to Aborigines?	No regulations relating to this.	Regulation 32 authorises the protector or superintendent to order mail to or from Aborigines on the reserve under his control to be delivered to him and read by him.

WESTERN AUSTRALIA.	STH AUSTRALIA.	N.S.W.	VIC.
Yes, except in the case of minors where the Director has the authority usually possessed by parents.	Yes, except in the case of minors where the rights usually possessed by parents are vested in the Board.	Yes.	Yes.
No. The Commissioner and Native Welfare officers have total power over Aboriginal children until they are 21.	No. "The Board is the legal guardian of every Aboriginal child in the state".	Yes.	Yes.
Considerable social discrimination exists in many parts of the state. Aborigines are often not welcome in cafe's and places of entertainment, guest houses, etc.	Yes, except that some restrictions "Aboriginal camps & prohibited places", etc. interfere with normal friendly relations.	In some parts of the state. Some sections of Act, 8B & 10B if enforced could be a barrier. Considerable social discrimination still exists in some country towns, e.g. Moree.	Yes, in some parts of the state. Residents of Lake Tyers cannot invite outside friends into their homes without permission from the manager.
No.	Yes, Section 34a, extra-marital forbids sexual relations, between female Aborigines and non-Aboriginal males.	No.	No.
Yes, but a Protector may appear in court on behalf of Aborigines when directed by the Commissioner.	Yes.	Yes.	Yes.
No special courts.	No special courts. Section 48 gives judges, etc. authority to decide whether person is an Aborigine merely by inspection.	No special courts. Police enter homes without warrents.	Police enter Aboriginal homes without warrents.
Federal vote granted 1962. No vote for state Government.	Yes. Voting rights for both state and Federal houses.	Yes. Voting rights for both state & Federal Parliaments.	Yes. Voting rights for both Federal and state.
Yes. All mail to inmates of Aborigine institutions to pass through the hands of the supertendent who can with-hold them. (Reg. 39)	Not mentioned in regulations.	Not mentioned in regulations.	Not mentioned in regulations.

SUBJECT

NORTHERN TERRITORY.

QUEENSLAND.

Are Aborigines allowed alcoholic liquor.

No. Section 141 of the N.T. Liquor Ordinance prohibits the supply of liquor to wards. Regulation 16(2) states that "a ward who is found drunk on a reserve or in an institution is guilty of an offence". Liquor must not be brought onto or drunk on a reserve.

No. Section 28 of the Act prohibits the supply of liquor to Aborigines. Section 24 makes it an offence for any Aborigine to be in possession of liquor.

WESTERN AUSTRALIA.

STH AUSTRALIA.

N.S.W.

VIC.

No. The Licensing Act prohibits the sale of liquor to Aborigines. Regulations 25 and 26⁴ forbid any one to take liquor on to a reserve or to be under the influence of liquor there.

The S.A. Licensing makes it an offence for any Aborigine to drink or possess liquor. It is also an offence to supply liquor to an Aborigine. Liquor must not be brought on to reserves.

Section 9A forbidding supply of liquor to Aborigines repealed 1962. It is still an offence to bring liquor onto a reserve or be under the influence on a reserve. (Regulations 10 & 11).

Yes, except on Lake Tyers. No one on a reserve may be in possession of liquor without permission of manager, or "under the influence". (Reg. 21(f) and (h)).