QUEENSLAND'S KIDNAPPING ACT: THE NATIVE LABOURERS PROTECTION ACT OF 1884*

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In the nineteenth century in far north Queensland the development of large-scale commercial bêche-de-mer fisheries was dependent upon the ready availability of cheap Aboriginal labour. So too was the pearl-shell industry until the mid-1870s when diving suits were introduced; even after this date, when new shallow pearlshell beds were discovered, there was a resurgence of demand for Aboriginal labour.¹

The working conditions of the Aborigines in the fishing industries were harsh and the recruitment procedures often callous. These factors, combined with the dependence of the northern fishing industry on Aboriginal labour, provoked the first attempts in Queensland at protectionist legislation. Sixteen years before the passing of the first comprehensive protection act, the Aboriginal Protection Act of 1897,² the Queensland legislature enacted the Pearl Shell and Bêche-de-mer Fishery Act of 1881, which in part attempted to regulate working conditions in the fisheries.³ The protective clauses in the legislation, however, were almost casually deleted during the bill’s progress through the legislature and any desire to regulate the working conditions of Aborigines and Torres Strait Islanders proved to be less important to the government than the collection of revenue from a valuable industry which came within its administration. Indeed, the need for special protectionist legislation might have continued to be ignored had it not been for the fact that atrocities associated with the northern fisheries became enmeshed with the Pacific Islander labour trade. It was only then that the Queensland government tried to protect its indigenous labourers and in 1884 passed the Native Labourers Protection Act.⁴ However, in its passage through both houses of the colony, it became clear that the protection of Queensland’s reputation and self-governing

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1 Saville-Kent 1893:205-206; Aplin to Colonial Secretary 3 March 1875 in ‘Report on the Pearl Fisheries of Torres Strait’, Somerset Correspondence, Records 1872-1877. See Beckett 1977 for an account of Torres Strait Islander involvement in the pearlshell and bêche-de-mer industries.

2 An Act 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 (61 Vic. No.17).

3 An Act to Regulate the Pearlshell and Bêche-de-mer Fishery in the Colony of Queensland (45 Vic. No.2).

status was more important to Griffith's Liberal ministry than the protection of indigenous labour.\textsuperscript{5} The resulting legislation protected capitalist enterprise, and the subservience of colonial 'native' policy to economic self-interest was further demonstrated when the 1884 Act became accepted as a means of protecting the interests of fishermen and not those of indigenous labourers.

From the early years of Australia's settlement, well before Queensland separated from New South Wales in 1859, bêche-de-mer fishermen had periodically fished North Queensland waters.\textsuperscript{6} By the 1840s a 'little trade' in bêche-de-mer and such items as tortoise shell had been developed in Torres Strait by vessels from Sydney and Hong Kong bartering with Aborigines and Torres Strait Islanders.\textsuperscript{7} In fact bêche-de-mer had been a major item of New South Wales' limited early trade with the Far East, and during the 1860s Captain Robert Towns had exploited the Barrier Reef to supply the local Chinese market.\textsuperscript{8} In the mid-1860s bêche-de-mer boats occasionally put in to Somerset, established in 1864 on the northern tip of Cape York Peninsula,\textsuperscript{9} and by 1869 the Prince of Wales Islanders were coming to Somerset to barter tortoise shell for tobacco and probably other European merchandise.\textsuperscript{10} This industry prospered when access to the large Chinese market was firmly established. In 1874, over sixty tons of bêche-de-mer worth at least £3,000 was obtained in the Torres Strait.\textsuperscript{11} In 1880, Queensland exported 98 tons 1 cwt. valued at £18,343 and, in 1883, a nineteenth century record of 342 tons 1 cwt. valued at £31,581 was exported, all but a few hundredweight going each year to the China market.\textsuperscript{12} Over one hundred boats were licensed for the industry in 1889: 62 from Port Kennedy on Thursday Island, 27 from Cooktown, and another half-dozen each from Cairns, Ingham and Townsville. Mackay was the southernmost point from which bêche-de-mer fishermen worked. Bêche-de-mer was the second most important fish export after pearl-shell, slightly exceeding in value the edible oyster from southern Queensland.\textsuperscript{13}

\textsuperscript{5} Sir Samuel Walker Griffith was Premier 13 November 1883-13 June 1888 and 12 August 1890-27 March 1893.

\textsuperscript{6} Bolton 1963:76. Bêche-de-mer is a sea slug also known in the nineteenth century as trepang.

\textsuperscript{7} Loos 1976:89, 90.

\textsuperscript{8} Bolton 1963:76.

\textsuperscript{9} Cannon 1885:30.

\textsuperscript{10} Chester n.d.:13.

\textsuperscript{11} Aplin to Colonial Secretary, 3 March 1875, in Somerset Correspondence, Records 1872-1877.

\textsuperscript{12} 'Bêche-de-mer and Pearlshell Fisheries of Northern Queensland', 1890 V & P III:4.

\textsuperscript{13} \textit{ibid.}:4; see also Saville-Kent 1893:204. I have followed the nineteenth century practice of referring to bêche-de-mer as fish.
The pearlshell industry developed from this earlier exploitation of the sea. Since first contact the Torres Strait Islanders and Aborigines of Cape York Peninsula had been observed to have pearlshell ornaments, but it was not until 1868 that a Captain Banner revealed the existence of extensive beds of high quality pearlshell at Warrior Reef, north-east of Thursday Island and about forty miles from the New Guinea coast. Shortly afterwards shell was discovered in Endeavour Strait and in various other areas in or near Torres Strait. In 1870, there were five vessels on the grounds employing 160 Pacific Islanders or "kanakas". Fifty tons of shell had been collected by mid-October. The police magistrate at Somerset, C. D'Oyly Aplin, issued the first comprehensive report on the new industry early in 1875, pointing out that "the enterprise . . . seems almost to have escaped notice in Queensland".

In 1872 the Queensland border was set sixty miles beyond Cape York, and in 1879 it was pushed further north to pass close to the New Guinea mainland coast. Virtually all the pearling grounds were then within Queensland's jurisdiction. There was some activity at Newcastle Bay immediately south of Somerset and along the west coast of Cape York Peninsula as far south as the Jardine River, but most of the fishing was to the north of Cape York. In 1874 it was estimated that 707 people were employed in the industry, raising shell valued at £27,849 and beche-de-mer valued at £3,000. No revenue was derived by the Queensland government from duties or licences, although the government outpost of Somerset increasingly had to exercise some supervision of the industry. The fishermen were already requesting that the government establishment be moved from Somerset to a more accessible central position in the islands. By this time pearl fishing stations, some of which were small villages, had been established at Warrior Island, Mount Ernest Island, Somerset, and Prince of Wales Island. In 1877, sixteen firms employed an estimated seven hundred non-Europeans and fifty Europeans on 109 boats. Pearlshell soon became Queensland's most important fishery and one of its more important export earners. Although the pearls were generally less numerous and inferior in quality to those collected in Western Australia, working owners claimed that pearls alone covered their expenses.

14 Beaglehole 1955:388.
15 'Notes on Pearlshell Fishery of Queensland' (QSA HAR/48:1).
16 Jardine to Colonial Secretary, 1 November 1870, in Somerset Correspondence, Letterbook 1868-71. See also Somerset Correspondence, Records from Letterbook of Police Magistrate 1869-1870.
17 Aplin to Colonial Secretary, 3 March 1875, in Somerset Correspondence, Records 1872-1877.
18 As above.
19 Chester to Colonial Secretary, 7 May 1877, in Somerset Correspondence, Records 1872-1877.
20 Saville-Kent 1890a:704-705.
The bêche-de-mer fishery was carried on chiefly by small luggers of five or six tons which made daily voyages from curing-stations to nearby reefs, or by a fleet of luggers which stayed in the vicinity of the reefs while one or more conveyed the catch to the curing station and brought back supplies. A few large schooners or ships of from twenty to fifty tons carried small boats and were fitted out as mother ships to cure the fish. The bêche-de-mer were collected by wading or diving from the reefs during the low spring tides. At the curing stations they were boiled in large iron cauldrons, gutted, dried in the sun, and then smoked. Finally, they were despatched to the nearest market.²¹

Throughout its history this industry needed a very large supply of cheap labour to gather and process the fish. Aboriginal labour was used at an early period although the number and proportion of mainland Aborigines are not clear because commentators did not always differentiate between them and Torres Strait Islanders. Sometimes, especially when describing working conditions or rates of pay, observers may not have taken mainland Aborigines into consideration at all.²² As well as the more permanent employment, there was much casual use of local Aborigines as opportunity and need arose. Thus, the Queensland Commissioner of Fisheries, W. Saville-Kent, as late as 1890 remarked on the use of casual Aboriginal labour which the 1884 Act had by then made illegal:

numbers of the natives at remote distances from the shipping ports, while willing to work for a month or two, or for a limited number of tides on the reefs in the immediate neighbourhood of their settlements, have a strong aversion to being transported to the shipping ports for registration.²³

John Douglas, Government Resident at Thursday Island for the last fifteen years of the nineteenth century, admitted in 1890 that prevention of such casual employment would destroy the industry.²⁴

It is probably impossible to estimate with any accuracy the number of Aborigines employed as regular labour in the bêche-de-mer industry in the early years. Saville-Kent, who was commissioned by the Queensland Government to investigate the fisheries of Queensland in 1889 and 1890, thought they were the most numerous group:

The crews employed in gathering bêche-de-mer consist chiefly of mainland Aborigines, or "Binghis", as they are termed in the North,
with a frequent admixture of Torres Straits and South Sea Islanders and Manilla [sic] men.\(^{25}\)

Again he was supported by John Douglas, who estimated that almost half of the five hundred men and boys employed in the bêche-de-mer trade were mainland Aborigines.\(^{26}\) This presumably referred only to the area under his jurisdiction and apparently did not include Aborigines later picked up as casual labour for the boats without official knowledge.\(^{27}\) Douglas reported in 1898, when the bêche-de-mer was only about 6 per cent of that harvested in 1884, that there were about three hundred Aborigines employed in the fisheries on articles. As Douglas at this time refused to agree to employment of women or children below the age of puberty, there was probably a significantly larger number working in the fisheries casually or illegally.\(^{28}\) It would seem then from the above information that there may have been at least five hundred Aborigines employed in North Queensland in the bêche-de-mer industry during a peak season.

The precise number of Aborigines employed in the pearlshell industry is equally difficult to estimate. Until 1874 the shell was entirely obtained by 'swimming divers' (non-Europeans, many of them Aborigines) who would gather the shell at depths of up to fifty feet. Boys of twelve to fourteen years of age could dive and bring up shell from depths of up to twenty-four feet. Much of the diving was done for about two to three hours at low tide.\(^{29}\) Such 'swimming diving' required a large unskilled work force and it seems that in these early years the fishermen in Queensland waters collected bêche-de-mer as well as pearlshell.\(^{30}\) In 1874, several boats introduced diving suits which allowed depths of up to ninety and later up to one hundred and twenty feet to be fished.\(^{31}\) By 1877, sixty-three out of one hundred and nine boats were equipped with diving apparatus.\(^{32}\) Despite the heavy capital outlay of £200-£250 for each suit and pump, the working

\(^{25}\) Saville-Kent 1890b:728.
\(^{26}\) Government Resident (1885) 1886:49.
\(^{27}\) Roth to Police Commissioner, 6 May 1898 (06944 of 1898, QSA COL/142).
\(^{28}\) Stuart to Police Commissioner, 19 March 1898 (QSA POL/1:29), quoting from a telegram from the Government Resident, John Douglas. See also Roth to Police Commissioner, 6 May 1898, for Douglas's attempt to prevent women and children being employed. For production of pearlshell and bêche-de-mer, see QSA HAR/48, 'Statistics: Pearlshell and Bêche-de-mer Fishery, Queensland, 1896-1910', and Saville-Kent 1890b:730.
\(^{29}\) Aplin to Colonial Secretary, 3 March 1875, in Somerset Correspondence, Records 1872-1877.
\(^{30}\) Jardine to Colonial Secretary, 1 January 1872: Active had 47 tons of bêche-de-mer and one ton of pearlshell. See also Jardine to Colonial Secretary, 1 May 1873, in Somerset Correspondence, Records 1872-1877.
\(^{31}\) Aplin to Colonial Secretary, 3 March 1875; Saville-Kent 1893:205.
\(^{32}\) Chester to Colonial Secretary, 7 May 1877, in Somerset Correspondence, Records 1872-1877.
out of the shallower beds and the ability of one diver to stay under water for an hour or two soon established this as the standard method of obtaining pearlshell.\textsuperscript{33} This change meant a need for fewer but more skilled and reliable labourers. However, at various times, for example in the late 1890s, when new pearlshell beds were discovered, there was an upsurge in demand for Aborigines, experienced or inexperienced, to collect the shell by swimming diving.\textsuperscript{34}

The Aboriginal way of life was obviously vulnerable to seaborne European intrusion. There were times, however, when such contacts made Europeans vulnerable to Aboriginal reaction. Indeed the first recorded fatalities caused by Aborigines in North Queensland occurred on the sea frontier in August 1861, four months after the first settlers arrived at Bowen. Two men on board the \textit{Ellida} were killed at Shaw Island in the Whitsunday group after they foolishly placed themselves at the mercy of an Aboriginal group whom they then unintentionally alarmed.\textsuperscript{35} By the 1870s it had become part of the conventional wisdom of the sea frontier that boats should not anchor at night in vulnerable positions. Thus, after an unsuccessful attack was made on the crew of a cutter in North Queensland on 3 February 1879, the Sub-Collector of Customs at Port Hinchinbrook commented:

I would beg respectfully to state that the extremely treacherous nature of the blacks on this Coast Cannot [sic] be too widely made known and that it is downright unsafe for any vessel to anchor off any of these Islands [sic] without the strictest watch being kept on land.\textsuperscript{36}

The fishermen of North Queensland knew that after a short time most Aborigines would want to go home. Indeed, it was conventional wisdom on the fishing frontier that even willing recruits, legally signed on, well-treated and receiving their promised wages, would desert within a few months if the opportunity arose.\textsuperscript{37} The Aborigines' desire to

\textsuperscript{33} Aplin to Colonial Secretary, 3 March 1875, in Somerset Correspondence, Records 1872-1877.
\textsuperscript{34} Saville-Kent 1893:205. See also Roth to Police Commissioner, 6 May 1898 (06944 of 1898, QSA COL/142).
\textsuperscript{35} Dalrymple, Bowen, to Colonial Secretary, 10 October 1861 (QSA COL/A22, 1861/2787). See also inquests into the deaths of N. Millar, Seaman, and Henry Irving, Squatter of Broadsound (QSA JUS/N3, 1861/65).
\textsuperscript{36} Griffin to Colonial Treasurer, 5 February 1879 (QSA TRE/A20, 1879/343). See also \textit{Port Denison Times}, 4 July 1874, for account of an attack by Aborigines upon two men in a boat anchored off Great Palm Island for the night.
\textsuperscript{37} \textit{Cooktown Courier}, 22 April 1892, 'The Fisheries Act'. This report of a petition of Cairns fishermen to the Chief Secretary indicated how completely accepted this belief was:

1st. We would point out that payment of wages every three months is quite unworkable when applied to floating stations (i.e., fishing carried on by large vessels, schooners, etc.), which start on a cruise of from 6 to 10 months (footnote 37 continued on next page)
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return to their home territories, to participate in the religious ceremonies that sustained their way of life, to enjoy the warm social life and the varied economic pursuits was inexplicable to the fishermen. They dubbed it 'nostalgia' and were convinced that it could be such a severe malady as to cause death. 38

In the early years of the fisheries conditions were unregulated and the wishes and well-being of the native labourers were disregarded by many of the fishermen. Some of the earliest extant records reveal kidnapping and retention of Torres Strait Islanders against their will, 39 while conflict was reported between the natives of New Guinea and some pearlshell fishermen who sent Pacific Islanders to plunder their villages. 40 Indeed the British government's interest in the Pacific Islander labour trade focused a revealing light on the fisheries. An investigation by Captain J. Moresby of H.M.S. Basilisk in 1872 indicated that a large number of Pacific Island labourers were employed under the British flag at the various fishing stations and some were being detained beyond their period of service. The fisheries were even described as 'uncontrolled', which was literally true as it was more than twenty-five years since the Torres Strait Islands and the adjacent coasts had been visited by a British man-of-war. Yet during this time trade had increased greatly. 41 Some bêche-de-mer fishermen had settled on islands in the Torres Strait and were conducting their industry with kidnapped Torres Strait Islanders, principally women, from other islands. The police magistrate reported, 'They have already become a terror to the Natives of the smaller Islands in the Straits'. 42 Thus, the mate of the Margaret and Jane was in the habit of compelling recruits to dive for shell by firing at them with a revolver and had shot two Torres Strait Islanders trying to escape. 43 It was common not to put

37 (continued)
at a stretch, and extending from the reefs off Keppel Bay in the South to the reefs off Thursday Island in the North. . . . loss of time would occur when the seamen are paid, as they would certainly require a few days or weeks to spend their wages, and in the case of Aborignals, if paid anywhere near their homes, they would clear out, in most cases for good.

38 Chester to Colonial Secretary, 19 December 1876, in Somerset Correspondence, Records 1872-1877.

39 Chester to Immigration Agent, Brisbane, 30 November 1869, in Somerset Correspondence, Records 1868-1871.

40 Jardine to Colonial Secretary, 1 November 1870, in Somerset Correspondence, Records, 1868-1871.

41 Jardine to Colonial Secretary, 19 February 1872, enclosing copy of a letter from J. Moresby, Captain H.M.S. Basilisk, to Jardine, 17 February 1872, and copy of a letter from Jardine to Moresby, in Somerset Correspondence, Records 1872-1877.

42 Jardine to Colonial Secretary, 1 January 1872, in Somerset Correspondence, Records 1872-1877.

43 As above.

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‘natives’ on ship’s articles, consequently the land-bound police magistrate at Somerset could not investigate rumours concerning their deaths. Sometimes vessels avoided Somerset to prevent official enquiries. Aborigines were rarely specifically mentioned in these early reports; however, it is clear they were much abused.44

The type of men in both fisheries in the early years was such that maltreatment of the Aborigines was to be expected. Police Magistrate Chester wholeheartedly agreed with the opinion of his predecessor, Dalrymple, who had written:

There are of course among these men some of excellent character and integrity of purpose; but there are others of whom to say that they are about as bad a lot as sail out of any port on the earth, is not to say too much.45

The pearlshell industry lost much of this reputation, possibly because the higher capital investment dictated the need for more responsible management, and the need for more skilled and more reliable boat’s crew left little scope for dragooned labour. But the bêche-de-mer industry retained its unsavoury reputation throughout the nineteenth and into the twentieth century. Thus in his 1897 report W.E. Parry-Okeden, the police commissioner, claimed that the bêche-de-mer industry was 'dirty' but profitable, attracting the ‘lowest class of whites and Manilla men’.46 But when pearlshell fishermen needed cheap Aboriginal labour as swimming divers to exploit newly discovered shallow beds, they treated the Aborigines just as callously as bêche-de-mer fishermen.47 Clearly the nature of the intruders’ industry was as important in determining race relations on the sea frontier as it was on other frontiers of contact.

It is difficult to estimate the proportion of the labour force that was initially kidnapped by force, duped into undertaking engagements in the fisheries, or who misunderstood the nature of their future employment, as against those who were recruited willingly and remained contented with their employment. One can write with confidence, however, that the abuses associated with the fisheries were very serious, common, and often harmful to relations between the intruders and the Aborigines. They constitute an indictment of the men associated with the industry and the government that failed to control the

44 Chester to Colonial Secretary, 2 August 1876, in Somerset Correspondence, Records 1872-1877. Chester remarked that there were about five hundred 'natives' engaged in the industry, exclusive of Aborigines. See also Beddome to Colonial Secretary, 11 November 1873, in Somerset Correspondence, Letterbook 1872-1877. Jardine reported that there were large numbers of the 'natives' of the mainland and adjacent islands employed by pearlshellers as divers.

45 Chester to Colonial Secretary, 13 March 1877, in Somerset Correspondence, Records 1872-1877.


47 Roth to Under-Secretary, Home Department, 13 March 1901 (QSA Lands Reserve No.91-14, I: 1901/7027).
abuses. The reports of government officials clearly substantiate this conclusion. In 1877 Brinsley Sheridan, Police Magistrate and Land Commissioner at Cardwell, notified the government of lawlessness in the pearlshell and bêche-de-mer fisheries:

I venture to bring under your notice the practice, which I trust is not common of vessels engaged in the Pearl and Bêche-de-mer Fisheries in Torres Straits and its neighbourhood, kidnapping the natives along the coast and the adjacent islands, and forcing them to act as divers, etc. This offence is commonly known to the seafaring men frequenting the coast as ‘shanghai-ing’ them.48

Despite his pious hope that the practice was not common, he proposed that an extensive reserve be created in the Cardwell District, not only to ‘put an end to an abominable traffic’ but also to save the lives of whites and blacks in the ensuing conflict. Indeed, the Water Police Magistrate at Cooktown reported in the same year that the kidnapping of Aborigines had ‘frequently resulted in the loss of life and valuable property’ of the intruders.49

In 1882 B. Fahey, the Sub-Collector of Customs at Cooktown, had a blatant case of kidnapping brought to his attention. Like Sheridan earlier, he believed that Aborigines were ‘far better off’ employed in the fisheries and that in most cases they were willing to work for the fishermen. But he was appalled by the recruitment procedures:

I would point out that the mode of obtaining their services should, in the interests of common humanity, be more legitimately pursued than “indiscriminately decoying” them at every convenient spot along the coast and its Islands, irrespective of age or sex.50

The then police magistrate at Cooktown, Howard St. George, supported Fahey and reported ‘numerous instances’ of Aborigines being kidnapped,51 and the police commissioner acknowledged his helplessness.52 In February 1884, another kidnapping case was reported to the police magistrate at Cooktown, Hugh Milman, this time associated with a callous attempt to murder the Aborigines who had avoided capture. The Colonial Secretary, S.W. Griffith, pressed charges of kidnapping and intent to murder, but the culprit was not convicted despite enthusiastic efforts at all levels of law enforcement. Milman claimed that kidnapping of Aborigines was ‘rife’ and urged that he be allowed to

49 Fahey to Water Police Magistrate, Brisbane, 19 May 1877 (QSA TRE/A18/-1877/1906).
50 Fahey to Collector of Customs, Brisbane, 2 March 1882 (QSA COL/A333/-1882/1385).
51 H. St. George to Colonial Secretary, 3 March 1882 (QSA COL/A333/1882/-1385).
53 Milman to Under Colonial Secretary, 21 June 1884 (QSA COL/A394/1884/-4516). See whole file for the attempt to bring the culprit to justice.
visit the fisheries to report on them.\footnote{Police Magistrate, Somerset, to Colonial Secretary, 1 January 1872, encl. Normanby to Secretary of State for the Colonies, 19 March 1872 (QSA GOV/-A26/1872/20). See Farnfield 1973:218-220, and van der Veur 1966:21.} Indeed the concern shown by Griffith and his subordinates indicated one aspect of the motivation behind the 1884 \textit{Native Labourers Protection Act}.

The bêche-de-mer and pearlshell fisheries in and near Torres Strait were associated with the Pacific Islander labour trade well before 1884. In 1872 the abuse of Pacific Islander labour stimulated the prompt investigation and granting of Queensland's request for extended territorial jurisdiction although broader imperialist, commercial, strategic, and humanitarian reasons were also involved.\footnote{35 and 36 Vict. Ch. 19: \textit{An Act for the Prevention and Punishment of Criminal Outrages upon Natives of the Islands in the Pacific Ocean}. Its short title was \textit{The Kidnapping Act, 1872} but it was also referred to as \textit{The Pacific Islanders Protection Act of 1872}. 38 and 39 Vict. Ch. 51: \textit{An Act to Amend the Act of the Session of the Thirty-fifth and Thirty-sixth years of the reign of Her present Majesty, Chapter nineteen, intituled ‘An Act for the Prevention and Punishment of Criminal Outrages upon Natives of the Islands in the Pacific Ocean’}. The short title of the amended act was \textit{The Pacific Islanders Protection Acts, 1872 and 1875}. Each Act could be referred to separately as \textit{The Pacific Islanders Protection Act, 1872} or \textit{The Pacific Islanders Protection Act, 1875}. The short title \textit{Kidnapping Act, 1872} was still used after 1875.} Unfortunately the Queensland government did not enforce its Polynesian labourers legislation in Torres Strait, and British legislation to control violence beyond the sixty-mile border was no more effective.

Well publicised abuses in the Pacific Islander labour trade (which took labour to Fiji as well as to Queensland) led the British parliament to pass the \textit{Pacific Islanders Protection Acts} of 1872 and 1875 which made kidnapping (i.e. the recruiting of islanders by force or deception and their detention without consent) a felony. A commonly used short title for the 1872 Act was ‘The Kidnapping Act’.\footnote{56 Farnfield 1973:221. See also Parnaby 1964:12-27.} All British recruiting vessels had to be licensed and vessels suspected of kidnapping were seized. The 1875 amendment also created the position of Western Pacific High Commissioner with jurisdiction over British subjects on islands which were not governed by any ‘civilised’ power eastward of 143°E longitude.\footnote{57 Normanby to Secretary of State for Colonies, 30 October 1872 (QSA GOV/-26/1872/65). See also Chester 1877:1125.} However, the Torres Strait Islands were too remote for the imperial High Commissioner (the Governor of Fiji) to control. Serious abuses in the recruiting, conditions and payment of Pacific Islanders employed in the fisheries within and beyond the Queensland border continued. Many of the islands beyond Queensland’s sixty mile limit ‘had become the resort of criminals from all parts of the
world’. The Liberal premier, John Douglas, was convinced that the gross abuses in the fisheries could be controlled by bringing them under Queensland’s jurisdiction, an action which was endorsed by the McIlwraith government when it defeated the Liberal ministry. But this motive was secondary to Queensland’s desire to annex the islands to the north, including New Guinea, to forestall their annexation by either France or Germany. The proposal was readily acceded to by the imperial authorities, who were glad to shed the responsibility. The Queensland government now had undisputed jurisdiction, and to police the fisheries it purchased at a bargain price one vessel, the schooner *Pearl*, which had a complement of a master and five men. It was a futile gesture.

In July 1879 a bill was introduced to the Queensland Legislative Assembly to regulate the pearlshell and bêche-de-mer fisheries. It was primarily concerned with collecting previously untapped revenue — earned mainly by New South Wales capitalists — through licence fees charged to vessels engaged in the industry, and rent on Crown land where fishing stations had been erected. It was also aimed at regulating the employment of Pacific Islanders. The Colonial Secretary, A.H. Palmer, admitted the fisheries were associated ‘with a good deal of irregularity and lawlessness . . . about the Barrier Reef, and the islands that had lately come under the dominion of the colony’. However, he claimed there were very few complaints about the misuse of either ‘Polynesian’ (i.e. Pacific Islander) or ‘other native labour’, by which he meant Aborigines and Torres Strait Islanders. He neglected to point out that the labourers themselves would have found it almost impossible to register such complaints. The bill contained clauses that were at least aimed at prevalent abuses among ‘native labourers’, i.e. Aborigines and Torres Strait Islanders. Pacific Islanders and ‘native labourers’ were to be employed only under written agreement. They were to be discharged under supervision to ensure they were returned to their homeland or to the port from which they had originally embarked and not dismissed at any convenient spot the master might

58 Queensland Parliamentary Debates, XXIX (1879):117, Postmaster-General, second reading of Queensland Coast Islands Bill.

59 Farnfield 1973:222-225; van der Veur 1966:14-16, 21. John Douglas was Premier of Queensland 8 March 1877 to 21 January 1879. Sir Thomas McIlwraith was Premier 21 January 1879 to 13 November 1883, 13 June 1888 to 30 November 1888, 27 March 1893 to 27 October 1893.

60 QPD, XXIX (1879):117; the abbreviation *QPD* will be used hereafter for Queensland Parliamentary Debates.

61 QPD, XXIX (1879):766, 767, Colonial Secretary, second reading of the ‘Pearlshell and Bêche-de-mer Fishery Bill’. For a detailed account of the abuse of Aboriginal labour in the fisheries of North Queensland and the evolving multiracial society see Loos 1976: Chapter 7.
choose. Other clauses aimed at ensuring that labourers received their stipulated wages. All deaths and desertion were to be recorded and the master was made accountable for his crew. No intoxicants were to be supplied to the labourers.

The Colonial Secretary explained that the term 'native labourers' was a new one intended to encompass those natives of Queensland (Aborigines and Torres Strait Islanders) that were taken from the islands and coastal districts of the north without legal protection. Significantly, the bill had been drafted by the Immigration Agent experienced in the hiring and management of Pacific Islanders and by the police magistrate at Thursday Island. New South Wales investors responded with petitions claiming the proposed legislation would ruin the industry. The Colonial Secretary retorted: 'The object of the Bill was to secure for Queensland what she should have had years ago:- namely, a revenue from the pearl-shell fisheries on her coast'.

All clauses dealing with the 'Native Labourers' were put and passed except the clause which dealt with the disposal of the wages of deceased 'Polynesians or Native Labourers'. Apparently the Queensland government could not legislate to dispose of wages earned on vessels belonging to another country, which, in this case, would mainly be New South Wales. Later the entire bill was withdrawn by the Postmaster-General in the Legislative Council because of the opposition of the New South Wales capitalists to the licence fees. The opinion of the British government as to the power of the Queensland legislature to pass such a bill also had to be ascertained.

Palmer brought a new bill before Parliament in July 1881. The British government had now allowed that the scope of the legislation was within the power of the colonial government. Palmer once again stressed his concern for the lost revenue and prefaced this with a perfunctory concern for the 'irregularities going on on the northern coast of the colony by those engaged in the pearl-shell and bêche-de-mer fishery . . . he could hardly call them outrages'. The bill was similar to the previous one except that the protests had effectively reduced the licence fees.

62 QPD, XXIX (1879):767-768.
63 QPD, XXX (1879):1523, Griffith, in Committee. See also 1879 V & P, Second Session, II:951, 953 for the petitions.
64 QPD, XXX (1879):1523, Colonial Secretary in Committee.
65 QPD, XXX (1879):1732, Colonial Secretary in Committee.
66 QPD, XXVIII (1879):388, Postmaster-General, second reading of the 'Pearl-shell Fishery Bill'.
67 QPD, XXXV (1881):186, Colonial Secretary, the first reading of the Pearlshell and Bêche-de-mer Fishery Bill.
68 QPD, XXXV (1881):186, 187, Colonial Secretary.
In the bill a ‘native labourer’ was defined as ‘any Aboriginal native of Australia or New Guinea, or of any of the islands adjacent there-to’.69 It thus referred to people who would today be Aborigines, Torres Strait Islanders and New Guineans. Several clauses were designed to prevent native labourers being defrauded of their wages. Two were withdrawn when it was pointed out that they would discourage the spending of wages at Thursday Island and thus reduce the revenue raised there. A third, imposing a penalty on anyone selling intoxicating liquor to native and ‘Polynesian’ (really Melanesian) labourers, was withdrawn for similar reasons, and because the Colonial Secretary had recently been informed that ‘these men would not work without spirits, and consequently, it must be given to them’. The one remaining clause on payment of wages was subsequently withdrawn on the ground that it would be ineffective in isolation.70 As one member, Dickson, pointed out to his fellow members, every clause aimed at protecting the native and ‘Polynesian’ labourers had been withdrawn despite the Colonial Secretary’s initial claim that this was the prime aim of the legislation.71

Even if the Act had been passed in its original form it is doubtful if it would have controlled the abuses in the industry. There was only one vessel to supervise the ships, stations, and waters of the fisheries.72 The problem of kidnapping Aborigines and Torres Strait Islanders was barely acknowledged. They could still be picked up after leaving port and disembarked before return. The whole problem of recruiting labour in northern waters, of fishermen persuading, deceiving or forcing Aborigines into service they would not have entered willingly, had not been addressed. The Act only required that ‘Polynesian’ and native labourers be employed under a written agreement and disembarked at a place approved by the police magistrate or principal customs officers.73 If a Pacific Islander or native labourer employed in the fishery was discharged without such approval, all maintenance costs and the expense of returning him to his homeland could be summarily charged to the fishing vessel master.74 This at least gave the government a legal means of fining a master who had kidnapped his labour, if by chance he was detected. Half-hearted attempts over three

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69 QPD, XXXV (1881): 186, 187. This was probably the definition expressed in the previously proposed Bill, but, as no complete original was printed in either the 1879 QPD or the 1879 V & P, this is not certain.
70 QPD, XXXV (1881): 264, 265. Griffith and Colonial Secretary in Committee.
71 QPD, XXXV (1881): 264, 265, Dickson in Committee. He actually mentioned ‘Polynesian’ labourers only; apparently this was a casual omission.
72 QPD, XXXV (1881): 187, Colonial Secretary in first reading.
73 'Pearlshell and Bêche-de-mer Fishery Act of 1881' i.e., 45 Vic. No.2, clauses 11, 12.
74 45 Vic. No.2, clause 12.
years to regulate the employment of native labour had achieved little; but legislation to collect revenues from the fisheries had overcome all obstacles.

In 1884 the Griffith Liberal Government prepared a bill more seriously aimed at preventing 'the improper employment of Aboriginal Natives of Australia and New Guinea on ships in Queensland waters'. It is clear that Griffith was motivated by reports of gross abuse among the Aborigines of north-east Queensland. It is equally clear, however, that his dominant and most immediate concern was the involvement of Queenslanders in the abuse of Pacific Islander labour which was the responsibility of the imperial authorities. In the parry and thrust of Parliamentary debate extracts of official reports from police magistrates at Cooktown and Thursday Island were read to the Legislative Assembly to refute the claim of the then leader of the opposition, B.D. Morehead, that there was no 'enormous harm' or injustice done to the natives of Australia and New Guinea. Evidence of brutality in southeastern New Guinea was also provided by the Queensland Immigration Department which supervised the labour trade then developing in that area. As reported by Louisiade Islanders to the Government Agent of the Céara, the bêche-de-mer fisherman had employed both Louisiade Islanders and Queensland Aborigines, and raped their women and flogged the men unmercifully. They had treated Queensland Aborigines worse than Islanders and shot anyone of either race who committed the slightest offence. The report was sent to the Immigration Department and then to the Colonial Secretary and Premier, Griffith.

In trying to get through the Legislative Council legislation that would look respectable to imperial authorities, the Postmaster-General stated explicitly:

No action was taken upon that report [of 1882] until May 1884, when the Acting Immigration Agent wrote to the Colonial Secretary with regard to a bêche-de-mer trader carrying on business in the Louisiade Archipelago. When the accounts of present and past recruiting atrocities among North Queensland Aborigines were brought to his notice Griffith had immediately asked for reports from the Sub-Collector of Customs and police magistrate at Cooktown. Between 22 January 1882 and 26 March 1884 one fisherman had shipped seventy-eight Aborigines while

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75 48 Vic. No.20. See initial description in the Act itself (my punctuation). Here, I am not dealing with attempts by the administration in British New Guinea to control events in Torres Strait.

76 QPD, XLIII (1884): 211, Morehead, and 211, 212, the Premier, Griffith.

77 QPD, XLII (1884): 107, Postmaster-General. See pp.106, 107, Postmaster-General, for description of atrocities in Queensland waters.

78 QPD, XLII (1884): 107.
working in Queensland and New Guinea waters and failed to discharge eleven. Thus abuses concerned with Aboriginal labour in the fisheries became involved with other contemporary enquiries into the kidnapping of New Guineans in the wider Pacific Islander labour trade. The kidnapping of Aboriginal labour, which had previously been played down or ignored, was now publicly revealed. Several times in both the Legislative Assembly and the Legislative Council debates Queensland’s reputation was declared an issue and frequently the government was accused of giving way to the humanitarians in the Colonial Office who tried to protect the interests of native peoples throughout the Empire. Indeed, Griffith’s hope that ‘the hon. members would assist in removing the stigma [of kidnapping Aborigines] on the colony’s reputation’ has to be seen in the wider context of the Pacific Islander labour question.

The McLlwraith government of 1879-1883, which had supported the importation of cheap coloured labour, had been replaced in November 1883 by Griffith’s Liberal government which was strongly opposed to it. Indeed, this was one of the most important political issues in Queensland during the second half of the nineteenth century. In 1884, Griffith had passed legislation to confine Pacific Islanders to employment in sub-tropical or tropical agriculture and had tried to repeal the Queensland Act of 1862 that allowed the introduction of labourers from India, only to have his bill rejected by the Legislative Council. In 1884, Griffith also appointed a Royal Commission to enquire into Queensland vessels recruiting in the New Guinea area. The subsequent report revealed widespread abuses. Griffith’s concern for Queensland’s reputation and its autonomy was increased when a number of law cases involving serious charges against recruiters indicated the susceptibility of the Queensland law courts and government to

79 *QPD*, XLIII (1884):211, 212, the Premier.
80 *QPD*, XLIII (1884):190, Mr Brooks, second reading, 214, the Premier in Committee. *QPD*, XLI (1884):81, the Postmaster-General in Committee; 83, Walsh in Committee, criticised the government for posing before the world ‘as desirous of protecting the aboriginal”; 110, Thynne, in Committee.
81 *QPD*, XLIII (1884):185, Morehead, second reading. *QPD*, XLI (1884):80. 108, Palmer in Committee; 82, Macpherson, in Committee; 83, 105, Walsh in Committee; 105, Murray-Prior, in Committee.
82 *QPD*, XLIII (1884):214, the Premier in Committee.
83 Pamaby 1964:104.
84 47 Vic. No.12, clause 2. See Pamaby 1964:127.
85 26 Vic. No.
86 Pamaby 1964:132.
88 Pamaby 1964:115.
public opinion.89 This situation was remedied by the Colonial Office in June 1884 when two crew members of the *Stanley* on trial in the Queensland Supreme Court for kidnapping were extradited and tried in the Court of the Western Pacific High Commission. Thus recruiters in the Pacific could no longer find refuge among Queensland sympathizers who placed less value on the lives of innocent blacks than on those of guilty whites. At the trial, the High Commissioner was highly critical of Queensland’s administration of recruiting. While Griffith acknowledged the lawlessness in the labour trade90 and the impotence of his administration, his government protested strongly against the High Commission’s infringing Queensland’s rights of self-government.91 Griffith had now added to his genuine concern for justice the need to demonstrate that Queensland could enforce appropriate legislation.

By July 1884 legislation had been drafted and Griffith introduced the bill to the Legislative Assembly.92 He limited his criticism principally to the bêche-de-mer industry on this occasion, as employment of Aborigines in the pearlshell industry had declined greatly with the introduction of diving apparatus. He introduced the bill as the ‘Native Labourers Protection Bill’ and pointed out clearly its functions:

I have reason to believe that, at the present time, great abuses prevail in that respect, and that great numbers of natives of Cape York Peninsula, both on the eastern and western side, are frequently taken on board vessels without supervision, and that sometimes they are brought back, and sometimes not; it is not known whether they are or not. There is no real reason why we should not protect the aboriginals just as the Polynesians are protected.93

The main clause, derived from the imperial Act designed to prevent kidnapping of Pacific Islanders, provided that no native labourer (Aboriginal or Torres Strait Islander) should be employed or carried on board any vessel trading in Queensland waters unless he was carried on ship’s articles ‘in like manner as a seaman forming part of the crew of the vessel’.94 The labourer had to be engaged in the presence of a

89 Enclosure in Musgrave to Derby, 8 May 1884 (Colonial Office, 234/44). Cited in Parnaby 1964:99.
90 Griffith to Musgrave, enclosure in Murray to Derby, 18 February 1884 (Colonial Office 234/44). See Parnaby 1964:98-100, for discussion of the law cases that affected Queensland’s reputation.
91 Enclosure in Queensland Agent-General to Colonial Office, 24 April 1884 (Colonial Office 234/25).
92 *QPD*, XLII (1884):107, the Postmaster-General in Committee; *QPD*, XLIII (1884):98.
94 *QPD*, XLII (1884):107, the Postmaster-General in Committee. See also 48 Vic. No.20, clause 2.
shipping master who had to explain the agreement carefully, record full particulars of the agreement, provide a description of the labourer sufficient to identify him and give an identification disk to the labourer for later reference by government officials. Where interpreters were needed, they were to be supplied. Each agreement was to describe the intended voyage or engagement (it could not exceed twelve months' duration), the task expected of the labourer, the wages due, and the scale of provisions and clothing to be issued.

Griffith attempted to separate the bill from the highly sensitive issue of imported black labour for plantations, but in the political climate of 1884 this proved impossible. Thus the principle that native labourers should not be maltreated was not disputed although the validity of the reports was challenged by some opposition members. When Griffith introduced the bill to the Legislative Assembly a strong objection to the penalties was declared at the second reading which failed to materialize in committee. Here, in fact, leading planter supporters like Hume Black adopted the anti-coloured labour polemics of Griffith's own party in urging amendments to safeguard the native labourers. Morehead pleaded: 'If hon. members really took an interest in [the native labourers] let them show it thoroughly, and do justice to them by having a schedule [of provisions] attached to the Bill, and by providing clothing'. Accused by a government member of 'exquisite fooling', he laughingly retorted: 'You want to have the monopoly of the Black question'. Griffith, who tried to insist that the bill was meant to prevent kidnapping, was embarrassed into accepting Black's amendments, derived from the Pacific Islander legislation, which could in no way be supervised in the fisheries.

In the Council the opposition allowed the bill to pass the second reading, thus technically accepting its principle, but determinedly set out to reduce the penal provisions which it claimed would inhibit or destroy the fishing industry. The poor state of the sugar industry was

95 QPD, XLIII (1884):183. See also 48 Vic. No.20, clause 3.
96 QPD, XLIII (1884):183. See also 48 Vic. No.20, clause 4.
97 QPD, XLIII (1884):183, second reading. See also 48 Vic. No.20, clause 5.
98 QPD, XLIII (1884):213, the Premier and Morehead in Committee.
99 QPD, XLII (1884):107, Murray-Prior, in Committee, and 109, Gregory, in Committee.
1 QPD, XLIII (1884):183, 184, Archer; 185, Palmer and Morehead, second reading.
2 QPD, XLIII (1884):215-218, Macrossan, Morehead, Black, in Committee.
3 QPD, XLIII (1884):215, Morehead and Brooks, in Committee.
4 QPD, XLIII (1884):217, 218, the Premier in Committee.
5 QPD, XLII (1884):105, Murray-Prior, in Committee, said: 'While it appeared to be a Bill to give Protection to native aboriginals, in reality it tended indirectly to abolish black labour altogether'. See also 107, Murray-Prior, and 109, Gregory, in Committee.
blamed on Griffith's opposition to black labour; and even a government supporter declared that capitalists had been frightened off and banks alarmed.\textsuperscript{6} One independent member said:

The Bill was framed very much in the same spirit as that which had guided the Government in their action with regard to kanaka labour — action which threatened to reduce one of the greatest industries in the colony to a state of complete destruction.\textsuperscript{7}

The opposition in the Council to the bill's penal provisions obviously surprised the government.\textsuperscript{8} The penalties were based on the imperial \textit{Kidnapping Act} of 1872, and were similar to those for infractions of the customs laws even where the amount smuggled was as low as £5.\textsuperscript{9}

The proposed Clause 6 provided that if any vessel trading in Queensland waters carried any Aboriginal or Torres Strait Islander without meeting the provisions of the Act the vessel and her cargo were liable to forfeiture and the master and owner to a fine not exceeding £500. A vessel suspected of carrying an Aboriginal or Torres Strait Islander without observing the provisions of the Act could be seized and detained pending trial.\textsuperscript{10} Although the Postmaster-General pointed out that the penalties were similar to those contained in other legislation where there was a need to detain the vessel and often difficulty in exacting a fine, the power to seize or detain a vessel was rejected completely by the Council and the maximum fine reduced to £100.\textsuperscript{11}

Like the \textit{Kidnapping Act} of 1872, the bill sought to compensate indigenous people disadvantaged before the law by putting the onus on Europeans to prove that they had not dealt illegally with the recruits they intended to carry. Moreover the penalties for carrying recruits illegally were severe, and this allowed opponents to argue that the Act was treating all suspected or accidental infringements as if they were actual kidnappings.\textsuperscript{12} In reality, of course, the ordinary processes of law provided ample safeguards against the award of excessive penalties for mere technical infringements of the Act, but the opposition persisted in expressing horror at the enormity of the punishment hanging over the head of innocent captains. One opposition member claimed it was 'the most severe and outrageous Bill ever brought before Parliament' and the penalties 'something outrageous'.\textsuperscript{13} The Postmaster-General, in exasperation, claimed it was the

\textsuperscript{6} \textit{QPD}, XLII (1884):185, Heussler, in Committee.  
\textsuperscript{7} \textit{QPD}, XLII (1884):185, O'Doherty, in Committee.  
\textsuperscript{8} \textit{QPD}, XLII (1884):81, the Postmaster-General, second reading.  
\textsuperscript{9} \textit{QPD}, XLII (1884):81, 82, the Postmaster-General, second reading.  
\textsuperscript{10} \textit{QPD}, XLII (1884):80, 85, the Postmaster-General.  
\textsuperscript{11} \textit{QPD}, XLII (1884):82, 85, Macpherson in Committee; 48 Vic. No. 20, clause 6.  
\textsuperscript{12} \textit{QPD}, XLII (1884):84, 106, 109, the Postmaster-General in Committee.  
\textsuperscript{13} \textit{QPD}, XLII (1884):109, Taylor, in Committee; 83, 109, Palmer in Committee; 82, King; 83, Walsh.
most debated bill in the Council for the last ten years. Both sides of the house clearly regarded the bill as important, but for different reasons.

It was quite obvious that the intensity of the Council's opposition was reinforced by two other considerations. Firstly, members believed that the kidnapping of Aborigines and Torres Strait Islanders was not in itself a serious crime. Morehead, with his usual bluntness, said:

it would be as well for the [Premier] to tell the Committee some of the bad cases of kidnapping he referred to, as it might help them along. He had never yet heard what enormous harm was done to the blacks, even if they were kidnapped and put into a very much better state of life than they had followed previously.

Secondly, it was clear that opposition members were determined not to have men in the fisheries placed in danger of severe punishment even if they were guilty of committing the atrocities which had been described in the reports that Griffith and the Postmaster-General read to their respective houses. Once again the members opposing the bill had their experience with regard to Pacific Islander labour uppermost in their minds.

In June 1884, the police magistrate at Cooktown, Hugh Milman, proceeded to New Guinea to investigate, among other things, alleged cases of kidnapping. A recruiting vessel, the Forest King, was seized at his request on the justifiable suspicion that some of the recruits were kidnapped and none of them understood they were being recruited for three years. It seems, however, that the interpreters in this case were responsible and not the captain and the government agent. A Brisbane firm suffered severe financial loss through the detention of this vessel, which incensed supporters of the importation of labour. The apparent innocence of the firm and its captain provided timely propaganda; and in the Council debate on the Native Labourers Bill and in the Assembly debate on supply, the case was heatedly discussed. The leader of the assault on the Native Labourers Protection Bill, W.H. Walsh, broadened the scope of the argument:

14 QPD, XLII (1884):131, 180, Postmaster-General, in Committee.
15 QPD, XLIII (1884):211, Morehead, second reading. See also QPD, XLII (1884):80, Walsh; 82, King; 84, Forrest, in Committee.
16 QPD, XLII (1884):80, Walsh, Palmer; 84, Palmer, Forrest; 109, Taylor; 184, O'Doherty.
17 Milman to Colonial Secretary, 24 June 1884, and Griffith to Police Magistrate, Cooktown, 25 June 1884. QPD, XLIV (1884):1460, Black, in Committee, debate on supply.
18 QPD, XLIV (1884):1460, 1461, Colonial Secretary (Griffith), Black and McIlwraith, in Committee, debate on supply.
19 QPD, XLIV (1884):1460, 1461, Colonial Secretary, McIlwraith, Black, in Committee, debate on supply.
20 See footnotes, 58, 59, 60 above and QPD, XLII (1884):80, 84, Walsh; 81, the Postmaster-General, in Committee.
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But when it came to dealing with the owners of kanaka vessels, and the employers of black labour, they were treated with the utmost severity of the law; and for the most venial offence their ships were seized. What became of the vessel [the Forest King] which went away recently . . . which was seized? 21

Some members, however, expressed the basic fear frankly: ‘The penalties were far too excessive even for the most important infringements of the law’. 22

A third important consideration was unrelated to specific clauses in the bill. The two leading opposition members felt there was inconsistency in protecting Aborigines in the fisheries only and seemed genuinely alarmed that the Act might be the forerunner of a comprehensive policy of regulating the employment of Aborigines in other industries. The President of the Council, Sir A.H. Palmer, apologised for his unaccustomed intervention in the debate, adding that:

he felt it was his duty to protest against such legislation. Blacks were frequently engaged on stations; and, if it was made illegal to employ them on water, he did not see why the blacks employed on a station should not have to go before a land commissioner or a police magistrate to be engaged. The thing was a farce. 23

W.H. Walsh actually argued against such possible comprehensive protection:

Suppose a Bill of this kind were applied to the employers of black labour on pastoral stations, there would not be a black man in the country who would be able to get a living from a pastoral tenant, a farmer, or anybody else. At present there were many kind, charitable and good employers of a great many of our aboriginal population, and under such a measure as this they would be absolutely prevented through fear — through fear of informers — of the enforcing of arbitrary powers by the government — the liability of the Act being misconstrued by ignorant or prejudiced magistrates, or other officials — they would be absolutely deterred from employing any of these poor creatures. 24

By suggesting that legislation to protect Aboriginal labour from abuse would be used against a multitude of 'kind, charitable and good' employers by a conspiracy of 'informers' and bureaucrats in league with ignorant or prejudiced magistrates, Palmer and Walsh were obviously struggling to bolster a weak case.

The government wanted legislation of some sort to show the Colonial Office it was in earnest about preventing kidnapping. An
amended bill was therefore better than no bill. Some opposition members of the Council declared they wanted the bill rejected completely; but the majority were unwilling to be seen opposing the principle but were determined to reduce the penalties for kidnapping indigenous labourers. And they succeeded. The penal provisions to ensure the proper discharge of native labourers on the ship’s articles were similarly emasculated. The maximum penalty for not discharging and paying a native labourer in the presence of the shipping master was reduced from £50 to £20, and the penalty for having fewer native labourers than indicated on the ship’s articles was reduced from £100 to £25 for every labourer not satisfactorily accounted for. In this weakened form the bill passed into law.

The 1884 Native Labourers Protection Act failed utterly to prevent kidnapping. It was the only legislation that offered protection for the disadvantages experienced by Aborigines in relation to those colonizing their land and even then it only tried to control the grosser abuses in the least typical field of employment. Griffith had hoped that severe penalties would discourage most kidnapping. Yet in 1884 abuses in the New Guinea area had indicated that the 1872 Kidnapping Act had not worked as a deterrent in the area under the jurisdiction of the Western Pacific High Commission. As Parnaby has remarked:

The events of 1883-1884 confirmed the growing impression in Queensland that recruiting could never be adequately regulated by colonial legislation, and that if the colony was to preserve, or rather regain, its good name, then recruitment must stop. Griffith introduced a bill for this purpose in October 1885.

The failure of the 1872 Act to prevent kidnapping occurred despite the fact that the Royal Navy was empowered to arrest vessels suspected of contravening the Act. Five schooners were built and manned solely to enforce it, the first leaving Sydney in June 1873. In addition, an administrative agency, the Western Pacific High Commission, was primarily concerned with maintaining law and order among the islands. In far North Queensland there was only the Pearl. Griffith had indicated that a new gunboat might be sent to patrol the fisheries after the passing of the Native Labourers Protection Act. This

26 QPD, XLII (1884):110, 111, Thynne, Box, in Committee.
27 QPD, XLIII (1884):183, 184, the Premier, in Committee. See 48 Vic. No.20, clauses 7 and 8.
30 QPD, XLII (1884):184, the Premier, second reading.
appears never to have occurred; the police commissioner, in 1896, and
the Northern Protector of Aborigines in 1898, both commented on
the need for a 'smart steamer' to prevent the abuses in recruiting for
the fisheries.  

The Government Resident at Thursday Island, John Douglas, was
an official with a long history of concern for the welfare of Aborigi­
nes. He tried to prevent the grosser abuses of Aboriginal labour from
1885 till the turn of the century. Douglas's main legal control was the
1884 Native Labourers Protection Act under which all Aborigines
were shipped. Despite his early optimism that the Act was a deterrent,
Douglas found he had to use extra-legal powers to try to safeguard the
interest of the native labourers. In 1894, after ten years' experience
with the Act, Douglas concluded: 'I do not think that any good has
come or can come from the Native Labourers Act in this district....
It is impossible to supervise [the bêche-de-mer industry] properly.
To do so effectually would cost more than it is worth'.

Douglas was then referring to more than abuses in recruiting. The
colonists and the government had come to look to the 1884 Act and
the administration at Thursday Island as instruments of control to
prevent Aboriginal attacks upon fishermen's lives and property. Be­
cause of the employment of large numbers of Aborigines unfamiliar
with the fisheries and the abuse of Aboriginal labour, such resis­tence
was common, especially in and near the Torres Strait. Indeed, Doug­
las's 1890 report upon the working of the 1884 Act, and much of his
annual report for 1894, were a defence against the charge that his
administration was failing to protect fishermen and an explanation
of the uselessness of the 1884 Act in this regard. The conclusion
reached in his 1890 report concerning the impossibility of preventing
'outrages' upon the fishermen indicated even more markedly how
much the welfare of the Aborigines was at their mercy. He reported
that no supervision of Aboriginal labour in the industry would make
recruiting in areas such as the Batavia River — where the Aborigines
would not accept or could not understand the fishermen's conditions
of employment — 'a justifiable expedient ... except at a largely in­
creased outlay'. Douglas recommended the establishment of a mission
in this area, Mapoon, to 'civilize' the Aborigines to make safe the
fishermen's use of Aboriginal labour.

31 'Report of the Commissioner of Police for the Year 1896', 1897 V & P, II:
36. Roth to Police Commissioner, 6 May 1898 (QSA COL/142/1898/6944).
32 Roth to Police Commissioner, 6 May 1898 (QSA COL/142/1898/6944).
33 Government Resident 1894:912, 913.
34 Government Resident 1890:1565-1568; Government Resident 1894:911-913,
920-921.
35 Government Resident 1890:1567.
The regulations introduced to control abuses in the recruitment of Pacific Islanders in Melanesia were never applied to the recruiting of Aborigines in the fisheries except for the implied necessity of an interpreter to make sure that Aboriginal recruits understood the nature and conditions of their employment. There was no licensing of recruiting vessels, nor were government agents appointed to supervise recruiting. No authority was exercised over the kind of men allowed to recruit; no attempt was made to prevent fishermen from being rewarded according to the number of Aborigines recruited. Finally, there was no agency independent of the fishermen, such as the government agent on vessels recruiting in the islands, to ensure that recruits were correctly returned. By 1884, all of these measures had been introduced into the Pacific Islander trade.36

Griffith was willing to accept the emasculated bill despite the fact that it offered little hope of protecting the native labourers from brutal exploitation. He needed, at the very least, a token bill as window-dressing to reply to any Colonial Office enquiries. Even Griffith was unwilling to endanger a small though valuable industry by insisting on effective legislative or administrative action which would have diminished the abuses in the industry. As Douglas pointed out, the industry was not worth the expense of thoroughly supervising it. Nor apparently were the Aborigines who were suffering so much from its intrusion.

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BIBLIOGRAPHY

Cannon, Richard. Savage scenes from Australia: being a short history of the settlement at Somerset, Cape York, in the form of a lecture delivered for the Young Men's Christian Association of Valparaiso. Valparaiso, 1885.
Cooktown Courier, 1874-1879, Queensland Parliamentary Library; 1888-1895, Victorian State Library.

QUEENSLAND'S KIDNAPPING ACT


Port Denison Times, 1864-1900.

Queensland Parliamentary Debates (QPD).

Queensland Parliamentary Handbook, Brisbane, 1877.

Queensland State Archives (QSA).


------ 'Beche-de-mer and pearlshell fisheries of northern Queensland' in Votes and Proceedings of the Queensland Legislative Assembly, III, 1890b:727-734.


Somerset Correspondence

Somerset letterbook, 2 September 1868-30 December 1871. Dixson Library, Sydney, MS.

Extracts from Somerset letterbook No.1 of the Police Magistrate, 28 July 1869-1 October 1870. Mitchell Library, B1415, MS.

Records of Somerset 1872-1877. Dixson Library, MS.

Letterbook of the Somerset settlement, Cape York Peninsula, 1 January 1872-December 1877, Queensland State Archives, Brisbane. (Accession Number: 13/5).


Votes and Proceedings of the Queensland Legislative Assembly (V & P), 1860-1903.