

WESTERN AUSTRALIA

ANNO QUARTO ET QUINTO

VICTORIÆ REGINÆ

No. 22

An Act to allow the Aboriginal Natives of Western Australia to give information and evidence without the sanction of an Oath.

[Assented to 26th November, 1841.]

WHEREAS many of the forms, requisites, and provisions of the law have been found inapplicable to the aboriginal inhabitants of Australia, inasmuch as there is strong reason to believe that these people are ignorant of the existence of any future state of rewards and punishments, and do not acknowledge any form or mode of adjuration as binding upon them, in consequence of which much failure of justice might ensue, and many serious offences and crimes which have been committed with their privity only, might pass unpunished; and whereas it is expedient to devise some means whereby such evils may be prevented; and whereas the attendance of natives to give evidence cannot be secured by the forms of the British law: Be it therefore enacted, by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that from and after the passing of this Act it shall and may be lawful for any Justice of the Peace of the said Colony, upon any complaint being made before him by any of the aboriginal race of this territory, to receive and take the information of the said individual upon his affirmation or declaration to tell the truth, the whole truth, and nothing but the truth, without administering the usual form of oath, and to reduce the substance of such information into writing, if it should appear necessary so to do, and thereupon to issue his summons or his warrant, as the nature of the case may require, or to take any other such proceedings as may be usual and proper in the case of an information made by any other of Her Majesty's subjects.

Preamble

Any Justice of the Peace may receive the information of an aboriginal native on his affirmation without administering the usual form of oath

2. And be it enacted that in any civil action, or upon any inquiry into any matter of complaint, or upon the trial of any offence, whether committed by one of the aborigines or by any other person, it shall and may be lawful for any Court, or for any Justice or Justices of the Peace to receive the evidence of any of the aborigines without administering the usual form of oath, such aboriginal native having first made an affirmation or declaration to tell the truth, the whole truth, and nothing but the truth; provided always that in the case of

On the inquiry or trial the evidence of any of the aborigines may be received on affirmation without administering the usual form of oath

Aborigines

In any preliminary stage of proceeding such information or evidence is to be reduced to writing, signed by a mark, and verified by the Justice

If at the appointed time of inquiry or hearing, the individual who gave the information does not appear, then such information or evidence so written and signed and verified may be read in evidence

The degree of credibility to be attached to such information or evidence shall be entirely left to the decision of the Justices, or Court and Jury

Any person making such affirmation falsely, is to be punishable as in case of perjury

Duration of Act, two years

any proceeding in the nature of a preliminary inquiry the substance of the evidence or information of such aboriginal native shall be reduced to writing, and signed by a mark by such native, and verified by the signature of one or more of the Justices of the Peace before whom such information or such evidence shall have been given.

3. And be it enacted that if at the appointed time of such inquiry or trial as aforesaid, the aboriginal native who gave his or her information or evidence in any preliminary stage of the proceedings shall not appear when called upon, then, in such case, such information or evidence so taken as aforesaid, and so reduced to writing, and so signed and verified as aforesaid, may be read and received as evidence, in any future stage of the proceedings relative to the same transaction, without the necessity of bringing forward the same individual, to repeat his testimony orally;—Provided always, nevertheless, that the degree of credibility to be attached to any such information or evidence, whether in the preliminary or in the final stage of the proceedings, and whether oral or written, shall be entirely left to the decision of the Justice or Justices, or of the Court and Jury respectively, according to the tribunal before which such information or evidence shall have been offered, as being evidence given without the sanction of an oath or the test of cross-examination.

4. And be it enacted, that if any aboriginal native making such affirmation or declaration, as aforesaid, shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing, which, if the same had been made upon oath in the usual form, would have amounted to wilful and corrupt perjury, he or she shall incur the same penalties and forfeitures as by the laws and statutes of England are enacted against persons convicted of wilful and corrupt perjury.

5. And be it enacted, that this Act shall be and continue in force for two years from the date of its passing the Legislative Council.

JOHN HUTT,
GOVERNOR.