

COMMONWEALTH SERUM LABORATORIES.

No. 38 of 1961.

An Act relating to the Commonwealth Serum Laboratories.

[Assented to 2nd June, 1961.]

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

PART I.—PRELIMINARY.

Short title. 1. This Act may be cited as the *Commonwealth Serum Laboratories Act* 1961.

**Commence-
ment.** 2. This Act shall come into operation on a date to be fixed by Proclamation.

Parts. 3. This Act is divided into Parts, as follows:—
Part I.—Preliminary (Sections 1–6).
Part II.—The Commonwealth Serum Laboratories Commission.
Division 1.—Establishment and Constitution of the Commission (Sections 7–18).
Division 2.—Functions, Powers and Duties of the Commission (Sections 19–22).
Division 3.—The Director (Section 23).
Division 4.—Staff (Sections 24–30).
Division 5.—Finances of the Commission (Sections 31–42).
Division 6.—Reports (Sections 43–44).
Part III.—Miscellaneous (Section 45).

Definitions. 4. In this Act, unless the contrary intention appears—
“Commissioner” means a member of the Commission and includes an Acting Commissioner;
“the Auditor-General” means the Auditor-General for the Commonwealth;
“the Chairman” means the Chairman of the Commission, and includes a Commissioner acting as Chairman under section eleven of this Act;
“the Commission” means the Commonwealth Serum Laboratories Commission established by this Act;

“the Director” means the person appointed under section twenty-three of this Act to be the Director of the undertaking known as the Commonwealth Serum Laboratories, and includes a person for the time being performing the duties of the Director;

“the Vice-Chairman” means the Vice-Chairman of the Commission, and includes a Commissioner appointed under section eleven of this Act to act as Vice-Chairman.

5. A determination by the Minister or the Treasurer for the purposes of this Act shall be by instrument in writing.

Determinations
by Minister to
be in writing.

6. Subject to this Act, the Commission is bound by all laws of the Commonwealth except laws that do not bind the Crown in right of the Commonwealth.

Application of
Commonwealth
Acts.

PART II.—THE COMMONWEALTH SERUM LABORATORIES COMMISSION.

Division 1.—Establishment and Constitution of the Commission.

7.—(1.) There shall be a Commission by the name of the Commonwealth Serum Laboratories Commission.

Establishment
of Commission.

(2.) The Commission—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a seal;
- (c) has power to acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3.) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and shall presume that it was duly affixed.

8.—(1.) The Commission shall consist of—

Constitution of
Commission.

- (a) four Commissioners, one of whom is a medical practitioner registered under a law of a State or a Territory of the Commonwealth providing for the registration of medical practitioners; and
- (b) the Director.

(2.) The Commissioners referred to in paragraph (a) of the last preceding sub-section shall be appointed by the Governor-General.

(3.) The Governor-General shall appoint one of the Commissioners appointed by the Governor-General to be the Chairman, and another of the Commissioners appointed by the Governor-General to be the Vice-Chairman, of the Commission.

(4.) The Commissioners first appointed by the Governor-General shall be appointed to hold office—

(a) in the case of two such Commissioners—for four years; and

(b) in the case of the other two such Commissioners—for two years.

(5.) After the appointment of the four Commissioners first appointed by the Governor-General, each further appointment of a Commissioner by the Governor-General shall, subject to this section, be for a period of four years.

(6.) In the event of a Commissioner appointed by the Governor-General ceasing to hold office before the termination of the period of his appointment, another Commissioner may be appointed in his place for the remainder of that period.

(7.) A Commissioner appointed by the Governor-General is eligible for re-appointment.

(8.) A person who—

(a) has a financial interest, whether direct or indirect, in a company that is engaged in, or a business enterprise that is carried on wholly or partly for the purpose of, the production or wholesale distribution of pharmaceutical products (including biological products of a kind used for therapeutic purposes); or

(b) is a director, officer or employee of a company that is so engaged,

shall not be appointed under this section as a Commissioner.

(9.) The exercise or performance of the powers or functions of the Commission is not affected by reason only of there being a vacancy in the office of a Commissioner.

Oath or
affirmation
of allegiance.

9. A Commissioner shall, before entering on his duties or exercising any power under this Act, make, before a Justice of the Peace or a Commissioner for taking Affidavits, an oath or affirmation of allegiance in accordance with the form in the Schedule to the Constitution.

Leave of
absence.

10. The Minister may grant leave of absence to a Commissioner appointed by the Governor-General upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Absence of
Commissioners.

11.—(1.) Where the Minister grants leave of absence under the last preceding section to a Commissioner appointed by the Governor-General, the Minister may appoint a person to act as a Commissioner during that absence, and a person so appointed has all the powers and functions of a Commissioner.

(2.) Where the Minister grants leave of absence under the last preceding section to the Chairman of the Commission, the Vice-Chairman shall act as Chairman during the absence.

(3.) Where the Minister grants leave of absence under the last preceding section to the Vice-Chairman of the Commission or where the Vice-Chairman is or will be acting as Chairman, the Commission may appoint a Commissioner (other than the Director or an Acting Commissioner) to act as Vice-Chairman during the absence, or during the period for which the Vice-Chairman acts as Chairman, as the case may be.

12. A Commissioner appointed by the Governor-General shall be paid such remuneration (if any) and such allowances (if any) as the Governor-General determines. Remuneration and allowances.

13. The Governor-General may terminate the appointment of a Commissioner appointed by the Governor-General for inability, inefficiency or misbehaviour. Dismissal of Commissioner.

14. A Commissioner appointed by the Governor-General or an Acting Commissioner may resign his office by writing under his hand addressed to the Governor-General or the Minister, as the case may be. Resignation of Commissioners.

15.—(1.) If a Commissioner appointed by the Governor-General— Vacation of office.

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) becomes a person referred to in sub-section (8.) of section eight of this Act;

(c) is absent, except on leave granted by the Minister, from three consecutive meetings of the Commission; or

(d) fails to comply with his obligations under the next succeeding sub-section,

the Governor-General shall, by notice published in the *Gazette*, declare that the office of the Commissioner is vacant, and, upon the publication of the notice, the office shall be deemed to be vacant.

(2.) A Commissioner who is directly or indirectly interested in a contract made or proposed to be made by the Commission, otherwise than as a member, and in common with the other members, of an incorporated company consisting of not less than twenty-five persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(3.) A disclosure under the last preceding sub-section shall be recorded in the minutes of the Commission, and the Commissioner—

- (a) shall not take part after the disclosure in any deliberation or decision of the Commission with respect to that contract; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

**Meetings of
Commission.**

16.—(1.) Subject to this section, the Chairman shall convene such meetings of the Commission as, in his opinion, are necessary for the efficient conduct of its affairs.

(2.) The Chairman shall not permit a period exceeding five weeks to elapse between a meeting of the Commission and the next meeting of the Commission.

(3.) The Chairman shall, on receipt of a written request signed by a Commissioner, convene a meeting of the Commission.

(4.) The Minister may at any time convene a meeting of the Commission.

(5.) The Chairman shall preside at all meetings of the Commission at which he is present.

(6.) In the event of the absence of the Chairman from a meeting of the Commission, the Vice-Chairman shall preside at that meeting.

(7.) In the event of the absence of both the Chairman and the Vice-Chairman from a meeting of the Commission, the Commissioners present shall appoint one of their number to preside at that meeting.

(8.) At a meeting of the Commission, three Commissioners other than the Director constitute a quorum.

(9.) A question arising at a meeting of the Commission shall be decided by a majority of the votes of the Commissioners present.

(10.) The Commissioner presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Delegation.

17.—(1.) The Commission may, either generally or in relation to a matter or class of matters and either in relation to the whole of the Commonwealth or to a State or part of the Commonwealth, by writing under its seal, delegate all or any of its powers under this Act (except this power of delegation).

(2.) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Commission.

18. In this Division, a reference to a Commissioner appointed by the Governor-General does not include a reference to the Director. Interpretation.

Division 2.—Functions, Powers and Duties of the Commission.

19. The functions of the Commission are—

Functions of
Commission.

(a) to produce and sell such biological products of a kind used for therapeutic purposes as are prescribed and to undertake research in connexion with any such prescribed product;

(b) if the Minister so determines—

(i) to undertake research towards the production of biological products of a kind used for therapeutic purposes, being products other than products prescribed for the purpose of the last preceding paragraph; and

(ii) to install or maintain plant or equipment capable of being used for the production of biological products, and to produce and hold stocks of biological products, for purposes other than the immediate sale of those products,

in accordance with the determination; and

(c) subject to the last two preceding paragraphs, to carry on the undertaking known as the Commonwealth Serum Laboratories,

and are exercisable for or in relation to any purpose of the Commonwealth including any of the following purposes:—

(d) the defence of the Commonwealth;

(e) external affairs;

(f) trade and commerce with other countries or among the States;

(g) the provision by the Commonwealth of pharmaceutical, sickness or hospital benefits or of medical or dental services;

(h) quarantine; and

(i) a Territory of the Commonwealth.

20.—(1.) Subject to the next succeeding sub-section, the Commission has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions.

Powers of
Commission.

(2.) The Commission shall not, except with the approval of the Minister, purchase or dispose of capital assets for a consideration exceeding Twenty thousand pounds.

Duties of
Commission.

21. The Commission shall, in relation to biological products prescribed for the purpose of paragraph (a) of section nineteen of this Act, pursue a policy directed towards securing revenue from the sale of those products sufficient to meet all its expenditure (including expenditure in undertaking research) in connexion with those products that is properly chargeable to revenue, and to permit the payment to the Commonwealth of a reasonable return on the capital of the Commission.

Prices to be
determined by
Minister.

22. The Minister shall, after consulting the Commission, determine the prices to be paid for products supplied by the Commission directly to the Commonwealth or a State or to a person on behalf of the Commonwealth or a State.

Division 3.—The Director.

Director of
Commonwealth
Serum
Laboratories.

23.—(1.) The Governor-General shall appoint a person to be the Director of the undertaking known as the Commonwealth Serum Laboratories.

(2.) The Director shall be appointed for such period, not exceeding five years, as the Governor-General specifies in the instrument of appointment but is eligible for re-appointment.

(3.) The Director shall hold office on such terms and conditions as the Governor-General determines.

(4.) A person referred to in sub-section (8.) of section eight of this Act shall not be appointed as the Director.

(5.) The provisions of sub-section (1.) of section fifteen of this Act apply to the Director and the office of the Director in like manner as they apply to a Commissioner referred to in that sub-section and the office of such a Commissioner.

(6.) The Director shall be the chief executive officer of the Commission.

Division 4.—Staff.

Appointment
of officers.

24. The Commission may appoint such officers as it thinks necessary for the purposes of this Act.

Requirements
for
appointment.

25.—(1.) Subject to the next succeeding sub-section, a person shall not be appointed as an officer of the Commission unless—

(a) he is a British subject;

(b) the Commission is satisfied as to his health and physical fitness; and

(c) he makes and subscribes, before a Justice of the peace or a Commissioner for taking Affidavits, an oath or affirmation of allegiance in accordance with the form in the Schedule to the Constitution.

(2.) The Commission may appoint, to such positions or to positions of such classes as are approved by the Minister, persons who do not comply with all the provisions of the last preceding sub-section.

26.—(1.) Subject to this section, the terms and conditions of employment of officers appointed by the Commission shall be such as are determined by the Commission.

Terms and conditions of employment.

(2.) The Commission shall not, except with the approval of the Minister, determine the salary of a position at a rate exceeding Two thousand five hundred pounds per annum.

(3.) Before giving or refusing his approval for the purposes of the last preceding sub-section, the Minister shall consult the Public Service Board.

(4.) Where a Commissioner, the Director or an officer appointed in pursuance of this Act was, immediately before his appointment, an officer of the Public Service of the Commonwealth—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as a Commissioner, as the Director or as an officer of the Commission shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c) the *Officers' Rights Declaration Act* 1928–1959 applies as if this Act and this section had been specified in the Schedule to that Act.

27. The Commission may employ such temporary or casual employees as it thinks fit, on such terms and conditions as the Commission determines.

Temporary and casual employees.

28. The *Public Service Arbitration Act* 1920–1960 does not apply in relation to the employment of officers or employees of the Commission.

Public Service Arbitration Act not to apply.

29. Nothing in this Act prevents the making of an industrial award, order, determination or agreement under any Act (other than the *Public Service Arbitration Act* 1920–1960) in relation to persons appointed or employed under this Act or affects the operation of any such award, order, determination or agreement in relation to persons so appointed or employed.

Preservation of certain awards.

30.—(1.) The *Commonwealth Employees' Compensation Act* 1930–1959 applies to a Commissioner, to the Director and to officers and employees of the Commission as if they were employees within the meaning of that Act.

Compensation to officers and employees.

(2.) Any liability to pay compensation under that Act as applied by this section shall be borne by the Commission.

Division 5.—Finances of the Commission.

Transfer to
Commission of
assets, and
assumption by
Commission of
liabilities, of
Commonwealth
Serum
Laboratories.

31.—(1.) Upon the commencement of this Act—

- (a) the Minister shall transfer or cause to be transferred to the Commission the assets owned by the Commonwealth and held or used in connexion with, or arising from the business of, the undertaking known as the Commonwealth Serum Laboratories; and
- (b) the Commission is, by force of this section, liable to pay, satisfy, observe, perform and discharge the debts, liabilities and obligations of the Commonwealth in connexion with, or arising from the business of, that undertaking.

(2.) The Commission shall indemnify the Commonwealth, and keep the Commonwealth indemnified, from and against all actions, claims, demands, proceedings, suits, damages, expenses and costs that may be brought against, or incurred by, the Commonwealth at any time for or in respect of a debt, liability or obligation that the Commission is liable to pay, satisfy, observe perform or discharge under paragraph (b) of the last preceding sub-section.

(3.) In this section, “ assets ” includes—

- (a) plant, machinery, equipment, office furniture, fittings, motor vehicles and stock in trade;
- (b) book and other debts due to the Commonwealth and the benefit of any securities for those debts;
- (c) the benefit that is capable of assignment of all pending contracts;
- (d) the amount standing to the credit of the Commonwealth Serum Laboratories Trust Account at the commencement of this Act;
- (e) all other property, rights or interests to which the Commonwealth is entitled and which it may assign; and
- (f) all appropriate records maintained by the Commonwealth,

but does not include—

- (g) land (including buildings on land); and
- (h) stocks of biological products that are not prescribed for the purpose of paragraph (a) of section nineteen of this Act.

Capital of the
Commission.

32. The capital of the Commission at any time is an amount equal to the sum of—

- (a) the value, as determined by the Treasurer and notified by him to the Commission, of the assets transferred to the Commission under the last preceding section; and

(b) such amounts as have been paid to the Commission by the Treasurer out of moneys appropriated by the Parliament for the purposes of the Commission, less any amounts of capital that have been repaid to the Commonwealth by the Commission.

33.—(1.) Interest is not payable to the Commonwealth on the capital of the Commission but the Commission shall pay to the Commonwealth, out of the profits of the Commission for a financial year, such amount as the Treasurer, after consulting the Minister, determines.

Payments to
Commonwealth
by Commission.

(2.) The capital of the Commission is repayable to the Commonwealth at such times and in such amounts as the Treasurer, after consulting the Minister, determines.

(3.) In the making of a determination under either of the last two preceding sub-sections, the Treasurer shall have regard to any advice that the Commission has furnished to the Minister in relation to the financial affairs of the Commission.

34.—(1.) The Commission may, with the consent of the Treasurer, borrow moneys for temporary purposes on overdraft from the Reserve Bank of Australia or from such other bank as the Treasurer approves.

Borrowing
by the
Commission.

(2.) The Treasurer may, out of moneys appropriated by the Parliament for the purposes of this Act, make advances to the Commission of such amounts, and on such terms, as he thinks fit.

(3.) The Commission may, with the consent of the Treasurer, borrow moneys, whether for a temporary purpose or not, otherwise than in accordance with the preceding provisions of this section.

(4.) The Commission shall not borrow moneys otherwise than in accordance with this section.

35.—(1.) The Commission shall open and maintain an account or accounts with the Reserve Bank of Australia and may open and maintain an account or accounts with such other bank or banks as the Treasurer approves.

Bank accounts.

(2.) The Commission shall pay all moneys received by it into an account referred to in this section.

36.—(1.) Subject to this section, the moneys of the Commission shall be applied only—

Application
of moneys
by Commission.

(a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Commission in the performance of its functions under this Act;

(b) in payment of the remuneration and allowances of Commissioners; and

(c) in making any other payments that the Commission is authorized or required to make under this Act.

(2.) Moneys of the Commission not immediately required for the purposes of the Commission may be invested on fixed deposit with the Reserve Bank of Australia or with any other bank approved by the Treasurer, or in securities of the Commonwealth.

Estimates of
receipts and
expenditure.

37. The Commission shall, not later than the thirty-first day of March in each year, prepare and submit to the Minister estimates, in accordance with such form as the Minister directs, of its receipts and expenditure for the financial year commencing on the following first day of July.

Loss resulting
from
compliance with
Minister's
determination.

38. Where—

- (a) the Commission undertakes research, installs or maintains plant or equipment or produces or holds stocks of a biological product in accordance with a determination by the Minister under section nineteen of this Act;
- (b) the Commission satisfies the Minister that the operations (including the undertaking of research) carried on by the Commission in accordance with the determination have been so carried on at a loss in a financial year; and
- (c) a loss results in that financial year from the whole of the operations of the Commission,

the Commission is entitled to be reimbursed by the Commonwealth to the extent of the first-mentioned loss or to the extent of the second-mentioned loss, whichever is the less.

Profits of the
Commission.

39.—(1.) For the purposes of this Act, the amount of the profits of the Commission for a financial year is the amount (if any) remaining after deducting from the revenue received or receivable in respect of that financial year the expenditure properly chargeable against that revenue.

(2.) For the purpose of the last preceding sub-section, the expenditure of the Commission properly chargeable against the revenue received or receivable in respect of a financial year includes—

- (a) charges and expenses accrued in that year but not paid;
- (b) provision made in that year for obsolescence and depreciation of assets;
- (c) provision made in that year in lieu of insurance;
- (d) provision made in that year for staff superannuation; and
- (e) provision made in that year for income tax,

but does not include expenditure charged against amounts provided out of revenue of a previous year or expenditure in payment of charges and expenses accrued in a previous year.

(3.) The profits of the Commission for a financial year shall be applied in the first place in payment of such sums as have been determined by the Treasurer under sub-section (1.) of section thirty-three of this Act and the balance (if any) shall be applied in such manner as the Minister, with the concurrence of the Treasurer, determines.

(4.) In the making of a determination under the last preceding sub-section, the Minister and the Treasurer shall have regard to any advice that the Commission has furnished to the Minister in relation to the financial affairs of the Commission.

40. The Commission shall keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over its assets and the incurring by it of liabilities.

Proper
accounts to be
kept.

41.—(1.) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission, and shall forthwith draw the Minister's attention to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

Audit.

(2.) The Auditor-General shall, at least once in each year, report to the Minister the result of the inspection and audit carried out under the last preceding sub-section.

(3.) The Auditor-General or an officer authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commission relating directly or indirectly to the receipt or payment of moneys by the Commission or to the acquisition, receipt, custody or disposal of assets of the Commission.

(4.) The Auditor-General or an officer authorized by him may make copies of or take extracts from any such accounts, records, documents or papers.

(5.) The Auditor-General or an officer authorized by him may require a Commissioner or an officer of the Commission to furnish him with such information in the possession of the Commissioner or officer or to which the Commissioner or officer has access as the Auditor-General or authorized officer considers necessary for the purposes of an inspection or audit under this Act, and the Commissioner or officer of the Commission shall comply with the requirement.

42.—(1.) Subject to this section, the Commission is subject to taxation under the laws of the Commonwealth, but is not subject to taxation under a law of a State or Territory of the Commonwealth to which the Commonwealth is not subject.

Liability
taxation.

1961.

Commonwealth Serum Laboratories.

No. 38.

PART III.—MISCELLANEOUS.

45. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act. **Regulations.**

(2.) The Commission is not a public authority for the purposes of paragraph (d) of section twenty-three of the *Income Tax and Social Services Contribution Assessment Act 1936-1961*.

(3.) For the purposes of the *Income Tax and Social Services Contribution Assessment Act 1936-1961*, the cost to the Commission of any asset transferred to the Commission under section thirty-one of this Act shall be deemed to be the value of that asset as determined by the Treasurer under section thirty-two of this Act.

Division 6.—Reports.

Commission to
keep Minister
informed.

43.—(1.) The Commission shall from time to time inform the Minister concerning the general conduct of its business.

(2.) The Commission shall furnish to the Minister such information relating to its operations as the Minister requires.

Annual Report
of Commission.

44.—(1.) The Commission shall, as soon as practicable after each thirtieth day of June, prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves.

(2.) The report shall deal specifically with any operations of the Commission in respect of which a determination by the Minister under section nineteen of this Act was in force during the year and the financial statement shall show separately the financial results of any such operations.

(3.) Before furnishing the financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and the state of the affairs of the Commission;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act;
- (d) as to the adequacy of provision in the nature of reserves made in the accounts of the Commission; and
- (e) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4.) The Minister shall lay the report and financial statements of the Commission, together with the report of the Auditor-General, before each House of the Parliament within fifteen sitting days of that House after their receipt by the Minister.