

DEFENCE.

No. 4 of 1941.

An Act to amend the *Defence Act* 1903-1939.

[Assented to 4th April, 1941.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title
and citation.

1.—(1.) This Act may be cited as the *Defence Act* 1941.

(2.) The *Defence Act* 1903-1939* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Defence Act* 1903-1941.

* Act No. 20, 1903, as amended by No. 12, 1904; No. 15, 1909; No. 30, 1910; No. 37, 1910; No. 15, 1911; No. 5, 1912; No. 33, 1914; No. 3, 1915; No. 36, 1917; No. 16, 1918; No. 47, 1918; No. 1, 1927; No. 50, 1932; No. 45, 1934; No. 13, 1939; No. 38, 1939; No. 70, 1939; and No. 74, 1939.

2. This Act, except sections three and four thereof, shall come into operation on the day on which it receives the Royal Assent, and those sections shall be deemed to have come into operation on the third day of September, One thousand nine hundred and thirty-nine. Commencement.

3. Section seventy-three c of the Principal Act is amended— Supplying inferior food, materials and equipment.
- (a) by omitting the word “ fraudulently ” (wherever occurring);
 - (b) by adding, at the end of sub-section (1.), the words “, unless he proves that he supplied the article, material, equipment or beast without intent to defraud and that he neither knew nor had reasonable means of knowing that the article was so inferior or less in quantity or that the material, equipment or beast was so inferior.”; and
 - (c) by adding at the end of sub-section (2.) the words “, unless he proves that he received the article, material, equipment or beast without intent to defraud, and that he neither knew nor had reasonable means of knowing that it was supplied in contravention of this section.”.

4. Section seventy-three d of the Principal Act is repealed and the following sections inserted in its stead :—

- “ 73d.—(1.) Any contractor who has in his possession— Possession of certain things an offence.
- (a) any goods (being goods of a like kind to goods which he has contracted to supply to the Commonwealth for use by the Defence Force or any portion thereof, or being goods of a like kind to goods which are suitable to form a constituent part of, or to be used in the manufacture or production of, goods so contracted to be supplied)—
 - (i) to which is applied, without lawful authority, any mark or design or the impression of any seal or stamp indicating that the goods have been inspected by or on behalf of the Commonwealth or have been accepted by or on behalf of the Commonwealth for delivery for such use ;
 - (ii) to which is applied any mark or design or the impression of any seal or stamp so nearly resembling any such mark, design or impression as is referred to in the last preceding sub-paragraph as to be likely to lead to the belief that the goods had been so inspected or accepted ; or
 - (iii) on which any mark or design or the impression of any seal or stamp applied by authority of the Commonwealth has, without lawful authority, been altered, added to or effaced or has in any way been falsified ; or
 - (b) any die, device, seal or stamp capable of making any such mark, design or impression as is referred to in the last preceding paragraph,

shall be guilty of an offence, unless he proves that he had possession of the goods, die, device, seal or stamp without intent to defraud and that, in relation to any such goods, the mark, design or impression was applied without his knowledge and without his having the means of knowing of its application.

“(2.) For the purposes of this section—

- (a) a mark or design shall be deemed to be applied to goods if it is impressed on, or annexed or affixed to, the goods ; and
- (b) a mark, design or impression shall be deemed to be applied to goods if—
 - (i) it is applied to the goods themselves ; or
 - (ii) it is applied to any container, covering, label or thing in or with which the goods are had in possession.

Application
of secs. 73C and
73D to bodies
corporate.

“73E. Where a person to whom section seventy-three C or section seventy-three D of this Act applies is a body corporate, the body and every person being a director or a person concerned in the management of the body shall, in respect of any act or fact specified in either of those sections, be guilty of an offence unless—

- (a) in the case of the body, it proves—
 - (i) that the act or fact took place or existed without the knowledge of any director, or of any person concerned in the management, of the body ; and
 - (ii) that no such director or person concerned had reasonable means of preventing the act or fact taking place or coming into existence ; or
- (b) in the case of a person being a director or person concerned in the management of the body, he proves—
 - (i) that the act or fact took place or existed without his knowledge ; and
 - (ii) that he did not have reasonable means of preventing the act or fact taking place or coming into existence.

Penalty.

“73F.—(1.) An offence under any of the six last preceding sections may be prosecuted either summarily or upon indictment, but an offender shall not be liable to be punished more than once in respect of the same offence.

“(2.) The punishment for an offence under any of the six last preceding sections shall be—

- (a) if the offence is prosecuted summarily—a fine not exceeding One hundred pounds or imprisonment for six months or both ; or, in the case of a body corporate, a fine not exceeding One thousand pounds ; or
- (b) if the offence is prosecuted upon indictment—a fine of any amount or imprisonment for any term, or both.”.