

8.

Western Australia

The laws

| Decade | Laws applying specifically to Aboriginal children | General child welfare laws/adoption laws |
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| 1840s | <p>An Act to Prevent the Enticing Away the Girls of the Aboriginal Race From School or From Any Service in Which They Are Employed 1844</p> <p>An offence to remove Aboriginal girls from school or 'service' without the previous consent of a Protector of Aborigines or the girl's employer.</p> <p><i>Repealed by Aborigines Act 1905</i></p> | |
| 1870s | | <p>Industrial Schools Act 1874</p> <p><i>Key provisions</i></p> <p>Every child or descendant 'of the aboriginal race' apparently under 21 years of age who voluntarily surrenders himself or herself or is surrendered 'by any parent or apparent guardian and friend' to continue in the custody and care of the manager of the institution, who is the child's lawful guardian to the exclusion of others; children of any race affected if 'apparently an orphan and without a guardian;' any person descended from the 'aboriginal' race being a child apparently under the age of 12 years who is not living under the care or guardianship of either father or mother may after careful inquiry be handed over by the Magistrate or guardian to a school or institution for maintaining and teaching descendants of the 'aboriginal' race. This Act ceased to be relevant to Aboriginal children after the passage of the <i>Aborigines Protection Act 1886</i>.</p> <p><i>Amended by</i></p> <p><i>Industrial Schools Amendment Act 1877</i> – the consent of the child or the signed approval of a Magistrate required before a child apprenticed.</p> <p><i>Repealed by the State Children Act 1907</i></p> |

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| 1880s | <p>Aborigines Protection Act 1886</p> <p>Established Aborigines Protection Board. Its functions include submitting proposals to the Governor relating to the care custody or education of the children of 'Aboriginals' and exercising a general supervision and care over all matters affecting the interests and welfare of the 'Aboriginals'.</p> <p><i>Definitions</i></p> <p><i>Aboriginal</i> – an 'Aboriginal Native of Australia and every Aboriginal half-caste or child of a half-caste, such half-caste or child habitually associating with or living with Aboriginals'</p> <p><i>Key provisions</i></p> <p>Board may appoint honorary local protectors to oversee rationing and medical care of 'Aboriginals' and report on condition of Aboriginal children. Resident Magistrates, acting under instructions of the Board, may apprentice any 'Aboriginal' or 'half-caste' child of a 'suitable age' until the age of 21 years, provided that 'due and reasonable provision is made for [the child's] maintenance, clothing and proper and humane treatment'. 'Aboriginals' may be prohibited from entering or remaining in towns.</p> <p><i>Repealed by Aborigines Act 1905</i></p> | |
| | <p>Aborigines Act 1889</p> <p>Amended the 1886 Act to allow Crown lands to be reserved and set aside 'for the use and benefit of the Aboriginal inhabitants' and vested existing 'Native Reserves' in the Aborigines Protection Board.</p> <p><i>Repealed by Aborigines Act 1905</i></p> | |
| 1890s | <p>Aborigines Act 1897</p> <p><i>Key provisions</i></p> <p>Abolished the Aborigines Protection Board and the powers and duties of existing protectors of Aborigines.</p> | |

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| | <p>Created the WA Aborigines Department with similar duties to the former Board as well as to provide for the custody, maintenance and education of the children of Aborigines. The Department given an annual budget of £5000 instead of 1% of annual government revenue as specified in 1889 WA Constitution. (1% was a much larger amount after the discovery of gold boosted government revenue. As this provision was inconsistent with the WA Constitution, an Act of the British Parliament, the Act was actually invalid. The invalidity was realised in 1904 and retrospectively validated in the <i>Aborigines Act 1905</i>.)</p> <p><i>Repealed by Aborigines Act 1905</i></p> | |
| 1900s | <p>Aborigines Act 1905</p> <p>Established the position of Chief Protector who was the legal guardian of 'every aboriginal and half-caste child' to the age of 16 years.</p> <p><i>Definitions</i></p> <p><i>aboriginal</i> – 'an aboriginal inhabitant of Australia'; 'a half-caste who lives with an aboriginal as wife or husband'; 'a half-caste, who otherwise than as wife or husband, habitually lives or associates with aborigines'; 'a half caste child whose age apparently does not exceed 16 years'</p> <p><i>half-caste</i> – includes any person born of an 'aboriginal' parent on either side and the child of any such person</p> <p><i>Key provisions</i></p> <p>Regional protectors to be appointed with power to grant permits for employment of Aboriginal males less than 14 years and Aboriginal females. No person to remove any 'aboriginal', any male 'half-caste' under 16, or any female 'half-caste' without the written authority of a protector. Minister for Aboriginal Affairs may remove 'aboriginals' from one reserve or district to another reserve or district.</p> | <p>State Children Act 1907</p> <p><i>Definitions</i></p> <p><i>child</i> – a boy or girl under the age of 18 years</p> <p><i>destitute child</i> – a child who has no sufficient means of subsistence apparent to the Court and whose near relatives are, in the opinion of the Court, in indigent circumstances and unable to support such child, or are dead, or unknown, or cannot be found, or are out of the jurisdiction, or in the custody of the law</p> <p><i>neglected child</i> – any child who habitually begs or receives alms; wanders about or sleeps in the open air and does not satisfy the court that she or he has a home; associates or dwells with any person who has been convicted of vagrancy, bad repute or thief or habitual drunkard; is under the guardianship of someone unfit; is illegitimate and whose mother is dead or is unable to maintain or take charge of such child; or is living under conditions as to indicate that the child is lapsing or likely to lapse into a career of vice or crime</p> |

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| | <p>The marriage of an 'aboriginal' woman and a non-Aboriginal man requires the permission of the Chief Protector. Minister may exempt 'aboriginals' from the Act but an exemption could be cancelled at any time. Regulations may be made for 'the care, custody and education of the children of aborigines and half-castes' and 'enabling any aboriginal or half-caste child to be sent to and detained in an aboriginal institution, industrial school or orphanage'.</p> <p><i>Regulations</i> <i>Aborigines Protection Regulation 1909</i> – police, protectors and Justices of the Peace may remove any 'half-caste' child to a mission.</p> <p><i>Repealed by Native Welfare Act 1963</i></p> | <p><i>State child</i> – a destitute child or neglected child received into a Government institution or a subsidised institution or apprenticed or placed out under the authority of the Act</p> <p><i>Key provisions</i> Secretary of State Children Department to have care and control of all State children. Where a court finds that a child is destitute or neglected, or the child is 'uncontrollable' or 'incorrigible', it may order the child to be committed to the care of the Department or sent to an institution to be detained until the age of 18. If a child is found guilty of offence the court may order that the child be sent to an industrial school. Reasonable notice of a complaint against a child must be given to his/her parent or guardian.</p> <p><i>Repealed by Child Welfare Act 1947</i></p> |
| 1910s | <p>Aborigines Act Amendment Act 1911</p> <p><i>Key provisions</i> Chief Protector made the legal guardian of all illegitimate 'half-caste' children 'to the exclusion of the rights of a mother of an illegitimate half-caste child.' Aboriginal institutions to exercise the same powers as State institutions in respect of State children.</p> <p><i>Repealed by Native Welfare Act 1963</i></p> | <p>State Children Act Amendment Act 1919 [also known as the Child Welfare Act 1919]</p> <p><i>Definitions</i> <i>State child</i> – definition expanded to include an incorrigible or uncontrollable child</p> <p><i>Key provisions</i> In committing any child to an institution the court must have regard to the child's future welfare. The court may direct that a child be detained in one of the institutions scheduled to the Act or in some other institution at which such special training and supervision can be provided as may best meet the needs of any special case.</p> <p><i>Repealed by Child Welfare Act 1947</i></p> |
| 1920s | | <p>State Children Act Amendment Act 1927</p> <p>Replaced the term 'State child' with 'ward'. A 'ward' defined as a child who is received into an institution or apprenticed, boarded out or placed out under this Act.</p> <p><i>Repealed by Child Welfare Act 1947</i></p> |

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| 1930s | <p>Native Administration Act 1936 [Also known as the Aborigines Act Amendment Act 1936]</p> <p>Changed the title of Chief Protector to Commissioner of Native Affairs. The expansive definition given to 'native' extended the reach of the Commissioner's powers.</p> <p><i>Definitions</i></p> <p><i>native</i> – 'any person of the 'full blood' descended from the original inhabitants of Australia'; 'any person of less than full blood' excepting a 'quadroon' under 21 who does not associate with 'full bloods'; a 'quadroon' over 21 and a person of less than 'quadroon' blood who was born prior to 31 December 1936</p> <p><i>quadroon</i> – 'a person who is descended from the full blood original inhabitants of Australia or their full blood descendants but who is only one-fourth of the original 'full blood'</p> <p><i>Key provisions</i></p> <p>Commissioner of Native Affairs made the legal guardian of all legitimate and illegitimate 'native' children to the age of 21 'notwithstanding that the child has a parent or other relative living'.</p> <p><i>Repealed by Native Welfare Act 1963</i></p> | |
| 1940s | <p>Native Administration Amendment Act 1941</p> <p>Restricted right of Aboriginal people to move from north to south of the State across the 20th parallel of south latitude.</p> <p><i>Repealed by Native Welfare Act 1963</i></p> | <p>Child Welfare Act 1947</p> <p>The secretary of the department to have the care, management and control of wards. Where a court finds a child to be 'destitute' or 'neglected', it may commit the child to the care of the department; send him/her to an institution; or release him/her on probation. In committing any child to an institution a court is bound to have regard to the future welfare of such child. A child committed to the care of the department may be detained in an institution; boarded out, apprenticed or placed at service with a 'suitable person'; or placed in the custody of a 'suitable person'.</p> |

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| | <p>Native (Citizenship Rights) Act 1944</p> <p><i>Key provisions</i></p> <p>To be granted 'citizenship' under this Act, an Aboriginal person had to convince a magistrate that he/she had severed all ties to extended family and friends (parents, siblings and own children excepted), was free from disease, would benefit from holding citizenship and was 'of industrious habits'.</p> <p><i>Repealed by Native (Citizenship Rights) Act Repeal Act 1971</i></p> | <p>No ward to be detained in an institution or to be under the control of the department after attaining the age of 18 except that a period of supervision or detention of any female ward may be extended to 21. Reasonable notice of the complaint must be given to the child's parent or guardian.</p> |
| 1950s | <p>Native Welfare Act 1954</p> <p><i>Key provisions</i></p> <p>Commissioner and Department of Native Affairs changed to Commissioner and Department of Native Welfare. The Commissioner remains the legal guardian of 'native' children except where the child has been made a ward under the <i>Child Welfare Act 1947</i>. 'The Commissioner may from time to time direct what person is to have the custody of a native child of whom he is the legal guardian, and his direction shall have effect according to its tenor'.</p> <p><i>Repealed by Native Welfare Act 1963</i></p> | <p>Child Welfare Act Amendment Act 1952</p> <p><i>Definitions</i></p> <p><i>destitute child</i> – definition expanded to include a child placed in a subsidised institution otherwise than in pursuance of a court order and near relatives not contributing regularly to maintenance</p> <p><i>neglected child</i> – definition expanded to include a child living under such conditions as to indicate that the mental, physical or moral welfare of the child is likely to be in jeopardy</p> <p><i>Key provisions</i></p> <p>Before declaring a child destitute, the court must be satisfied that all available proceedings taken to obtain an order against near relative for contributions.</p> |
| | | <p>Child Welfare Act Amendment Act 1958</p> <p><i>Key provisions</i></p> <p>Where it appears to the Minister that a person has placed a child in care of another but maintenance is not being paid, the Minister may commit the child to the care of the department.</p> |
| 1960s | <p>Native Welfare Act Amendment Act 1960</p> <p>'Quadroons' and persons less than 'quadroon blood' excepted from the definition of 'native'.</p> <p><i>Repealed by Native Welfare Act 1963</i></p> | <p>Child Welfare Act Amendment Act 1962</p> <p>Director of the Child Welfare Department made the guardian of wards. Where it appears to the Minister that a child has been left without a parent or guardian;</p> |

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| | <p>Native Welfare Act 1963</p> <p><i>Key provisions</i></p> <p>Commissioner ceased to be the guardian of 'native minors'. Duties of Department of Native Welfare include providing for 'the custody, maintenance and education of the children of natives' and to assist in the 'economic and social assimilation by the community' of 'natives'. Only 'natives' and specified persons to enter or remain on reserves. Regulations may be made for 'the control, care and education of the children of natives'.</p> <p><i>Repealed by Aboriginal Affairs Planning Authority Act 1972</i></p> | <p>or the whereabouts of any parent, near relative or guardian of the child is not readily ascertainable, then if the child is not destitute or neglected, the Minister may commit the child to the care of the department.</p> |

After the *Native Welfare Act 1954* Aboriginal children were removed under the *Child Welfare Act 1947* and subsequent child welfare legislation. However the Commissioner for Native Affairs remained the legal guardian of all 'native' children, except those made wards under the *Child Welfare Act*, until 1963.

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| 1970s | <p>Community Welfare Act 1972 [also known as the Community Services Act 1972]</p> <p>Established the Department of Community Welfare which was an amalgamation of the Child Welfare Department and sections of the Department of Native Welfare.</p> |
| | <p>Child Welfare Amendment Act (No 2) 1976</p> <p>Replaced the terms 'destitute child' and 'neglected child' with 'child in need of care and protection'.</p> <p><i>Definitions</i></p> <p><i>child in need of care and protection</i> – a child with no sufficient means of subsistence whose near relations are in indigent circumstances, unable or unwilling to support the child, dead or unknown; who has been placed in a subsidised centre and whose near relations have not contributed to maintenance; who associates or dwells with a person convicted of vagrancy, bad repute, a thief, is under the influence of alcohol or drugs or is a person unfit to have guardianship or custody; a child who is not maintained properly or deserted; who is found in a place where drugs are used; is ill treated; lives under conditions indicating that he/she is lapsing or likely to lapse into career of vice or crime; or there are indications that the child's physical, mental or moral welfare are in jeopardy</p> <p><i>ward</i> – a child in need of care and protection under the guardianship of the Director of Community Welfare</p> <p><i>Key provisions</i></p> <p>A ward may be placed in a suitable centre or facility, transferred from one centre, facility, training or employment to another, placed in employment with some suitable person, or placed in the care, charge or custody of a suitable person.</p> |