

(4.) The appearance of any such officer, and his statement that he appears by authority of the Commissioner or Deputy Commissioner, shall be sufficient evidence of such authority.

Minimum
penalty.

Inserted by
No. 6, 1944,
s. 15.

25B. The minimum penalty for any offence against this Act or the regulations shall be a fine of Two pounds, and that minimum penalty shall not be liable to reduction under any power of mitigation which would, but for this section, be possessed by the Court.

Time for com-
mencement of
prosecutions.

Inserted by
No. 6, 1944,
s. 15.

25C.—(1.) A prosecution in respect of any offence against section twenty-seven of this Act may be commenced at any time within three years after the commission of the offence.

(2.) A prosecution in respect of any offence against section twenty-two, twenty-three or twenty-four of this Act may be commenced at any time.

Averment of
prosecutor
sufficient.

Inserted by
No. 6, 1944,
s. 15.

25D.—(1.) In any proceedings by the Crown for the recovery of a penalty under this Act or the regulations, any averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter averred.

(2.) This section shall apply to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3.) Any evidence given in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) This section shall not apply to—

- (a) averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

PART V.—MISCELLANEOUS.

Power to search
premises.

26. On information given before a justice of the peace upon oath that there is just cause to suspect any person of being guilty of any indictable offence against this Act, the justice may, by warrant under his hand, cause to be searched every house, room, shop, building, or place—

- (a) belonging to or occupied by the suspected person, or
- (b) in which he is suspected of being or having been in any way engaged or concerned in the commission of any

such offence, or of secreting any machinery, implements, or utensils applicable to the commission of any such offence,

and if upon such search any of those several things are found, they may be seized and carried away, and shall afterwards be delivered over to the Commissioner who may, as he thinks fit, destroy, dispose of, or otherwise deal with, them.

26A.—(1.) The Commissioner may, by notice in writing, require any person, whether a proprietor of an entertainment or not—

Commissioner may obtain information and evidence.

(a) to furnish him with such information as he requires; or

(b) to attend and give evidence before him or before any officer authorized by him in that behalf,

Inserted by No. 6, 1944, s. 16.

for the purpose of inquiring into any matter arising in connexion with any of the provisions of this Act, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.

(2.) The Commissioner may require the information or evidence to be given on oath and either orally or in writing, and for that purpose he or the officer so authorized by him may administer an oath.

(3.) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

(4.) A person on whom a requirement has been made under this section shall not, without just cause shown by him—

(a) refuse or fail to furnish any information which he has been required to furnish, or furnish any information which is false or misleading in any particular; or

(b) refuse or neglect duly to attend and give evidence as required, or to answer truly and fully any question put to him, or to produce any book or papers required of him, by or in pursuance of any such requirement.

Penalty: One hundred pounds.

26B. The Commissioner, or any officer authorized by him in that behalf, shall at all times have free access to all buildings, places, books, documents and other papers for any of the purposes of this Act and for any of those purposes may make extracts from any such books, documents or papers.

Access to books, &c.
Inserted by No. 6, 1944, s. 16.

26c. Securities given for the purposes of this Act shall not be subject to stamp duty under the law of any State or Territory of the Commonwealth.

Stamp duty not payable on securities.

Inserted by No. 6, 1944, s. 16.*

26D. Any person who obstructs or hinders any person acting in the discharge of his duty under this Act, or the regulations thereunder, shall be guilty of an offence.

Obstructing officers.

Inserted by No. 6, 1944, s. 16.

Penalty: Fifty pounds.

* Sub-section (2.) of section 16 of the *Entertainments Tax Assessment Act 1944* reads as follows:—

“(2.) Section twenty-six c inserted in the Principal Act by this section shall be deemed to have come into operation on the first day of October, One thousand nine hundred and forty-two.”

Entertainments
to be
registered.

27.—(1.) Unless exempted by the regulations, every proprietor of an entertainment shall, within such time and in such manner as is prescribed, register the entertainment.

(2.) A person shall not hold, promote, give, carry on or launch any entertainment not duly registered in accordance with the provisions of the last preceding sub-section.

(3.) An owner, lessee or other person for the time being in possession, or entitled to possession of, or having the control of any premises, shall not permit or cause to be permitted any entertainment to be held in those premises unless he is first satisfied that the entertainment is duly registered in accordance with the provisions of sub-section (1.) of this section.

Penalty: One hundred pounds.

Regulations.

28. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular—

- (a) for the supply and use of stamps or stamped tickets, or for the stamping of tickets sent to be stamped; and for securing the defacement of stamps when used;
- (b) for the use of tickets covering the admission of more than one person and the calculation of the tax thereon; and for the payment of tax on the transfer from one part of a place of entertainment to another;
- (c) for making refunds or allowances for stamps or stamped tickets spoiled or not used, or used for admission to any entertainment in any case in which the payments made for such admission have been refunded by the proprietor;
- (d) for controlling the use of barriers or mechanical contrivances (including the prevention of the use of the same barrier or mechanical contrivance for payments of a different amount), and for securing proper records of admission by means of barriers or mechanical contrivances;
- (da) for prescribing that prosecutions in respect of offences against any regulation may be commenced at any time, or within a specified time; and
- (e) for prescribing penalties, not exceeding Fifty pounds, for any breach of the regulations.

Inserted by
No. 6, 1944,
s. 17.

S. 29 repealed
by No. 4, 1946,
s. 2.

* * * * *

ESTATE DUTY ACT 1914-1941.^(a)

An Act to impose Duties upon the Estates of Deceased Persons.

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

1. This Act may be cited as the *Estate Duty Act 1914-1941*.^(a) Short title.
Short title
amended,
No. 32, 1918,
s. 2.
Incorporation.
2. The *Estate Duty Assessment Act 1914* shall be incorporated and read as one with this Act.^(b)
3. Estate duty is imposed at the rates declared in the Schedule to this Act upon the estates of deceased persons dying after the commencement of this Act.^(c) Imposition of
succession
duties.

THE SCHEDULE.^(d)

RATES OF ESTATE DUTY.

- (a) Where the value for duty of the estate does not exceed Ten thousand pounds—Three pounds per centum.
- (b) Where the value for duty of the estate exceeds Ten thousand pounds but does not exceed Twenty thousand pounds—Three pounds per centum increasing by Three one-hundredths of one pound per centum for every complete One hundred pounds by which that value exceeds Ten thousand pounds.
- (c) Where the value for duty of the estate exceeds Twenty thousand pounds but does not exceed One hundred and twenty thousand pounds—Six pounds per centum increasing by Two one-hundredths of one pound per centum for every complete One hundred pounds by which the value exceeds Twenty thousand pounds.
- (d) Where the value for duty of the estate exceeds One hundred and twenty thousand pounds but is less than Five hundred thousand pounds—Twenty-six pounds per centum increasing by One two-hundredths of one pound per centum for every complete One thousand pounds by which the value exceeds One hundred and twenty thousand pounds.
- (e) Where the value for duty of the estate is Five hundred thousand pounds or more—Twenty-seven pounds eighteen shillings per centum.

Substituted by
No. 13, 1940,
s. 3 and again
by No. 51,
1941, s. 3.

(a) The *Estate Duty Act 1914-1941* comprises the Acts set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Estate Duty Act 1914</i> ..	1914, No. 25 ..	21st December, 1914	21st December, 1914
<i>Estate Duty Act 1940</i> ..	1940, No. 13 ..	20th May, 1940 ..	20th May, 1940
<i>Estate Duty Act 1941</i> ..	1941, No. 51 ..	3rd December, 1941 ..	3rd December, 1941

(b) Held by the High Court that this incorporation has not the effect of rendering this Act an Act dealing with more than one subject of taxation, nor does it tax one person in respect of property which belongs to another. *National Trustees, Executors and Agency Co. of Australasia Ltd. and others v. Federal Commissioner of Taxation*, (1916) 22 C.L.R. 367; 22 A.L.R. 409.

(c) See footnote (a) to s. 8 of the *Estate Duty Assessment Act 1914-1950*, at p. 1782, *infra*.

(d) Section 4 of the *Estate Duty Act 1940* is as follows:—

"4. The amendment effected by this Act shall apply to the estates of deceased persons dying on or after the date of the commencement of this Act."

Section 4 of the *Estate Duty Act 1941* is as follows:—

"4. The amendment effected by this Act shall apply to the estates of all persons dying on or after the date of the commencement of this Act."

ESTATE DUTY ASSESSMENT ACT 1914-1950.^(a)

An Act relating to the Imposition, Assessment, and Collection of Duties upon the Estates^(b) of Deceased Persons.

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

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Estate Duty Assessment Act 1914-1950*.^(a)

Short title.
Short title
amended,
No. 32, 1918,
s. 2.

(a) The *Estate Duty Assessment Act 1914-1950* comprises the *Estate Duty Assessment Act 1914* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Estate Duty Assessment Act 1914</i>	1914, No. 22 ..	21st December, 1914	21st December, 1914
<i>Estate Duty Assessment Act 1916</i>	1916, No. 29 ..	30th September, 1916	30th September, 1916
<i>Estate Duty Assessment Act 1922</i>	1922, No. 34 ..	18th October, 1922 ..	18th October, 1922
<i>Estate Duty Assessment Act 1928</i>	1928, No. 47 ..	28th September, 1928	28th September, 1928†
<i>Estate Duty Assessment Act 1940</i>	1940, No. 12 ..	20th May, 1940 ..	20th May, 1940‡
<i>Estate Duty Assessment Act 1942</i>	1942, No. 18 ..	3rd June, 1942 ..	3rd June, 1942§
<i>Estate Duty Assessment Act 1947</i>	1947, No. 16 ..	3rd June, 1947 ..	3rd June, 1947*
<i>Statute Law Revision Act 1950</i>	1950, No. 80 ..	16th December, 1950	31st December, 1950

(b) N.B. footnote (a) to s. 35, at p. 1801, *infra*, for decisions and *dicta* concerning the subject matter of this Act and the nature of the duty imposed.

† Section 17 of the *Estate Duty Assessment Act 1928* reads as follows:—

"17. The amendments effected by section two of this Act in section three of the Principal Act and by paragraphs (a) and (b) of section five of this Act in section eight of the Principal Act shall apply only to assessments in respect of estates of persons dying after the commencement of this Act and sections three and eight of the Principal Act shall remain unaffected by those amendments in the application of those sections to assessments in respect of estates of persons dying before the commencement of this Act."

‡ Section 7 of the *Estate Duty Assessment Act 1940* reads as follows:—

"7. The amendments effected by this Act shall apply to all assessments in respect of estates of deceased persons dying on or after the date of the commencement of this Act."

§ Section 11 of the *Estate Duty Assessment Act 1942* reads as follows:—

"11.—(1.) The amendments effected by sections four, six and seven of this Act shall apply to the estates of all persons dying on or after the date of the commencement of this Act.

(2.) The amendment effected by section five of this Act shall apply to the estates of all such members so dying on or after the third day of September, One thousand nine hundred and thirty-nine, and any assessment made prior to the commencement of this Act may, in order to give effect to that amendment, be amended notwithstanding anything contained in section twenty of the Principal Act as amended by this Act.

(3.) The amendments effected by sections eight and nine of this Act shall apply to all assessments issued on or after the date of the commencement of this Act."

* Section 6 of the *Estate Duty Assessment Act 1947* reads as follows:—

"6.—(1.) The amendments effected by paragraphs (a) and (b) of section three of this Act shall apply in relation to the estates of all persons dying after the commencement of this Act.

(2.) The amendment effected by paragraph (c) of section three of this Act shall apply to all assessments issued after the commencement of this Act.

(3.) The amendment effected by section four of this Act shall apply in relation to the estates of persons who have died or who die on or after the third day of September, One thousand nine hundred and thirty-nine.

(4.) The amendment effected by section five of this Act shall apply to all assessments, and all amendments of assessments, notice of which is or has been given on or after the twenty-seventh day of March, One thousand nine hundred and forty-seven:

Provided that that amendment shall not operate to prevent or affect the allowance of a deduction claimed before that date."

2. This Act shall be divided into Parts as follows:—

Parts.

PART I.—Introductory.

PART II.—Administration.

PART III.—Estate Duty.

PART IV.—Returns and Assessments.

PART V.—Objections and Appeals.

PART VI.—Collection and Recovery of Duty.

PART VII.—Miscellaneous.

3. In this Act, unless the contrary intention appears—

Definitions.

“Administrator” means any executor to whom probate of a will is granted, or any person to whom letters of administration, with or without a will annexed, is granted, and also any person who, by virtue of any administration, becomes entitled to administer, take charge of, or become receiver of, any property of a deceased person:

Amended by
No. 29, 1916,
s. 2, by No. 47,
1928, s. 2 and
by No. 18, 1942,
s. 3.

“Assistant Commissioner” means the Assistant Commissioner of Taxation:

“Board of Review” means a Board of Review constituted under the *Income Tax Assessment Act* 1936 or under that Act as amended;

“Debts” includes probate and succession duties payable under any State Act, but does not include voluntary debts:^(a)

“Duty” means estate duty under this Act:

“Estate” includes both real and personal estate:

“Gift *inter vivos*” includes every gift absolute and every non-testamentary disposition of property, whether by way of conveyance, transfer, appointment under power, declaration of trust or otherwise, made by any person either before or after the commencement of this Act, and containing trusts or dispositions to take effect during his lifetime, not being made before and in consideration of marriage, or in pursuance of a binding contract entered into before and in consideration of marriage, or in favour of a *bonâ fide* purchaser or encumbrancer (other than a purchaser who is a relative by blood, marriage or adoption of the deceased person) for valuable consideration, and whether or not the

(a) Held by the High Court that “debts” include amounts paid by executors under the *Succession and Probate Duties Acts* 1892 to 1931 (Queensland) and the *Companies (Death Duties) Act* 1901 (New South Wales). *Equity Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation*, (1936) 55 C.L.R. 459; 42 A.L.R. 366; 10 A.L.J. 208. The amount actually paid for Victorian probate duty on the estate of T. was the amount assessed under the State Act less a deduction, allowed under that Act, of certain *ad valorem* duty already paid on settlements notionally included in T.’s dutiable estate. Held by the High Court that in assessing the estate to Federal estate duty there should be deducted pursuant to s. 17 of the Act only the amount of Victorian probate duty actually paid. *Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation*, (1941) 65 C.L.R. 134; 48 A.L.R. 1; 15 A.L.J. 299.

property comprised in the gift is subject to any limitation:^(a)

"Settlement" means a conveyance, transfer, appointment under power, declaration of trust or other non-testamentary disposition of property made by any person either before or after the commencement of this Act containing trusts or dispositions to take effect after the death of the settlor or any other person dying after the commencement of this Act;

"The Commissioner" means the Commissioner of Taxation;

"The Minister" means the Treasurer of the Commonwealth;

"The Supreme Court" means the Supreme Court of a State or part of the Commonwealth;

"Valuation Board" means a Valuation Board constituted under the *Land Tax Assessment Act 1910-1927* or under that Act as amended.

PART II.—ADMINISTRATION.

Commissioner.
Amended by
No. 29, 1916,
s. 3.

4.—(1.) There shall be a Commissioner of Taxation, who shall, subject to the control of the Minister, have the general administration of this Act.

(2.) There may be an Assistant Commissioner of Taxation.

(3.) The Commissioner of Land Tax shall be the Commissioner, and the Assistant Commissioner of Land Tax shall be the Assistant Commissioner.

(4.) The provisions of section five sub-sections (3.) and (4.), and section six of the *Land Tax Assessment Act 1910-1916* shall apply in relation to the offices of Commissioner and Assistant Commissioner under this Act as they apply in relation to the offices of Commissioner of Land Tax and Assistant Commissioner of Land Tax respectively.

Second
Commissioner.
Inserted by
No. 29, 1916,
s. 4; substituted
by No. 47,
1928, s. 3.

4A.—(1.) There may be a Second Commissioner of Taxation.

(2.) The person for the time being holding the office of Assistant Commissioner of Taxation shall be the Second Commissioner of Taxation; and any reference in this Act to the Assistant Commissioner shall be deemed to include a reference to the Second Commissioner of Taxation.

Powers of
Assistant
Commissioner.
Inserted by
No. 47, 1928,
s. 3.

4B.—(1.) Subject to this section, the Assistant Commissioner shall have and may exercise all the powers and functions of the Commissioner under this Act.

(2.) Where in this Act the exercise of any power or function by the Commissioner, or the operation of any provision of this

(a) Four days prior to her death a testatrix signed and sealed a deed purporting to dispose of the greater portion of her estate to her eight children in consideration of the payment of an annuity. At the time of her death three of the children and the administrator had not executed the deed. Held by the High Court that the transaction was not a gift *inter vivos* within the meaning of s. 8 (4) (a). *Federal Commissioner of Taxation v. Taylor*, (1929) 42 C.L.R. 80; 3 A.L.J. 65; 35 A.L.R. 169.

Act, is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised by the Assistant Commissioner, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of the Assistant Commissioner in relation to that matter.

(3.) Nothing in this section shall be deemed to confer upon the Assistant Commissioner any power or function of the Commissioner under sub-section (1.) of section four, section six, or section seven of this Act or to prevent the exercise of any power or function by the Commissioner, and the Commissioner shall have, in relation to any act of the Assistant Commissioner, the same power as if the act were done by himself.

5. There may be such Deputy Commissioners of Taxation as are required, who shall, subject to the control of the Commissioner, have such powers and functions as are prescribed or as the Commissioner directs.

6.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation), so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Commissioner.

7.—(1.) The Commissioner shall furnish to the Minister annually for presentation to the Parliament, a report on the working of this Act.

(2.) In the report the Commissioner shall draw attention to any breaches or evasions of this Act, which have come under his notice.

PART III.—ESTATE DUTY.

8.—(1.) Subject to this Act, estate duty shall be levied and paid upon the value,^(a) as assessed under this Act, of the estates of

(a) Held by the Supreme Court of Western Australia, that the value of shares in a company is not to be assessed at what their value would be in the event of the winding up of the company but at what they would fetch if sold in the open market on terms that the purchaser should take and hold them subject to the Articles of Association, including those articles containing restrictive conditions. *West Australian Trustee, Executor and Agency Co. Ltd. v. Deputy Commissioner of Taxation (Federal)*, (1930) 33 W.A.L.R. 83. Held by the High Court that in valuing shares which have no ordinary market value the main items to be taken into account are the earning power of the company and the safety of the capital assets in which the shareholder's money is invested. Transferability of the shares is also important but in certain cases the value of the shares would not necessarily be depreciated by reasonable restrictions on transfer. *Perpetual Trustee Co. (Ltd.) v. Federal Commissioner of Taxation*, (1942) 65 C.L.R. 572; 49 A.L.R. 93; 16 A.L.J. 31. The proper approach to the problem of determining the value of shares in a company as at the date of the death of a deceased holder was considered by the High Court in *McCarthy v. Federal Commissioner of Taxation*, (1944) 69 C.L.R. 1; 18 A.L.J. 21. For a further discussion on the proper approach to a valuation of shares see *Abrahams v. Federal Commissioner of Taxation*, (1945) 70 C.L.R. 23.

Deputy Commissioners.

Delegations by the Commissioner.

Amended by No. 29, 1916, s. 5 and by No. 47, 1928, s. 4.

Report by the Commissioner.

Duty on estates.

Amended by No. 47, 1928, s. 5, by No. 12, 1940, s. 3, by No. 18, 1942, s. 4 and by No. 16, 1947, s. 3.

persons dying after the commencement^(a) of this Act.^(b)

(2.) Estate duty shall be at such rates as are declared by the Parliament.^(c)

(3.)^(d) For the purposes of this Act the estate of a deceased person comprises—

(a) his real property in Australia (including real property over which he had a general power of appointment, exercised by his will);

(b) his personal property,^(e) wherever situate (including personal property over which he had a general power of appointment, exercised by his will), if the deceased was, at the time of his death, domiciled in Australia;^(f) and

(c) his personal property in Australia (including personal property over which he had a general power of appointment, exercised by his will), including all debts, money, and choses in action receivable or recoverable by the administrator in Australia, if the deceased had, at the time of his death, a foreign domicile.

(4.) Property^(g)—

(a) which has passed from the deceased person by any gift

(a) This Act was assented to at 10 a.m. on 21st December, 1914. Held by the Supreme Court of South Australia to have commenced at the preceding midnight and that it therefore applied to the estate of a person dying at 8 a.m. on 21st December, 1914. *In re Flavel (deceased)*, 1916 S.A.L.R. 47.

(b) Held by the High Court, that the "property derived from a deceased person" within the meaning of the *Succession Duties Act* 1893 of South Australia does not mean the property derived after deducting the amount of Commonwealth estate duty. *Registrar of Probates (S.A.) v. Rymill and others*, (1917) 23 C.L.R. 163; 23 A.L.R. 209. Similarly held by the Supreme Court of Queensland as regards the *Succession and Probate Duties Act* 1892-1906 (Queensland). *In re Patrick O'Brien (deceased)*, 1920 St.R. Qd. 124; 9 Q.W.N. 26. Held by the High Court (Gavan Duffy, C.J., Starke, Dixon, Evatt and McTiernan, J.J.; Rich, J., dissenting) that estate duty is not a "stamp duty or other tax" from which s. 52A of the *Commonwealth Inscribed Stock Act* 1911-1927 exempts stock, bonds, &c., issued pursuant to that Act. *Perpetual Trustee Co. (Ltd.) v. Federal Commissioner of Taxation*, (1923) 47 C.L.R. 402; 6 A.L.J. 78; 38 A.L.R. 305; 1 A.T.D. 375.

(c) See *Estate Duty Act* 1914-1941, *supra*.

(d) Held by the High Court (Rich, Starke, Dixon and Evatt, J.J.) that this sub-section on its true interpretation does not include the exercise of a contingent power in anticipation of a contingency depending on an uncertain event occurring, if at all, after the death of the deceased. *Grey v. Federal Commissioner of Taxation*, (1939) 62 C.L.R. 49; 46 A.L.R. 40; 13 A.L.J. 75.

(e) T. paid income tax upon an assessment which included the interest which had been received upon Commonwealth bonds issued in New York. After T.'s death her executors received from the Commonwealth a sum by way of refund of the income tax upon the interest. The Commissioner of Taxation subsequently included as an asset in her estate the amount so received describing it as a "right of action for recovery of unliquidated damages". Held by the High Court (Latham, C.J., Dixon and McTiernan, J.J.; Starke and Williams, J.J. dissenting) that no such right of action existed, the refund being a voluntary payment, and the amount of the refund should not be included in the estate for the purpose of estate duty. *Perpetual Executors and Trustees Association of Australia Ltd. v. Federal Commissioner of Taxation*, (1948) 77 C.L.R. 1; [1948] A.L.R. (Vol. 2) 448; 22 A.L.J. 382.

(f) Held by the High Court that movables situate abroad, which passed from a deceased person domiciled in Australia by gift *inter vivos* within one year of his death, are to be included as part of his estate for the purposes of this Act and that, so interpreted, this sub-section is *intra vires* the Parliament. *Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation*, (1933) 49 C.L.R. 220; 7 A.L.J. 168; 39 A.L.R. 367; 2 A.T.D. 330.

(g) In interpreting this sub-section as it read prior to the amendments effected by the amending Act of 1928 the High Court considered that the scheme of the Act is to tax the estate of a deceased person in respect of all property which that person owned at the date of his death and also previously owned property which, in the opinion of the Legislature, he had disposed of to avoid payment of duty, and that if the words of this section can fairly be read consistently with that scheme, it is proper so to read them. *Osborne v. Federal Commissioner of Taxation*, (1921) 29 C.L.R. 169; 27 A.L.R. 158.

inter vivos^(a) (not including any gift of property the value of which, together with the value of the property comprised in any other gifts made to the same person within three years before his decease, does not exceed Fifty pounds) or by a settlement made before or after the commencement of this Act within three years before his decease;^(b)

Provided that where the gift consists of a disposition of property in pursuance of a binding contract entered into for valuable consideration by a relative by blood, marriage or adoption of the deceased the property so disposed of shall not be taken into account for the purposes of this paragraph where the purchase price exceeds three-quarters of the value of the property at the date of disposition and where the price does not exceed three-quarters of that value, shall be so taken into account only to the extent of the excess of that value over that price; or

- (b) being an interest of any kind of the deceased person for his life in property comprised in a settlement (not being a settlement made by the deceased person) which interest he surrendered to any other person within three years before his decease:

Provided that the value which shall be assessed in respect of this interest shall be the total value or amount which would have been received by the person who surrendered the interest (calculated for expectation of his life from the date of the surrender of the interest) if it had not been surrendered by him; or

- (c) comprised in a settlement made by the deceased person under which he had any interest of any kind for his

(a) Held by the Supreme Court of Victoria, that gifts *inter vivos* are portion of the estate not merely for the purpose of assessment but also for the purposes of charge, collection and apportionment. *In the Will of Harper, deceased. Harper v. Harper*, 1922 V.L.R. 512; 43 A.L.J. 197; 28 A.L.R. 214. Held by the High Court that the gift of an annuity is a gift of part of the testator's estate and that the ascertainment of the value of that annuity is a question of fact. Held further, therefore, that Reg. 33 of Statutory Rules, 1917, No. 267, which purported to provide for the method of calculating the value of a limited interest in an estate, was *ultra vires*. *Chesterman v. Federal Commissioner of Taxation* (1923) 32 C.L.R. 362; 29 A.L.R. 224. (The decision of the High Court was varied on appeal to the Privy Council (*Chesterman v. Federal Commissioner of Taxation*, [1926] A.C. 128; 37 C.L.R. 317; 32 A.L.R. 9) but these points were not considered.) Four days prior to her death a testatrix by deed purported to dispose of the greater portion of her estate to her eight children in consideration of the payment of an annuity. At the time of her death three of the children and the administrator had not executed the deed. Held by the High Court that the transaction was not a gift *inter vivos* within the meaning of this paragraph. *Federal Commissioner of Taxation v. Taylor*, (1929) 42 C.L.R. 80; 3 A.L.J. 65; 35 A.L.R. 169.

(b) Held by the High Court that this paragraph does not deal with a different subject of taxation from the remainder of the Act and does not therefore violate s. 55 of the Constitution. *National Trustees, Executors and Agency Co. of Australasia Ltd. and others v. Commissioner of Taxation*, (1916) 22 C.L.R. 367; 22 A.L.R. 409. See also footnote (f) to paragraph (b) of ss. (3.) of this section, *supra*. It is the value of the property given or settled that must be valued, but not the value at the date of the gift or settlement, but at the date of the death of the deceased. (*Per* Starke, J. in *Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation*, (1941) 65 C.L.R. 134; 48 A.L.R. 1; 15 A.L.J. 299).

Held by the High Court (Williams, J.) that gifts of money by a deceased within three years before her death formed part of her estate within the meaning of this sub-section only to the extent to which they could still be traced as money or could be traced into other assets and identified and valued at the date of death. *Moss and Anor. v. Federal Commissioner of Taxation*, (1947) 77 C.L.R. 184; [1949] A.L.R. 370.

life whether or not that interest was surrendered by him before his decease, unless it was so surrendered more than three years before his decease;^{(a)(b)} or

(d) being the beneficial interest held by the deceased person, immediately prior to his death, in a joint tenancy or joint ownership with other persons;^(c) or

(e) being a beneficial interest in property which the deceased person had at the time of his decease, which beneficial interest, by virtue of a settlement or agreement made by him, passed or accrued on or after his decease to, or devolved on or after his decease upon, any other person;^(d) or

(a) A settlor settled two life insurance policies and the proceeds thereof, upon trust for his wife for an absolute interest with a proviso that if she predeceased him the policies and proceeds should be held upon trust for the settlor. The settlor predeceased his wife. Held by the High Court that the settlement did not contain an interest in the policies and proceeds for the life of the settlor within the meaning of this sub-section nor did the settlor have a beneficial interest therein which passed by virtue of the settlement after his decease within the meaning of s. 8 (4) (e). *Union Trustee Co. of Australia Ltd. v. Federal Commissioner of Taxation*, (1941) 65 C.L.R. 29; 47 A.L.R. 258; 15 A.L.J. 159.

A testator by his will declared trusts in specified shares in his trust estate in favour of his sons and daughters. The shares in favour of the daughters did not vest until they attained forty years of age or married under that age. The will further provided that the share of every daughter about to be married under that age should be by deed settled and assured upon her and her children as the trustees directed but assuring the annual income on the share to the daughter for life.

For the purpose of Federal estate duty on the estate of a daughter in respect of whom such a settlement was made the Commissioner of Taxation included in his assessment, as part of the daughter's estate, the value of the property the subject of the settlement.

Held by the High Court that he was not correct in so doing because the property was not "comprised in a settlement made by" the daughter within the meaning of this paragraph.

West v. Federal Commissioner of Taxation, (1949) 79 C.L.R. 319. See also note of Thomson's Case to s. 8 (4) (e) on p. 1785 (*infra*).

(b) Held by the High Court that this paragraph is not limited to interests in possession or vested interests but extends to contingent interests. *Craig v. Federal Commissioner of Taxation*, (1945) 70 C.L.R. 441; 51 A.L.R. 105; 19 A.L.J. 97.

(c) On the instructions of L. certain bonds were deposited in three joint accounts at banks in London on behalf of himself and his three daughters. Interest was paid into L.'s own account out of which he paid allowances to his daughters. L., who retained the right to withdraw the bonds, subsequently died. Held by the High Court that the deceased made gifts to his daughters of a joint interest in the bonds, that L. held a beneficial interest immediately before his death in a joint tenancy in the bonds which formed part of his estate within the meaning of this sub-section, and that the value of the beneficial interest of the deceased was equal to half the value of the bonds at the date of his death. *Fadden v. Deputy Federal Commissioner of Taxation*, (1943) 68 C.L.R. 76; 50 A.L.R. 179; 17 A.L.J. 158.

(d) Nearly three years prior to his death H. transferred his freehold and leasehold property to himself and his wife as joint tenants but continued to receive the rents and profits until the time of his death. The Commissioner having included this property in the assessment the Supreme Court of South Australia held that by virtue of s. 22 (1) the onus was on the appellants to prove that the property was not a beneficial interest of the deceased's. *In re Koennecke*, 1920 S.A.L.R. 398. A. contributed his son's share in a partnership but reserved the right to determine the son's interest in the partnership at any time and without assigning any reason. A. died without determining the interest. On appeal to the High Court (Starke, J.) from a decision of the Commissioner that portion of the sum was liable to assessment, the Court dismissed the appeal because of lack of jurisdiction (see footnote (a) to s. 27 (2.) *infra*), but indicated that the amount should not have been included in the assessment. *Perpetual Trustee Co. v. Commissioner of Taxation*, (1926) 32 A.L.R. 317. Where an option to purchase property at less than its market value was given by will, held by the Supreme Court of New South Wales that the value of the option formed portion of the estate and that duty was payable thereon. *Re Busby; Busby v. Busby*, (1930) 30 S.R. (N.S.W.) 399; 47 W.N. (N.S.W.) 155. By a deed of separation a partner in a firm charged his share of the profits with an annuity payable to his wife, and further provided that in the event of the termination of the partnership for any reason £40,000 out of any moneys received for his share should be invested to provide his wife's annuity. His death terminated the partnership. Held by the High Court (Latham, C.J., Starke, Dixon, Evatt and McTiernan, J.J.) that neither the present value of the annuity nor the obligation to provide the £40,000 was a debt to be deducted from the gross value of the estate. Held further (Latham, C.J., dissenting) that the £40,000 was not properly included in the assessable estate save as to the reversionary interest of the deceased therein. *Bakewell v. Commissioner of Taxation*, (1937) 58 C.L.R. 743; 43 A.L.R. 173; 11 A.L.J. 34. Held by the High Court (Rich, Starke and Williams, J.J., Latham, C.J. and McTiernan, J. dissenting) that where on the death of one of the partners in a business the survivors exercised an option to take over his share in the capital of the partnership and paid for it in manner specified, no allowance being made for good will, the deceased partner at the time of his death had nevertheless a beneficial interest in the good

(f) being money payable to, or to any person in trust for, the widow, widower, children, grand-children, parents, brothers, sisters, nephews or nieces of the deceased under a policy of assurance on the life of the deceased where the whole of the premiums has been paid by or on behalf of the deceased, or, where part only of the premiums has been paid by or on behalf of the deceased, such portion of any money so payable as bears to the whole of that money the same proportion as the part of the premiums paid by or on behalf of the deceased bears to the total premiums paid,^(a)

Inserted by
No. 18, 1942,
s. 4.

shall for the purposes of this Act be deemed to be part of the estate of the person so deceased.

(4A.) Where a policy of assurance on the life of the deceased was in existence at the commencement of paragraph (f) of the last preceding sub-section, in ascertaining the money payable under that policy for the purposes of that paragraph there shall be deducted from the money actually payable an amount equal to the amount which, if invested at the date of that commencement and accumulated at three per centum per annum compound interest with yearly rests, would have produced, as at the date of death, an amount equal to the money actually payable.^(a)

Inserted by
No. 18, 1942,
s. 4.

(5.) Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, or public educational purposes^(b) in Australia or to a public hospital or public benevolent institu-

will within the meaning of this sub-section. *Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation*, (1944) 69 C.L.R. 270; 50 A.L.R. 315; 18 A.L.J. 180. See also footnote (a) to s. 8 (4.) (c) *supra*.

T. deposited money upon fixed deposit at interest in the joint names of himself and his son, the money to be payable to T. while living, then to the son. Before T.'s death the deposit, after several renewals, had been transferred to the Matured Fixed Deposit Account; all interest accruing before the last renewal had been paid to him and at his death the deposit and remaining interest was paid to his son. Held by the High Court (Webb, J.) that the property was, from the original deposit until T.'s death, held on the same trusts, that the son had no beneficial interest in T.'s lifetime, that interest passed to the son upon T.'s death by virtue of the settlement and the property was accordingly assessable for duty as property within the meaning of s. 8 (4.) (c); alternatively that, if the son had a beneficial interest during T.'s life subject to T.'s power of revocation, the power gave T. an interest for his life within the meaning of s. 8 (4.) (c). *Thomson v. Commissioner of Taxation*, (1949) 80 C.L.R. 344; [1950] A.L.R. 11; 24 A.L.J. 190.

(a) A testator and his wife executed a deed declaring that the proceeds of a policy of insurance upon the testator's life should be payable to the wife on trust to pay all expenses and duties relating to the testator's estate and to pay the residue, as a part of the residuary personal estate, to his legal representatives. The wife was sole beneficiary under the will in respect of the residuary estate. Held by the High Court that the wife took the residue beneficially not by virtue of the policy, but entirely by virtue of the will, that the money did not fall within this paragraph but within s. 8 (3.) (b) and that therefore no deduction under s. 8 (4A.) was allowable. *Williams v. Commissioner of Taxation*, (1950) 81 C.L.R. 359; [1950] A.L.R. 572; 24 A.L.J. 232.

(b) The meaning of "public educational purposes" was considered by the High Court in *Chesterman v. Federal Commissioner of Taxation*, [(1923) 32 C.L.R. 362; 29 A.L.R. 224], Isaacs, Rich and Starke, JJ., holding them to mean training or teaching, either bodily or mental. The decision of the High Court was varied on appeal to the Privy Council but wholly on the interpretation of the words "charitable purposes" which have since been omitted by the amending Act of 1928. *Chesterman v. Federal Commissioner of Taxation*, [1926] A.C. 128; 37 C.L.R. 317; 32 A.L.R. 9.

tion^(a) in Australia or as or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia.^(b)

Substituted by
No. 16, 1947,
s. 3.

(6.) Where a gift of property has been liable to gift duty under the provisions of the *Gift Duty Assessment Act* 1941, or of that Act as amended at any time, and the property is also included in the estate of the donor under this Act, there shall be deducted from the total duty to which the estate is liable under this Act the lesser of the following sums:—

- (a) the amount of gift duty paid or payable in respect of the gift; or
- (b) the amount by which the estate duty payable apart from this sub-section in respect of the estate is increased by reason of the inclusion of the property in the estate.

(a) The Royal Naval House, Sydney, which provides accommodation and recreation for naval ratings at a relatively small charge, is built on land made available by the State Government and is assisted by a subsidy from the Commonwealth Government as well as by subscriptions and donations. Held by the High Court (Starke, Dixon and Evatt, JJ.; McTiernan, J., dissenting) that the institution is not a "public benevolent institution". Held further by Starke and Dixon, JJ., that a public benevolent institution is an institution organized for the relief of poverty, sickness, destitution, or helplessness. *Perpetual Trustee Co. Ltd. v. Federal Commissioner of Taxation*, (1931) 45 C.L.R. 224; 5 A.L.J. 109; 37 A.L.R. 240. Per Starke, J., Church institutions not founded, organized or maintained by or under or in connexion with any public authority or managed by its representatives are not public benevolent institutions within the meaning of this sub-section. *Public Trustee (N.S.W.) v. Federal Commissioner of Taxation*, (1934) 51 C.L.R. 75; 8 A.L.J. 74. A residence and land devised to the Presbyterian Church (N.S.W.) Property Trust upon trust for the purpose of a home for aged women in straightened financial circumstances was held by the High Court to be a "public benevolent institution" within the meaning of this sub-section. *Lemm v. Federal Commissioner of Taxation*, (1942) 66 C.L.R. 399; 49 A.L.R. 119; 16 A.L.J. 246; 7 A.T.D. 138. The testator further devised and bequeathed his residuary estate upon trust to pay certain annuities and such regular or occasional sums as the trustees should think fit for the benefit and maintenance of the above home and certain other institutions. Held that other than the part devised and bequeathed to pay annuities the residuary estate was devised and bequeathed "to a fund established and maintained for the purpose of providing money for use" for public hospitals and public benevolent institutions within the meaning of this sub-section. *Ibid.* Per Williams, J.: It is no objection that the public hospital, public benevolent institution or fund is established by the will itself or that the trustees are authorized to apply the fund to assist unnamed institutions, so long as their discretion does not allow them to apply it otherwise than for one or more of the purposes mentioned in the sub-section. *Ibid.*

(b) A testator directed that the income from his residuary estate was to be used for certain objects, one of which was a payment to a scientific institution for a period, within the discretion of a public body, of a sum which might be reduced by that body. Held by the High Court (Dixon, J.) that no distinct and definable estate or interest was devised for scientific purposes. *Baker and others v. Federal Commissioner of Taxation*, (1932) 6 A.L.J. 111. Held by the Supreme Court of New South Wales that where an interest in remainder is bequeathed, &c., to an institution exempted from the payment of duty the duty must be imposed on the intervening estates. *Perpetual Trustee Co. Ltd. v. Shelley*, (1921) 21 S.R. (N.S.W.) 426; 38 W.N. (N.S.W.) 132. (As to the apportionment of the duty and manner of payment by a life tenant, see footnote (a) to s. 35, *infra*.) Portion of an estate was vested in trustees in trust for four named Church of England Homes for children and to such other homes for children founded by the Church of England having for their objects the care and control of children as the widow might direct and, after her death, as the trustees should think fit and to such additional institution or institutions as the widow or after her death the trustees might direct. Held by the High Court that the trusts, other than for the four named homes, were not within this sub-section and, even assuming that the four named homes were, they were excluded from the benefits of the sub-section by reason of the discretion. *Public Trustee (N.S.W.) v. Federal Commissioner of Taxation*, (1934) 51 C.L.R. 75; 8 A.L.J. 74. As to the effects of an order of a Court varying the terms of a will see *ibid.* As to the meaning of this sub-section as it read prior to the substantial amendments effected by the amending Act of 1928, see *Jackson and another v. Federal Commissioner of Taxation*, (1920) 27 C.L.R. 503.

Held by the High Court that a bequest of residuary estate "to such charitable or religious causes or institutions in Victoria as my trustees in their absolute discretion may determine with power to build a memorial hall or any other building" did not fall within any of the exemptions set out in this sub-section. *Teale v. Federal Commissioner of Taxation*, (1940) 63 C.L.R. 201; 46 A.L.R. 74; 13 A.L.J. 507.

Portion of an estate was given to the Treasurer of a Presbyterian intermediate hospital to invest, the income from the fund to be used to provide free hospital accommodation and medical services at the hospital for "deserving people who are unable to pay any fees or such fees as private patients in the said hospital are usually required to pay." Held by the High Court (Kitto, J.) that the bequest did not fall within this sub-section. *Ballarat Trustees Executors and Agency Co. Ltd. v. Commissioner of Taxation*, (1950) 80 C.L.R. 350; [1950] A.L.R. 487; 24 A.L.J. 186. Meaning of expression "in necessitous circumstances" considered. *Ibid.*

(7.) When any duty is lawfully paid in any place outside Australia in respect of any part of the estate situate outside Australia there shall be deducted from the total duty to which the estate is liable under this Act the lesser of the following sums—

- (a) the amount of duty so paid in the place outside Australia;
or
- (b) the duty which is payable under this Act in respect of that part of the estate.^(a)

(8.) In this Act, “public educational purposes” includes the establishment or endowment of an educational institution for the benefit of the public or a section of the public.

9.—(1.) From the value of the estate of a person who is or has been a member of the naval, military or air forces of the Commonwealth, or of any other part of the King's dominions, or of any Ally of His Majesty, during the state of war which commenced on the third day of September, One thousand nine hundred and thirty-nine, and who, during that state of war, or within three years after its termination, has died or dies on active service or as a result of injuries received or disease contracted on active service during that state of war there shall be deducted in respect of such part of the estate as passes to the widow, children, grandchildren, parents, brothers, sisters, nephews or nieces of the deceased, a sum of Five thousand pounds, or where the value of that part is less than Five thousand pounds, an amount equal to the value of that part.

Estates of persons dying on active service.
Substituted by No. 18, 1942, s. 5.
Amended by No. 16, 1947, s. 4.

(2.) Where any property in respect of which a deduction has been allowed under the last preceding sub-section later forms the whole or part of the estate of some other such person so dying, there shall be excluded from the estate of that other person so much of that property as passes to the widow, children, grandchildren, parents, brothers, sisters, nephews or nieces of the other person.

(3.) Where the question as to whether such a person has or has not died as a result of injuries received or disease contracted on active service has been finally determined for the purposes of the *Australian Soldiers' Repatriation Act 1920-1941*^(b) by an authority constituted under that Act, the certificate by that authority that that person has or has not so died shall, for the purposes of this Act, be conclusive evidence that the person has or has not so died, as the case may be.

^(a) Held by the High Court that the method of determining the amount of Federal estate duty payable in respect of that part of an estate situated outside Australia is to take that proportion of the total duty to which the estate is liable which the value of the assets outside Australia, after the deduction of a rateable part of all debts, bears to the net value of the whole estate. *Perpetual Trustee Company (Limited) and Another v. Federal Commissioner of Taxation*, (1938) 59 C.L.R. 611; 44 A.L.R. 216; 12 A.L.J. 35.

^(b) Now the *Repatriation Act 1920-1950*, *infra*.

PART IV.—RETURNS AND ASSESSMENTS.

Returns.

Returns to
be lodged.

10.—(1.) For the purpose of assessment and levy of estate duty every administrator shall, except as prescribed, within the prescribed period, prepare and furnish in the prescribed form and at the prescribed place a statement setting forth a full and complete return of all the estate in Australia of the deceased person in respect of whose estate he is the administrator.^(a)

(2.) The statement shall set forth the description and values of the items comprising the estate, before deducting any debts or other charges upon the estate, and shall also set forth in detail all the debts and other charges upon the estate, distinguishing between secured and unsecured debts and describing and valuing any security for any such debts.^(a)

Commissioner
may require
further or other
returns.

11. The Commissioner may require such further or other returns as he deems necessary for the full and complete assessment and collection of the duty assessable under this Act, and may permit the administrator or other person interested to make alterations in any return lodged, upon the Commissioner being satisfied as to the necessity for the alteration.

Verification
of returns.

12. Every return required to be furnished under this Act shall be verified by a statutory declaration by the administrator.

Assessments.

Arrangement
with States to
supply
information.

13. The Governor-General may make arrangements with the Governor of a State for the supply to the Commissioner of particulars of assessments made by the State for the purpose of collecting probate and succession duty under the laws of the State.

State
valuations
may be
adopted.

14. In assessing duty in accordance with this Act, the Commissioner may if he thinks fit adopt, as far as it extends, the value of dutiable estate as assessed for duty under a State law in respect of the same estate.

Commissioner
to make
assessments.

15. From the returns, particulars and values so furnished, supplied or ascertained, and from any other information in his possession, or from any one or more of these sources, and whether

^(a) *Per* the Supreme Court of Victoria, "estate" as used in this section includes gifts *inter vivos* as defined by s. 8 (4.) (a). *In the Will of Harper, deceased.* *Harper v. Harper*, 1922 V.L.R. 512; 43 A.L.J. 197. Held by the High Court that in assessing the value of stocks and bonds it is not permissible to deduct the amount of brokerage which would be paid if they were sold. *Elder's Trustee and Executor Co. Ltd. v. Deputy Federal Commissioner of Taxation*, (1934) 51 C.L.R. 694; 8 A.L.J. 231; 4 A.T.D. 135.

Held by the High Court that amounts paid by executors under the *Succession and Probate Duties Act 1892 to 1931* (Queensland) and the *Companies (Death Duties) Act 1901* (New South Wales) are deductible as debts. *Equity Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation*, (1936) 55 C.L.R. 459; 42 A.L.R. 366; 10 A.L.J. 208. *Semble per* Dixon, Evatt and McTiernan, J.J., the words "other charges on the estate" cover at least claims upon the estate analogous to debts, as for instance, equitable obligations to make payments in money, but it is a necessary consequence of s. 17 that no deduction can be made under them of pecuniary liabilities of the deceased which at the time of his death were not "due and owing". *Bakewell v. Commissioner of Taxation*, (1937) 58 C.L.R. 743; 43 A.L.R. 173; 11 A.L.J. 34.

any return has been furnished or not, the Commissioner shall cause an assessment to be made for the purpose of ascertaining the amount upon which duty shall be levied in accordance with this Act.

16. If—

(a) any administrator makes default in furnishing any return; or

(b) the Commissioner is not satisfied with the return made by any administrator; or

(c) the Commissioner has reason to believe that any estate (though no return has been furnished) is dutiable,

the Commissioner may cause to be made an assessment of the amount on which, in his judgment, duty ought to be levied, and the estate shall be liable to duty thereon, except so far as the amount is, on appeal, shown to be excessive.

Default assessments.

Amended by No. 47, 1928, s. 6.

16A.^(a)—(1.) Where the Commissioner is of the opinion that it is necessary that the following provisions should apply for the purpose of assessing the value for duty of an estate for the purposes of this Act, the following provisions shall apply:—

Value of shares and stock.

Inserted by No. 18, 1942, s. 6.

(a) the value of shares or stock in any company, whether incorporated in Australia or elsewhere, shall be determined upon the assumption that the memorandum and articles of association or rules of the company, at the date of death, satisfied the requirements prescribed by the Committee or governing authority of the Stock Exchange at the place where the share or stock register is situate for the purpose of enabling that company to be placed on the current official list of that Stock Exchange;

(b) no regard shall, in determining the value of any such shares or stock, be had to any provision in the memorandum or articles of association or rules of the company whereby or whereunder the value of the shares or stock of a deceased or other member is to be determined; and

(c) where the estate includes any shares or stock in any company the shares or stock of which are not or is not quoted in the official list of any Stock Exchange, the Commissioner may, in his discretion, notwithstanding anything contained in the last two preceding paragraphs, adopt as the value of any such shares or stock such sum as the holder thereof would receive in the event of the company being voluntarily wound up on the date of death.

(a) The application of this section was considered in *Federal Commissioner of Taxation v. Sagar*, (1946) 71 C.L.R. 421; 20 A.L.J. 129, and in *Commissioner of Taxation v. Shaw*, (1950) 80 C.L.R. 1; [1950] A.L.R. 217. *Per Williams, J.* and *Latham, C.J.* in those cases respectively. Paragraph (a) does not require the valuation to be made on the assumption that the company was actually listed on the Stock Exchange at the date of death.

(2.) Any Board or Court having jurisdiction to determine, for the purposes of this Act, the value of any shares or stock to which the last preceding sub-section applies, may substitute its own opinion for, or use its own discretion in lieu of, any opinion or discretion of the Commissioner under that sub-section.

Deductions
from gross
value of
estate.

Substituted by
No. 16, 1947,
s. 5.

17.—(1.) For the purpose of assessing the value for duty of the estate of a deceased person, there shall, subject to this section, be deducted from the gross value of the assessable estate—

- (a) if the deceased person was domiciled in Australia at the time of his death, all debts due and owing by him at the time of his death;^(a)
- (b) if the deceased person was not domiciled in Australia at the time of his death, all debts due and owing by him at the time of his death to persons resident in Australia, or contracted to be paid in Australia, or charged on property situate in Australia;^(a)
- (c) Federal and State income taxes assessed in respect of income derived by him before the date of his death and Federal income taxes assessed in respect of any amount which is included in the assessable income of the trust estate of the deceased person in accordance with the provisions of section one hundred and one A of the *Income Tax Assessment Act* 1936-1941, or of that Act as amended at any time, and which is included in the estate for the purposes of this Act;^(b) and
- (d) Federal and State land taxes assessed in respect of the ownership, on or before the date of his death, of land owned or deemed to be owned by him.

(2.) No deduction under this section shall be allowed in respect of—

- (a) provisional tax or provisional contribution payable in pursuance of the *Income Tax Assessment Act* 1936-1944, or of the *Social Services Contribution Assessment Act* 1945, or of either of those Acts as amended at any time; or

(a) *Per* the High Court: Although the word "debts" as used in these sections (this case and the following one were decided on ss. 17 and 18 as they stood prior to the amending Act of 1947) does not include succession and probate duties (which are included in the definition of "debts" in section 3) these sections do not prevent the deduction of succession and probate duties if that deduction is authorized by other provisions. The High Court considered that this authority is to be found in the combined effect of the *Estate Duty Act* 1914 and sections 3 and 10 to 15 of this Act and accordingly held that amounts paid by executors under the *Succession and Probate Duties Acts* 1892 to 1931 (Queensland) and the *Companies (Death Duties) Act* 1901 (New South Wales) are deductible as debts. *Equity Trustees Executors and Agency Co. Ltd. v. Federal Commissioner of Taxation*, (1936) 55 C.L.R. 459; 42 A.L.R. 366; 10 A.L.J. 208. *Per* Dixon, Evatt and McTiernan, J.J. (Starke, J., dissenting): These sections exhaustively state what debts may be deducted in computing the value of estates for duty. *Bakewell v. Commissioner of Taxation*, (1937) 58 C.L.R. 743; 43 A.L.R. 173; 11 A.L.J. 34. See also footnote (a) to s. 3, at p. 1780, *supra*.

(b) In a case where income tax unpaid at the death of a taxpayer was afterwards partly remitted by a Board constituted under s. 95 of the *Income Tax Assessment Act* 1922-1934 it was held by the High Court (Williams, J.) that there was, until the actual remission, an existing liability to pay the full amount of tax as assessed and this amount was therefore deductible from the gross value of the deceased's estate. *Scott Fell v. Federal Commissioner of Taxation*, (1944) 69 C.L.R. 250; 50 A.L.R. 365; 18 A.L.J. 215.

- (b) taxes paid before the date of the death of the deceased person.

* * * * * S. 18 repealed by No. 16, 1947, s. 5.

18A.—(1.) From the value of the estate there shall be deducted— Statutory exemption.

- (a) where the whole of the estate passes by will, intestacy, gift *inter vivos*, settlement or right of survivorship to the widow, children or grand-children of the deceased—(a) Inserted by No. 12, 1940, s. 5. Amended by No. 18, 1942, s. 7.

(i) where the value of the estate does not exceed Two thousand pounds—a sum equal to the value of the estate; or

(ii) where the value of the estate exceeds Two thousand pounds—the sum of Two thousand pounds decreasing by One pound for every Ten pounds by which that value exceeds Two thousand pounds up to a value of Ten thousand pounds and thereafter decreasing by One pound for every Two pounds by which that value exceeds Ten thousand pounds;

- (b) where no part of the estate so passes to the widow, children or grand-children of the deceased—

(i) where the value of the estate does not exceed One thousand pounds—a sum equal to the value of the estate; or

(ii) where the value of the estate exceeds One thousand pounds—the sum of One thousand pounds decreasing by One pound for every Ten pounds by which that value exceeds One thousand pounds up to a value of Six thousand pounds and thereafter decreasing by One pound for every Eight pounds by which that value exceeds Six thousand pounds; or

- (c) where part only of the estate which is liable to be assessed passes by will, intestacy, gift *inter vivos*, settlement or right of survivorship to the widow, children or grandchildren of the deceased, the sum ascertained by adding the following amounts, namely—

(a) A testator by will gave his residuary estate to trustees on trust to pay the income to his widow and unmarried daughter and directed that after the death of the daughter the corpus should be divided amongst any children of the daughter who should attain the age of 21 years. Held by the High Court (Knox, C.J.) that as the residuary estate must pass either to the grand-children by will or, if there are no grand-children, to the widow and daughter by intestacy, the estate must go to members of the privileged class and should therefore be charged at the lower rate. *Smith v. Federal Commissioner of Taxation*, (1928) 40 C.L.R. 467; 2 A.L.J. 39; 34 A.L.R. 189. As to the position where the estate is not solely for the benefit of members of the privileged class, members of the non-privileged class also having an interest therein. see *In the Will of Davidson, deceased. The Perpetual Executors and Trustees Association of Australia Ltd. v. Davidson*, 1917 V.L.R. 748; 39 A.L.T. 140; 23 A.L.R. 415. (The cases in this footnote were decided on s. 8 (6.) as it stood prior to its omission and the enactment of this section by the amending Act of 1940.)

- (i) that portion of the deduction which would have been allowable under paragraph (a) of this sub-section if the whole of the estate had passed to the widow, children or grandchildren which bears the same proportion to that deduction as the value of the part of the estate which passes to the widow, children or grandchildren bears to the value of the estate; and
- (ii) that portion of the deduction which would have been allowable under paragraph (b) of this sub-section if no part of the estate had passed to the widow, children or grandchildren which bears the same proportion to that deduction as the value of the part of the estate which does not pass to the widow, children or grandchildren bears to the value of the estate,

and the balance remaining shall be the value for duty of the estate.

(2.) For the purposes of this section "value of the estate" means the value ascertained by deducting from the gross value of the estate liable to be assessed all the deductions allowable under this Act except the deduction allowable under this section and "value of the part of the estate" has a corresponding meaning.

Compounding
duties.

19. Where in the opinion of the Commissioner any estate is of such a nature or is so disposed of or circumstanced that the value thereof is not fairly ascertainable under this Act, he may compound the duty on such property on such terms as he thinks fit, and may give a discharge to the administrator or to any other person interested in the property upon payment of the duty according to such composition.

Amendment of
assessments.
Substituted by
No. 18, 1942,
s. 8.

20.—(1.) The Commissioner may, subject to this section, at any time amend any assessment by making such alterations therein or additions thereto as he thinks necessary, notwithstanding that duty may have been paid in respect of the assessment.

(2.) Where an administrator has not made to the Commissioner a full and true disclosure of all the material facts necessary for the making of an assessment, and there has been an avoidance of duty, the Commissioner may—

- (a) where he is of opinion that the avoidance of duty is due to fraud or evasion—within twelve years from the date upon which the duty became due and payable under the assessment; and
- (b) in any other case—within three years from the date upon which the duty became due and payable under the assessment,

amend the assessment by making such alterations therein or

additions thereto as he thinks necessary to correct an error in calculation or a mistake of fact or to prevent avoidance of duty, as the case may be.^(a)

(3.) Where an administrator has made to the Commissioner a full and true disclosure of all the material facts necessary for the making of an assessment, and an assessment is made after that disclosure, no amendment of the assessment increasing the liability of the estate in any particular shall be made except to correct an error in calculation or a mistake of fact, and no such amendment shall be made after the expiration of three years from the date upon which the duty became due and payable under that assessment.^(a)

(4.) No amendment effecting a reduction in the liability of an estate under an assessment shall be made except to correct an error in calculation or a mistake of fact, and no such amendment shall be made after the expiration of three years from the date upon which the duty became due and payable under that assessment.

(5.) Where an assessment has, under this section, been amended in any particular, the Commissioner may, within three years from the date upon which the duty became due under the amended assessment make, in respect of that particular, such further amendment in the assessment as, in his opinion, is necessary to effect such reduction in the liability of the estate under the assessment as is just.

(6.) Where an application for an amendment of the assessment of an estate is made within three years from the date upon which the duty became due and payable under that assessment, and the administrator has supplied to the Commissioner within that period all information needed by the Commissioner for the purpose of deciding the application, the Commissioner may amend the assessment when he decides that application notwithstanding that that period has elapsed.

(7.) Nothing contained in this section shall prevent the amendment of any assessment in order to give effect to the decision upon any appeal, or its amendment by way of reduction in any particular in pursuance of any objection made by the administrator or pending any appeal.

(8.) Where—

- (a) any provision of this Act is expressly made to depend in any particular upon a determination, opinion or judgment of the Commissioner; and
- (b) any assessment is affected in any particular by that determination, opinion or judgment,

^(a) A return stated as the value of a property a certain sum which, after an assessment based on it had issued, was proved not to represent the true (higher) value. The Commissioner issued an amended assessment based on the higher value. All parties acted *bona fide* and with reasonable diligence. Held by the High Court (McTiernan, J., and on appeal, Latham, C.J., Williams and Webb, J.J., Fullagar, J., dissenting) that there had been no "mistake of fact" within the meaning of these two sub-sections, and that "all the material facts" within the meaning of sub-section (2.) had appeared in the return. *Per* Fullagar, J.: The use of the word "disclosure" shows that s. 20 (2.) contemplates no more than a true statement of an administrator's honest opinion as to value. *Commissioner of Taxation v. Westgarth*, (1950) 81 C.L.R. 396; [1950] A.L.R. 439; 24 A.L.J. 129.

then if, after the making of the assessment it appears to the Commissioner that the determination, opinion or judgment was erroneous, he may correct it and amend the assessment accordingly in the same circumstances as he could under this section amend an assessment by reason of a mistake of fact.

(9.) Every alteration or addition which has the effect of imposing any fresh liability, or increasing any existing liability, shall be notified to the administrator affected or other person liable to pay the duty, and unless made with his consent shall be subject to objection.^(a)

(10.) An administrator shall be liable only for such additional or increased duty to the extent of any property then under his control or which can be applied by him for payment of such duty, unless it is owing to fraud or evasion on his part that the proper amount of duty was not paid in the first instance, in which case he shall be personally liable for the additional or increased duty.

(11.) If the amendment of any assessment made under this section has the effect of reducing the duty payable on the estate, the Commissioner shall refund the duty which has been paid in excess of the amount payable on the assessment as amended.

Validity of
assessments.

21. The validity of any assessment shall not be affected by reason that any provisions of this Act have not been complied with.

Evidence.
Amended by
No. 47, 1928,
s. 8.

22.—(1.) Production of any assessment or of any document under the hand of the Commissioner, Assistant Commissioner or a Deputy Commissioner purporting to be a copy of an assessment shall—

- (a) be conclusive evidence of the due making of the assessment; and
- (b) be conclusive evidence that the amount and all particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be *prima facie* evidence only.^(b)

(2.) The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any return or assessment shall for all purposes be sufficient evidence of the matter therein set forth, without the production of the original.

(a) A notification showed that the assessment had been increased owing to an increase in the goodwill of a business. After the executor had lodged an appeal and after the expiration of the period specified in sub-section (1.) of this section the Commissioner admitted that there had been no increase in the goodwill and purported to amend the notification so as to attribute the increased assessment to the value of an underlease. Held by the Supreme Court of South Australia that it had not been proved that the mistake was in the notification and not in the assessment and that, by virtue of sub-section (1.), the mistake could not therefore be rectified. *Kinderman v. Federal Commissioner of Taxation*, 1920 S.A.L.R. 237. N.B. This section has been considerably amended since the above case was decided.

(b) *Per* the Supreme Court of South Australia, the assessment, including a default assessment under s. 16, must, on appeal, stand unless proved to the satisfaction of the Court to be erroneous. *In re Koennecke*, 1920 S.A.L.R. 398.

23.—(1.) As soon as conveniently may be after an assessment is made the Commissioner shall cause notice in writing of the assessment to be given to the person liable to pay the duty.

Notice of
assessment.

(2.) The omission to give any such notice shall not invalidate the assessment.

PART V.—OBJECTIONS AND APPEALS.

24.—(1.) An administrator who is dissatisfied with the assessment of the Commissioner may, within thirty days after the service of notice of assessment, post or lodge with the Commissioner an objection in writing against the assessment, stating fully and in detail the grounds on which he relies:

Part V.
substituted by
No. 18, 1942.
s. 9.

Objection and
appeal.

Substituted by
No. 18, 1942,
s. 9.

Provided that, where the assessment is an amended assessment, an administrator shall have no further right of objection than he would have had if the amendment had not been made, except to the extent to which, by reason of the amendment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

(2.) The Commissioner shall consider the objection and may either disallow it or allow it either wholly or in part.

(3.) The Commissioner shall give to the objector written notice of his decision on the objection.

(4.) If the objector is dissatisfied with the decision of the Commissioner he may, within thirty days after the service by post of notice of that decision—

(a) in writing, request the Commissioner—

(i) to refer so much of the decision as relates to the value assigned to any property included in the estate to a Valuation Board for review of that value; or

(ii) to refer so much of the decision as does not relate to the value assigned to any property included in the estate to a Board of Review for a review of that decision; or

(b) in writing, request the Commissioner to treat his objection as an appeal and to forward it to the High Court, or to the Supreme Court of a State or Territory of the Commonwealth.

(5.) Notwithstanding anything contained in this section, where the assessment made by the Commissioner is based upon assessments made under the law of a State, a reference or an appeal shall not lie from such assessment unless an appeal has been made

from the State assessment upon which the assessment under this Act is based.^(a)

Reference to
Valuation
Board.

Substituted by
No. 18, 1942,
s. 9.

25.—(1.) Where the objector has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Valuation Board, the Commissioner shall, if the objector's request is accompanied by a deposit of One pound, refer the decision to the Valuation Board not later than sixty days after the receipt of the request.

(2.) The objector shall be limited on the review to the grounds which he has stated in his objection as being those upon which he objects to the value assigned to the property.

(3.) If the value assigned to the property included in the assessment has been reduced by the Commissioner after considering the objection, the reduced value shall be the value dealt with by the Valuation Board under the next succeeding sub-section.

(4.) Subject to the next succeeding sub-section, the Valuation Board shall give a decision and may either confirm the value assigned to the property in the assessment or reduce or increase that value.

(5.) In default of the appearance of the objector before the Valuation Board for the purpose of the review, the Valuation Board shall confirm the value assigned to the property in the assessment:

Provided that upon good cause shown, the Valuation Board may, within the prescribed time, re-open the matter and review the value assigned to the property in the assessment.

(6.) The objector may, within thirty days after the Valuation Board's decision, request the Commissioner, in writing, to refer his objection, so far as it relates to grounds not dealt with by the Valuation Board, to a Board of Review or to the High Court or the Supreme Court of a State or Territory of the Commonwealth.

(7.) The Commissioner or the objector may, within thirty days after the date of the Valuation Board's decision, appeal to the High Court from any decision of the Valuation Board under this section, which, in the opinion of the High Court, involves a question of law, and the Valuation Board shall, upon the request of the Commissioner or the objector, refer to the High Court any question of law arising before the Valuation Board, and the decision of the High Court thereon shall be final and conclusive.

Amended by
No. 80, 1950,
s. 3 and First
Schedule.

(a) *Per* the High Court (Starke, J.) this sub-section deals with the amount of assessment of a given property and not with the liability of that property to assessment. *Perpetual Trustee Co. v. Commissioner of Taxation*, (1926) 32 A.L.R. 317.

As to whether the whole decision of the Board, and not merely the question of law, is open to review on an appeal involving a question of law, *see per* Latham, C.J., in *Commissioner of Taxation v. Shaw*, (1950) 80 C.L.R. 1; [1950] A.L.R. 217 and *per* Williams, J., in *Federal Commissioner of Taxation v. Sagar*, (1946) 71 C.L.R. 421; 20 A.L.J. 129.

As to whether the right of appeal is confined to erroneous decisions of the Board upon questions of law, *see per* Latham, C.J., in *Commissioner of Taxation v. Shaw*, *supra*.

26.—(1.) Where the objector has, in accordance with section twenty-four of this Act, requested the Commissioner to refer a decision to a Board of Review, the Commissioner shall, if the objector's request is accompanied by a deposit of One pound, refer the decision to a Board of Review not later than sixty days after the receipt of the request.

Reference to
Board of
Review.
Substituted by
No. 18, 1942,
s. 9.

(2.) The objector shall be limited on the review to the grounds which he has stated in his objection.

(3.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment dealt with by the Board of Review under the next succeeding sub-section.

(4.) Subject to the next succeeding sub-section, the Board of Review shall give a decision and may confirm, reduce, increase or vary the assessment.

(5.) In default of the appearance of the objector before the Board of Review, for the purpose of review, the Board of Review shall confirm the assessment:

Provided that upon good cause shown, the Board of Review may, within the prescribed time, re-open the matter and review the assessment.

(6.) For the purpose of reviewing the assessment, a Board of Review shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of a Board of Review and its decisions upon review, shall for all purposes (except for the purpose of objections thereto and review thereof and appeals therefrom) be deemed to be assessments, determinations or decisions of the Commissioner:

Provided that a Board of Review shall not reduce or increase any value assigned in the assessment to any property, but shall accept as final the value assigned to the property by the Commissioner, or, where the value has been reduced or increased by a Valuation Board, by the Valuation Board.

(7.) The objector may, within thirty days after the decision of the Board of Review, request the Commissioner, in writing, to refer his objection, so far as it relates to the value assigned to any property in the assessment, to a Valuation Board.

(8.) Where a Board of Review has reviewed any assessment and given any decision thereon and the value assigned to any property in that assessment is subsequently reduced or increased by a Valuation Board, the Commissioner shall vary the assessment to give effect to the decision of the Valuation Board.

(9.) The Commissioner or the objector may, within thirty days after the decision of a Board of Review, appeal to the High Court from any decision of the Board of Review under this section which,

Amended by
No. 80, 1950,
s. 3 and First
Schedule.

in the opinion of the High Court, involves a question of law, and the Board shall, upon the request of the Commissioner or the objector, refer to the High Court any question of law arising before the Board of Review, and the decision of the High Court thereon shall be final and conclusive.

Appeals to Court.
Substituted by No. 18, 1942, s. 9.

27.—(1.) Where an objector has, in accordance with the provisions of this Part, requested the Commissioner to treat his objection as an appeal and to forward it to the High Court or a Supreme Court, the Commissioner shall forward it accordingly.

(2.) The appeal shall be heard by a single Justice or Judge of the Court.^(a)

(3.) The objector shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

(4.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with on the appeal.

(5.) On the hearing of the appeal, the Court may make such order as it thinks fit, and may by such order confirm, reduce, increase or vary the assessment.

(6.) The order of the Court shall be final and conclusive except as hereinafter provided.

(7.) The costs of the appeal shall be in the discretion of the Court.

Case stated to High Court.
Substituted by No. 18, 1942, s. 9.

28.—(1.) The Court may, if it thinks fit, state a case in writing for the opinion of the Full Court of the High Court upon any question of law arising on the appeal.

(2.) The High Court shall hear and determine the question, and remit the case, with its opinion, to the Court below and may make such order as to the costs of the case stated as it thinks fit.

Appeal to High Court.
Inserted by No. 18, 1942, s. 9.

28A. The Commissioner or the objector may appeal to the High Court in its appellate jurisdiction from any order made under sub-section (5.) of section twenty-seven of this Act.

Pending appeal or reference not to affect assessment.

Inserted by No. 18, 1942, s. 9.

28B. The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the assessment the subject of the appeal or reference, and estate duty may be recovered on the assessment as if no appeal or reference were pending.

Adjustment of duty after appeal.

Inserted by No. 18, 1942, s. 9.

28C. If the assessment is altered on the appeal or reference a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

(a) Held by the High Court (Starke, J.) that the Court is confined to the decision of the Commissioner upon the objections of the taxpayer and may not deal with the assessment generally. *Perpetual Trustee Co. v. Commissioner of Taxation*, (1926) 32 A.L.R. 317.

PART VI.—COLLECTION AND RECOVERY OF DUTY.

29. Duty assessed under this Act shall be due and payable by the administrator or other person liable under paragraph (b), (c), or (d) of sub-section (3.) of section thirty-four of this Act, or under paragraph (a) of section thirty-five A of this Act, to pay the duty within thirty days after the service by post of a notice of assessment.^(a)

Date of payment of duty.

Amended by No. 47, 1928, s. 10.

30. If the Commissioner is satisfied that the duty cannot be paid within the time specified in the last preceding section, he may, upon receipt of sufficient security for payment of the duty—

Time to pay—Extensions and instalments.

(a) extend the time for payment as he considers the circumstances warrant; or

(b) permit the payment of the duty to be made by instalments;

Provided that the whole of the duty payable shall be paid within a period of two years.

31. If the duty is not paid as provided by section twenty-nine of this Act or such further time as is provided by section thirty of this Act, additional duty amounting to ten per centum per annum upon the amount of the duty unpaid shall be payable in addition by way of penalty:

Penalty duty.
Amended by No. 34, 1922, s. 4 and by No. 47, 1928, s. 11.

Provided that the Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional duty imposed by way of penalty or any part thereof.^(b)

32. The duty assessed under this Act shall be deemed when it becomes due or payable to be a debt due to the King on behalf of the Commonwealth and payable to the Commissioner in the manner and at the place prescribed.

Duty debt to King.

33. Any duty unpaid, including any additional duty, may be sued for and recovered in any Court of competent jurisdiction by the Commissioner, Assistant Commissioner or a Deputy Commissioner suing in his official name.

Duty may be sued for.
Amended by No. 47, 1928, s. 12.

34.—(1.) The duty assessed under this Act shall be a first charge upon the estate^(c) in priority over all other encumbrances whatever, and there shall not be any disposition of the estate or any part of it until the duty thereon has been paid or the Commissioner Assistant Commissioner or a Deputy Commissioner certifies that he holds security for payment of the duty sufficient to permit any specified part of the estate to be disposed of.^(a)

Duty a first charge on estate.

Amended by No. 47, 1928, s. 13.

(a) Held by the Supreme Court of New South Wales that the amendments made to this section and to section 34 by the amending Act of 1928 do not impose a personal liability upon the beneficiaries mentioned in section 35 (a). *Re Busby; Busby v. Busby*, (1930) 30 S.R. (N.S.W.) 399; 47 W.N. (N.S.W.) 155.

(b) Sub-section (2.) of section 4 (by which this proviso was added to the section) of the *Estate Duty Assessment Act* 1922 is as follows:—“(2.) This section shall be deemed to have commenced on the first day of July, One thousand nine hundred and twenty-one.”

(c) Held by the Supreme Court of Victoria that the word “estate” (where it first occurs in this section) includes property the subject of a gift *inter vivos*. *In the Will of Harper, deceased; Harper v. Harper*, 1922 V.L.R. 512; 43 A.L.J. 197; 28 A.L.R. 214.

(2.) Any person who disposes of any estate or part of it in contravention of this section shall, without prejudice to the recovery of the duty by any other means, be personally liable for the duty.^(a)

(3.) Where there is no administrator of the estate of a deceased person—

- (a) the duty payable in respect of the estate shall be assessed in the same manner as it would have been assessed if there had been an administrator;
- (b) the duty assessed shall be payable by the persons who received the estate from the deceased person;
- (c) the duty payable by every such person shall be the sum which bears the same proportion to the total duty payable in respect of the estate as the value of the property received by that person in the estate bears to the total value of the estate;
- (d) persons who hold interests as joint tenants in any property forming the whole or part of the estate of the deceased person shall be jointly liable to pay the duty which is payable in respect of that property, and shall each be liable for the whole duty payable in respect of that property, but any of them who has paid the duty may recover contributions, as follows:—
 - (i) a person who has paid the duty in respect of any property may recover by way of contribution from any other person having an interest in that property a sum which bears the same proportion to the duty as the value of the interest of such other person in the property bears to the total value of the property;
 - (ii) every person entitled to contribution in respect of duty under this paragraph may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request, or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute;
- (e) every person who, under the provisions of this subsection, is liable to pay any duty shall make such returns as are prescribed or as the Commissioner requires in respect of any property for the purpose of a full assessment of the estate of the deceased person; and

(a) Held by the High Court that the payment of duty is not a condition precedent to obtaining probate; the provisions of this section forbidding disposition until payment is made or security given is by way of security only for a favoured debt and does not impart to the duty the character of a testamentary expense. *New South Wales Institution for the Deaf, Dumb and the Blind v. Shelley*, (1917) 23 C.L.R. 351; 34 W.N. (N.S.W.) 195. (Affirmed on appeal by the Privy Council, *sub nom. Shelley v. New South Wales Institute for the Deaf, Dumb and the Blind*, [1919] A.C. 650; 26 C.L.R. 200; 19 S.R. (N.S.W.) 466; 36 W.N. (N.S.W.) 162; 25 A.L.R. 282).

- (f) any duty assessed in a case to which this sub-section applies shall be a first charge on the property in respect of which the duty was assessed in priority to all other encumbrances whatever, and notwithstanding any change of ownership of that property it shall continue to be liable in the hands of any purchaser or holder for the payment of the duty so long as it remains unpaid:

Provided that no such charge shall be of effect as against a *bona fide* purchaser for value who at the time of purchase has made inquiry of the Commissioner as prescribed but has had no notice of the liability.

(4.) The provisions of Part V. of this Act shall apply to any person who is liable to pay duty in accordance with the provisions of the last preceding sub-section, as if the reference to an administrator in Part V. of this Act were a reference to that person.

35. Subject to any different disposition^(a) made by a testator in his will, the duty payable in respect of an estate, exclusive of so much of the estate as is exempt from estate duty by sub-section

Apportionment of duty among beneficiaries.

Amended by No. 12, 1940, s. 6 and by No. 18, 1942, s. 10.

(a) Held by the High Court that estate duty is not a testamentary expense and that a direction in a will to pay testamentary expenses out of the residuary estate is not a "different disposition". *New South Wales Institution for the Deaf, Dumb and the Blind v. Shelley*, (1917) 23 C.L.R. 351; 34 W.N. (N.S.W.) 195. (Affirmed on appeal by the Privy Council, *sub nom Shelley v. New South Wales Institution for the Deaf, Dumb and the Blind*, [1919] A.C. 650; 26 C.L.R. 200; 19 S.R. (N.S.W.) 466; 36 W.N. (N.S.W.) 162; 25 A.L.R. 282). Similarly held by the Supreme Court of New South Wales. *Perpetual Trustee Company (Ltd.) v. Luker*, (1932) 33 S.R. (N.S.W.) 85; 50 W.N. (N.S.W.) 70. Held by the Supreme Court of Victoria that estate duty is not covered by words directing either the payment of probate duty or testamentary expenses. *In re Dymke, deceased; Trustees Executors and Agency Company Ltd. and Another v. Dymke and others*, 1918 V.L.R. 649; 40 A.L.J. 90; 24 A.L.R. 378. Nor by the words "the expenses of administering my will." *In re George Bodey, deceased; Cameron v. Bodey*, (1935) 41 A.L.R. 476. Held by the Supreme Court of New South Wales that a direction for the payment of "probate and other duty" included estate duty. *Robson v. Board*, (1915) 15 S.R. (N.S.W.) 343; 32 W.N. (N.S.W.) 108. Held by the Supreme Court of New South Wales that a direction for the payment of stamp duty did not include estate duty but that a bequest of legacies "free of duty and other charges" was a "different disposition." *Buchanan v. Riddle and others*, (1920) 20 S.R. (N.S.W.) 544; 37 W.N. (N.S.W.) 161. Held by the Supreme Court of New South Wales that a direction that all legacies should be free of legacy and probate duty is a different disposition. *O'Neill v. Caffill*, (1920) 20 S.R. (N.S.W.) 264; 37 W.N. (N.S.W.) 90. See also footnote (b) to s. 35A, *infra*. Where a will made before the commencement of this Act directed the payment of "all probate, legacy and succession duties payable in respect of my estate" out of the residuary estate the Supreme Court of South Australia held that estate duty was in effect a succession duty and included in the direction. *In re Robert Barr Smith, deceased; Martin and Another v. Barr Smith and others*, 1917 S.A.L.R. 1. Knox, C.J., Isaacs and Starke, J.J., of the High Court later expressed the view that the subject matter of the Act is estate duty in its true sense and not a succession duty. *Jackson and Another v. Federal Commissioner of Taxation*, (1920) 27 C.L.R. 503, at p. 508. Since then the Supreme Court of South Australia has held that a direction for the payment of succession duties does not include estate duty, but has distinguished between the more general words used by the testator in *In re Robert Barr Smith's case* (*supra*). In the case of *In re Pope; Mellor and others v. Farrer and others*, (1925 S.A.S.R. 303) the same Court again held that a direction as to the payment of succession duties did not include the payment of estate duty but that the phrases "free of duty" and "free and clear of any deduction" indicated a "different disposition". The cases of *In re Robert Barr Smith*; *In re Pope and Jackson v. Federal Commissioner of Taxation* were considered by Long Innes, J., of the Supreme Court of New South Wales in interpreting the words "all Probate State and Succession Duty". His Honour followed the decision in *In re Robert Barr Smith*, holding that, whilst in strictly legal terminology the duty imposed by this Act is more correctly described as estate duty than as succession duty, it has many of the characteristics of a succession duty and that therefore the use of that term by a testator was sufficiently wide to include "estate duty." His Honour distinguished his decision from that of the Supreme Court of South Australia in *In re Pope* by reason of the fact that the duty imposed by the legislation of South Australia is imposed by the name of succession duty. *Re Jordan; Pidcock v. Cooper*, (1932) 32 S.R. (N.S.W.) 591; 49 W.N. (N.S.W.) 205. The use of general words directing the payment of duties out of the estate is not sufficient to place the incidence of the duty on the residuary estate. So held by the Supreme Court of South Australia in *In re Whallin*, 1924 S.A.S.R. 278; *In re Foster; Drury v. Foster*, 1930 S.A.S.R. 381; and *In re Willis; Woods and Another v. Willis and others*, 1931 S.A.S.R. 475 and by the Supreme Court of Tasmania in *In re Murray*, (1918) 14 Tas. L.R. 5 and *In re Gardner* (1919) 15 Tas. L.R. 78. A testator by will directed that his daughter should be allowed to reside in a certain house without charge of any kind. Held by the Supreme Court of New South Wales that a "different disposition" had been made and that the daughter was exempted from payment of duty which must be apportioned amongst other beneficiaries. *Brown v. Brown*, (1921) 22 S.R. (N.S.W.) 106; 38 W.N. (N.S.W.) 255. Within twelve months of his death a testator made certain gifts *inter vivos*. By his will he directed the investment of

(5.) of section eight of this Act,^(a) shall be apportioned by the administrator among the persons beneficially entitled^{(b)(c)} to the estate in the following manner:—

the residue of his estate subject to the payment of, *inter alia*, "all probate and estate duties on my estate so as to exonerate all legacies and annuities." Held by the Supreme Court of Victoria that the testator had not made a "different disposition" as regards the gifts *inter vivos*. *In the Will of Harper, deceased*. *Harper v. Harper*, 1922 V.L.R. 512; 43 A.L.J. 197; 28 A.L.R. 214. *Per Gavan Duffy, C.J.*, Rich, Dixon, Evatt and McTiernan, J.J., the word "probate" in a phrase "probate and any liability of mine" was intended by the testator to include estate duty. *Roman Catholic Archbishop of Melbourne v. Lawlor*; *The Pope v. The National Trustees, Executors and Agency Co. of Australasia Ltd.*, (1934) 51 C.L.R. 1; 1934 V.L.R. 231; 40 A.L.R. 202; 8 A.L.J. 70. *Per Richards, J.*, of the Supreme Court of South Australia: If the provisions of the will are inconsistent with adjustment or apportionment as prescribed, that is all that is required. *In re Reid*, 1936 S.A.S.R. 71 at p. 77. A testator after making certain gifts including pecuniary legacies directed that the residue should go to trustees with directions to convert and pay, *inter alia*, "the legacies bequeathed by this my will and all succession estate death and other duties." Then followed directions concerning what the testator stated was "hereinafter called 'the residuary trust funds' ". Later followed a clause directing that "all probate succession death estate legacy and other duties payable in respect of my estate or any part thereof or interest therein shall be paid out of the corpus of my residuary estate". Held by the Supreme Court of South Australia that estate duty should be paid out of the residuary estate without any adjustment thereof among the beneficiaries. *In re Reid*, 1936 S.A.S.R. 71. Held by the Supreme Court of Victoria that the words "probate and legacy duty" do not include "estate duty". *In re Thorpe*. *The Perpetual Executors and Trustees Association of Australia Ltd. v. Marley*, 1937 V.L.R. 262; 43 A.L.R. 458. Held by the Supreme Court of Victoria (Martin, J.) that the testator had made a different disposition where he directed trustees "to stand possessed of all residue of my real and personal estate upon trust after payment thereof of my just debts funeral and testamentary expenses including the State and Federal duty payable upon the estates of deceased persons which I direct shall be paid out of my estate in gross so as not to be specifically charged or apportioned against beneficiaries to divide". *In re Myer*; *Myer v. Myer*, 1939 V.L.R. 77; 45 A.L.R. 120.

Held by the Supreme Court of Tasmania that although there is no Commonwealth Probate Duty the expression "Federal Probate Duty" was meant to refer to Commonwealth Estate Duty. And a direction to pay such "Federal Probate Duty" out of residue, the various legatees not being liable to pay duty unless the residue was insufficient for that purpose is a "different disposition within the section". *Re Ansell, deceased*, (1947) Tas. S.R. 37.

The testator by his will provided "after payment of my just debts funeral and testamentary expenses" for various legacies and then for his property to be sold and "if there is any money over in my estate after Probate and Expenses and payment of above legacies to be divided equally between "a number of named persons."

Held by the Supreme Court of Tasmania that the expression "probate and expenses" does not include estate duty. *Per Morris C.J.* in an *obiter dictum*: There is no specific or implied direction to pay estate duty out of residue, hence there is no "different disposition". *Re Thomas, deceased*, (1948) Tas. S.R. 54.

Held by the Supreme Court of Tasmania that where a testatrix devised and bequeathed her estate to trustees to pay thereout *inter alia* probate and estate duties, certain legacies and then to divide the residue between certain named persons there was not "a different disposition" within the section. *Per Clarke J.*: "a different disposition within the meaning of the section is a provision in the will which makes some disposal or disposition of the duty attributable to a gift or gifts in the will different from that prescribed by s. 35 either by placing the burden of such duty (or a part of it) upon some other part or parts of the estate or some fund directed by the will to be created (a case which includes a direction that a particular gift or gifts are to be free from any liability to duty), or by providing that the whole duty payable in respect of the estate (or a part of such duty) is to be paid out of a particular part or parts of the estate, or by devising or bequeathing a particular part or parts of the estate (*Lawlor's Case*, (1934) 51 C.L.R. 1) or providing for the creation of a fund, for the purpose of paying, or which is directed to be applied to the payment of, the duty (or a part of it) payable in respect of the estate or the duty (or a part of it) attributable to one or more of the dispositions made by the will." *Re Goetze, deceased*, (1949) Tas. S.R. 131.

Held by the Supreme Court of Victoria (Dean, J.), following *Permanent Trustee Co. v. Culpan*, 50 W.N. (N.S.W.) 109, that the words "after payment of all my just debts, funeral and other expenses I give" etc. did not constitute a "different disposition". *In re Williams*, [1950] A.L.R. 751.

(a) A testator made a will giving his daughter a legacy of £6,000 but within a year of his death settled a similar sum on her and revoked the legacy by codicil. Held by the Supreme Court of New South Wales that the trustees of the settlement must refund the amount of duty paid by the executors in respect of the £6,000. *Brown v. Brown*, (1921) 22 S.R. (N.S.W.) 106; 38 W.N. (N.S.W.) 255.

(b) Held by the Supreme Court of Victoria (Martin, J.) that, subject to any different disposition made by a testator in his will, duty under the Act in respect of such part of the estate as is bequeathed for charitable purposes, is payable out of residue. *In re Lyell*; *Perpetual Executors and Trustees Association of Australia Ltd. v. Fredell*, 1941 V.L.R. 207; 47 A.L.R. 263.

(c) Held by the Supreme Court of New South Wales that "persons beneficially entitled" may include a corporation but not a charitable corporation. *Perpetual Trustee Co. v. Mackenzie*, (1917) 17 S.R. (N.S.W.) 660; 34 W.N. (N.S.W.) 229. (Note, however, the amendments made to section 8 (5.) by the amending Acts of 1928 and 1942).

- (a) The duty shall in the first instance be apportioned among all the beneficiaries in proportion to the value of their interests;^(a) and
- (b) Where there are any beneficiaries under the will each of whom takes only specific bequests or devises^(b) of a value not exceeding Two hundred pounds, the duty which under paragraph (a) of this section would be payable in respect of the interests of those beneficiaries shall be apportioned among all the beneficiaries in proportion to the value of their interests;^(c)

(a) Held by the Supreme Court of New South Wales that where certain legacies are exempted from the payment of duty but no fund is specified out of which the duty is to be paid, the charge must be shared by all the beneficiaries other than those exempted. *O'Neill v. Coffill*, (1920) 20 S.R. (N.S.W.) 264; 37 W.N. (N.S.W.) 90; *Brown v. Brown*, (1921) 22 S.R. (N.S.W.) 106; 38 W.N. (N.S.W.) 255; *Perpetual Trustee Coy. Ltd. v. Adams*, (1923) 24 S.R. (N.S.W.) 87; 40 W.N. (N.S.W.) 158. Held by the Supreme Court of South Australia that duty payable in respect of legacies and annuities given free of duty does not fall on the residuary estate but is apportioned amongst all the beneficiaries other than those exempted by s. 8 (5.) *In re Pope; Mellor and others v. Farrer and others*, 1925 S.A.S.R. 303. A testator exempted specific and pecuniary legacies from the payment of duty; held by the Supreme Court of New South Wales that the charge must be borne by the specific devisee. *Brown v. Butcher*, (1922) 22 S.R. (N.S.W.) 176; 39 W.N. (N.S.W.) 44. Held by the Supreme Court of New South Wales that a life tenant is not exempted from the payment of estate duty by reason of the fact that remainder is to an institution exempted from the payment of duty. Held further that in order that the exemption to the institution may be effective the duty should be paid out of the corpus which should then be recouped by annual instalments based on the life tenant's expectation of life—notwithstanding that in the event of an earlier death portion of the duty must, as a consequence, necessarily fall on the corpus. *Perpetual Trustee Co. Ltd. v. Shelley*, (1921) 21 S.R. (N.S.W.) 426; 38 W.N. (N.S.W.) 132. See also on the same point *Perpetual Trustee Co. v. Mackenzie*, (1917) 17 S.R. (N.S.W.) 660; 34 W.N. (N.S.W.) 229 and *In the Will of Davidson, deceased; the Perpetual Executors and Trustees Association of Australia Ltd. v. Davidson*, 1917 V.L.R. 748; 23 A.L.R. 415; 39 A.L.J. 140. As to the method to be followed when one moiety in remainder is exempt see *In re Hageard*, 1934 S.A.S.R. 364 (N.B.—This case contains several helpful examples of apportionment between life tenants and remaindermen). Where estate duty has been paid out of the corpus and, in order to prevent the payment of the duty falling on the ultimate remainder (a charity), the first life interest has been directed to contribute an annual amount to a sinking fund based on an expectancy of life of 25 years but death occurred after five years, held by the Supreme Court of New South Wales that the next succeeding life interest is not liable to continue the annual contribution and that the balance of the duty must therefore fall on the corpus. *Perpetual Trustee Company Ltd. v. Shelley (No. 3)*, (1922) 22 S.R. (N.S.W.) 589; 39 W.N. (N.S.W.) 187. Held by the Supreme Court of Victoria that the apportionment is properly made in the case of annuities charged on residue by deducting the duty from the corpus of the sum required to provide the annuity; in the case of successive gifts to life tenant and remainderman by deducting the duty from the corpus of the settled property; and in the case of a gift to infants upon certain contingencies, with gift over, by deducting the duty from the corpus of the gift. *In the Will of Davidson; The Perpetual Executors and Trustees Association of Australia Ltd. v. Davidson*, 1917 V.L.R. 748; 23 A.L.R. 415; 39 A.L.J. 140. Held by the Supreme Court of New South Wales that in the absence of more explicit directions the Court should be guided by the facts of each particular case and apportion the duty in the way that appears most equitable. Methods of valuing successive interests discussed; especially annuities and the right to live in a house rent free. *Perpetual Trustee Co. Ltd. v. Mitchell*, (1920) 20 S.R. (N.S.W.) 647; 37 W.N. (N.S.W.) 196. Pursuant to the *Testator's Family Maintenance Act 1916* the Supreme Court of New South Wales increased the annuity of the testator's widow from £1,000 to £2,000. Held by Street, C.J. in Equity that, in the absence of a contrary direction, the order should be interpreted as meaning £2,000 without any deduction and that the widow should not, therefore, bear a share of the duty. *Brown v. Brown*, (1921) 22 S.R. (N.S.W.) 106; 38 W.N. (N.S.W.) 255. Held by the Supreme Court of New South Wales that the donee of an option given by will to purchase property at less than its market value and who exercised that option, was a person beneficially entitled within the meaning of this paragraph. *Re Busby; Busby v. Busby*, (1930) 30 S.R. (N.S.W.) 399; 47 W.N. (N.S.W.) 155. Held by the Supreme Court of New South Wales that the amendments made to sections 29 and 34 by the amending Act of 1928 do not impose a personal liability upon the beneficiaries mentioned in this paragraph. *Ibid.*

(b) Held by the Supreme Court of New South Wales that the words "specific bequests and devises" must be given their legal signification and that residuary bequests or pecuniary legacies are not therefore within the meaning of the paragraph. *Perpetual Trustee Co. v. Mackenzie*, (1917) 17 S.R. (N.S.W.) 660; 34 W.N. (N.S.W.) 229. Later the same Court again held that "bequests and devises" must be given a technical interpretation. *Perpetual Trustee Co. Ltd. v. Shelley*, (1921) 21 S.R. (N.S.W.) 426; 38 W.N. (N.S.W.) 132.

(c) Held by the Supreme Court of New South Wales that in order to obtain the benefit of this paragraph the beneficiary must be able to show that he has such a specific bequest or devise at the time when the apportionment is made and that though the beneficiary's interest need not be an estate in possession it must be one capable of valuation. *Perpetual Trustee Co. v. Mackenzie, supra*. Held by the Supreme Court of New South Wales that a group of persons may enjoy the benefit of this paragraph provided that the interest of the group as a whole does not exceed £200. *Ibid.*

Proviso
substituted by
by No. 12,
1940, s. 6.

Provided that for the purposes of the foregoing provisions of this section, the value of the interests of the widow or children or grandchildren shall be reduced by an amount ascertained in accordance with the provisions of sub-paragraph (i) of paragraph (c) of sub-section (1.) of section eighteen A of this Act.

Apportionment
of duty.

Inserted by
No. 47, 1928,
s. 14.

35A. Where an estate includes property which passed from the deceased person by gift *inter vivos* or settlement^(a)—

(a) the Commissioner may, if he thinks fit, either of his own motion or upon the request of the administrator or of any person entitled to any interest in the estate, apportion the duty between the property which so passed and the residue of the estate in proportion to the respective values of that property and the residue, and the duty apportioned to that property shall be payable by the same persons and in the same manner as it would have been payable if there had been no administrator of the estate, and the administrator and any other person entitled to any interest in the estate shall be relieved from any liability in respect of the duty apportioned to that property; and

(b) Where there is no apportionment under the last preceding paragraph—the administrator may^(b)—

(i) recover, in any court of competent jurisdiction, from any person to whom property so passed, the amount of the duty assessed in respect of that property as a debt due and payable by that person to the administrator; or

(ii) retain or deduct that amount out of or from any moneys in his hands belonging or payable to that person.

Distribution of
charge on
estate.

36.—(1.) The Commissioner may if he thinks fit, either of his own motion or at the request of any person to whom any estate has passed on the death of another person, or of any person claiming in his right, accept or cause to be made so many separate assessments of the duty payable in respect of the interest of such person in any separate properties or any defined portions of the same property as he considers reasonable.

(2.) The duty so separately assessed shall thereafter be charged solely upon the separate estate in respect of which it has been

(a) For a discussion by the Supreme Court of Victoria, prior to the enactment of this section of the powers of administrators with respect to duty payable on gifts *inter vivos* see *In the Will of Harper, deceased; Harper v. Harper*, 1922 V.L.R. 512; 43 A.L.J. 197; 28 A.L.R. 214, and by the Supreme Court of New South Wales, *Perpetual Trustee Co. Ltd. v. Adams*, (1923) 24 S.R. (N.S.W.) 87; 40 W.N. (N.S.W.) 158.

(b) Held by the Supreme Court of New South Wales that a direction for the payment of "debts funeral and testamentary expenses and costs as aforesaid" (i.e. "costs of and relating to the administration of my estate") out of the residuary estate, did not operate to affect the executors' power to recover from a person, in whom property had vested under a settlement, the amount of duty paid in respect of that settlement. *Perpetual Trustee Co. v. Laker and others*, (1932) 33 S.R. (N.S.W.) 85; 50 W.N. (N.S.W.) 70.

assessed and upon payment of any amount so separately assessed, the portion of the particular estate affected shall thereafter be free from charge in respect of any unpaid duty assessed separately on any other portion of the estate.

37. The Commissioner may register any duty assessed under this Act as a charge on the particular interest assessed with the duty, after having certified in writing that there are arrears of duty payable and the Registrar-General or Registrar of Titles or other proper officer of a State or part of the Commonwealth shall register the charge accordingly and give effect to it as if the certificate were an instrument of charge or encumbrance duly executed under the laws in force in that State or part of the Commonwealth.

Registration of duty as a charge.

38.—(1.) Subject to the last two preceding sections, duty assessed under this Act shall be paid out of personal estate.

Duty—how payable.

(2.) If there is not sufficient personal estate to pay the duty, the administrator may raise the deficiency by way of mortgage secured upon the real estate, or may, if he thinks fit, apply to the High Court or the Supreme Court for the sale of the whole or any portion of the estate for the purpose of enabling him to pay the duty.

39. If any duty is not paid by the final date fixed for the payment thereof under the authority of this Act, the Commissioner may apply to the High Court or the Supreme Court for an order that a sufficient portion of any estate subject to the duty may be sold to pay the duty.

Commissioner may apply for order to sell.

40. The Court may grant the order applied for and may fix the prices, terms and conditions of the sale and may make such order as to costs of and consequent upon such application, proceedings and sale as it thinks fit.

Power of Court.

41. The moneys arising from such sale shall be applied first towards paying the costs and expenses, if so ordered, of and consequent upon any such application, proceedings or sale, and in the next place towards the payment of the duty and additional duty due, and the balance shall be paid to or held or disposed of by the administrator upon the same trusts as the property sold would have been held and disposed of:

Application of proceeds.

Provided that the Court may make any order that seems just as to such surplus moneys and as to the disposal or investment thereof, and as to the person or persons to whom the same or the interest thereof shall be paid.

Court may order *re* surplus.

PART VII.—MISCELLANEOUS.

42. No purchaser shall be concerned as to the *bona fides* of any sale to him made or purporting to be made under any order mentioned in sections thirty-nine and forty of this Act.

Protection to purchaser.

Title of
purchaser, &c.,
not affected.

43. The title of a *bonâ fide* purchaser, transferee, or mortgagee for valuable consideration, whether holding the legal estate or not, shall not be prejudiced by the non-payment of any duty assessed under this Act, if his interest was acquired at a sale made or purporting to be made under an order mentioned in sections thirty-nine and forty of this Act.

Access to lands,
buildings, &c.

44. The Commissioner, or any officer authorized by him on that behalf, shall at all times have full and free access to all lands, buildings, places, books, documents and other papers, and to all registers of deeds or documents of title, for the purpose of valuing or inspecting any estate or of ascertaining the ownership thereof and for any of these purposes may make extracts from or copies of any such books, documents or papers.

Power to obtain
evidence.

Substituted by
No. 47, 1928,
s. 15.

45.—(1.) The Commissioner, Assistant Commissioner or a Deputy Commissioner may by notice in writing require any person—

- (a) to furnish him with such information as he requires; or
- (b) to attend before him, or before any officer authorized by him in that behalf, and to answer any question put by him or by that officer concerning any estate or assessment, and to produce all books, documents or other papers whatever in his custody or under his control relating thereto.

(2.) The Commissioner, Assistant Commissioner or Deputy Commissioner may require the information or the answers to questions to be given on oath, and either verbally or in writing, and for that purpose he, or the officer so authorized by him, may administer an oath.

Obstructing
officers.

46. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the Regulations shall be guilty of an offence.

Penalty: Fifty pounds.

Offences.

Substituted by
No. 47, 1928,
s. 16.

47.—(1.) Any person who—

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations, or to comply with any requirement of the Commissioner, Assistant Commissioner or a Deputy Commissioner made in pursuance of this Act or the Regulations;
- (b) without just cause shown by him, refuses or neglects duly to attend and give evidence when required by the Commissioner, Assistant Commissioner, a Deputy Commissioner or any officer duly authorized by him or to answer truly and fully any questions put to him or to produce any books or papers required of him by the Commissioner, Assistant Commissioner, a Deputy Commissioner or any such officer; or

(c) makes or delivers a return which is false in any particular or makes any false answer whether verbally or in writing in relation to any matter arising under this Act, shall be guilty of an offence.

Penalty: One hundred pounds.

(2.) A prosecution in respect of an offence against paragraph (a) or (c) of sub-section (1.) of this section may be commenced at any time.

(3.) Any person who, after conviction for an offence against paragraph (a) or (b) of sub-section (1.) of this section, continues to fail to comply with the requirements of this Act or of the Regulations, or of the Commissioner, Assistant Commissioner, a Deputy Commissioner or other authorized officer in respect of which he was convicted, or who is convicted of an offence against paragraph (c) of that sub-section and repeats that offence, shall be guilty of an indictable offence.

Penalty: Five hundred pounds or imprisonment for three years.

(4.) It shall be a defence to a prosecution for an offence against paragraph (c) of sub-section (1.) of this section if the defendant proves that the false particulars were given or the false statement was made, through ignorance or inadvertence.

47A.—(1.) Notwithstanding anything contained in the last preceding section, any administrator who—

Offences by
administrator.
Inserted by
No. 47, 1928,
s. 16.

(a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations or by the Commissioner, Assistant Commissioner or a Deputy Commissioner; or

(b) fails to include in any return any part of the estate of the deceased person in respect of whose estate he is administrator,

shall—

(i) in any case to which paragraph (a) of this sub-section applies, be liable to pay additional duty at the rate of ten per centum per annum upon the amount of duty payable by the administrator (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day on which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of One pound, whichever is the greater; or

(ii) in any case to which paragraph (b) of this sub-section applies, be liable to pay, by way of additional duty, the amount of One pound or double the amount of the difference between

the duty properly payable and the duty which would be payable if the assessment were based upon the return lodged, whichever is the greater, in addition to any additional duty which may become payable by him in accordance with section thirty-one of this Act:

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional duty or any part thereof.

(2.) Where proceedings have been taken to recover a penalty provided by the last preceding section or by the next succeeding section, any additional duty which would otherwise have been payable under this section by the person against whom the proceedings have been taken shall not be charged.

Under-
valuation
of estate.

48. Any person who—

- (a) with intent to defraud, in any return understates the value of any estate, or
- (b) by any wilful act default or neglect, or by any fraud, art or contrivance whatever, evades assessment or duty,

shall be guilty of an indictable offence.

Penalty: Five hundred pounds or imprisonment for three years.

Payment of
penalties no
release from
duty.

49. Payment of penalties under this Act shall not relieve any estate from liability to assessment and payment of any duty.

Regulations.

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

EVIDENCE ACT 1905-1950.^(a)

An Act relating to the Law of Evidence.

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

Preliminary.

1. This Act may be cited as the *Evidence Act 1905-1950*.^(a)

Short title.

Short title amended
No. 32, 1918,
s. 2.

2. In this Act, unless the contrary intention appears—

Definition.

“Courts” includes the High Court, the Commonwealth Court of Conciliation and Arbitration, all Courts exercising federal jurisdiction and all Courts of the several States and parts of the Commonwealth, and all Judges and justices and all arbitrators under any law of the Commonwealth or of a State, and all persons authorized by the law of the Commonwealth or of a State or by consent of parties to hear, receive, and examine evidence.

Amended by
No. 80, 1950,
s. 3 and First
Schedule.

Judicial Notice.

3. All Courts shall take judicial notice of the impression of the Seal of the Commonwealth without evidence of the seal having been impressed or any other evidence relating thereto.

Seal of
Commonwealth
to be judicially
noticed.

See Qd. 62 Vict.
No. 15, s. 4.

4. All Courts shall take judicial notice of—

(a) the official signature of any person who holds or has held the office of Governor-General, Minister of State,^(b) President of the Senate, Speaker of the House of Representatives, Secretary to the Federal Executive Council, Justice of the High Court, Principal Registrar, Deputy Registrar or District Registrar of the High Court, President or Deputy President of the Commonwealth Court of Conciliation and Arbitration, Indus-

Certain
signatures &c.
to be judicially
noticed.

See ib. s. 10.

Amended by
No. 80, 1950,
s. 3 and First
Schedule.

(a) The *Evidence Act 1905-1950* comprises the *Evidence Act 1905* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Evidence Act 1905</i> ..	1905, No. 4 ..	25th August, 1905 ..	25th August, 1905
<i>Evidence Act 1934</i> ..	1934, No. 43 ..	4th August, 1934 ..	4th August, 1934
<i>Statute Law Revision Act 1950</i>	1950, No. 80 ..	16th December, 1950	31st December, 1950

(b) Held by the High Court that a Court will take judicial notice of who are Ministers of the Crown. *Holland and Anor. v. Jones*, (1917) 23 C.L.R. 149; 1917 V.L.R. 392; 23 A.L.R. 165.

trial Registrar or Deputy Industrial Registrar, or President or Judge or member of any Federal Court, or any office to which the Governor-General, by order published in the *Gazette*, declares this section to apply^(a); and

(b) the official seal of every such person or Court; and

(c) the fact that such person holds or has held such office;

if the signature or seal purports to be attached or appended to any judicial or official document.

Proof of Certain Documents.

Proof of proclamations, commissions, orders and regulations.

See N.S.W. 1898 No. 11, s. 18.
Vict. No. 1088 s. 17.
Qd. 62 Vict. No. 15, s. 6.

5. Evidence of any proclamation, commission, order, or regulation issued or made by the Governor-General, or by or under the authority of a Minister, may be given in all Courts—

(a) by the production of the *Gazette* purporting to contain it^(b); or

(b) by the production of a document purporting to be a copy thereof, and purporting to be printed by the Government Printer, or by the authority of the Government of the Commonwealth; or

(c) by the production (in the case of any proclamation, commission, order, or regulation issued or made by the Governor-General) of a document purporting to be certified by the Secretary to the Federal Executive Council as a true copy thereof or extract therefrom; or

(d) by the production (in the case of any proclamation, commission, order, or regulation issued or made by or under the authority of a Minister) of a document purporting to be certified by a Minister as a true copy thereof or extract therefrom.

Proof of public books and documents.

See 14 & 15 Vict. c. 99, s. 14.
N.S.W. ib. s. 16
Vict. ib. s. 23.

6.^(c) Whenever any book or document of the Commonwealth is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in all Courts if—

(a) it is proved to be an examined copy or extract; or

(b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

Proof of Votes and Proceedings of Parliament.

See 8 & 9 Vict. c. 113, s. 3.
Vict. ib. s. 26.

7. All documents purporting to be copies of the Votes and Proceedings or Journals or Minutes of either House of the Parlia-

(a) For orders extending the application of this section see *Gazette* 1912, p. 1260, Consolidation of Commonwealth Statutory Rules 1901-1927, Vol. IV., pp. 3688-3692, Commonwealth Statutory Rules 1929, pp. 334 and 335, *Gazettes*, 1940, pp. 839 and 2344; 1942, pp. 607 and 2219; 1943, pp. 141, 470, 1998, 2562; 1944, p. 108; 1945, pp. 1383 and 1980; and 1947, p. 907; and Commonwealth Statutory Rules, 1940, p. 902; 1942, p. 1396; 1944, p. 820; 1945-1946, p. 1250-1; and 1947-1948, p. 1412.

(b) See *R. v. Quirke*, (1919) 25 A.L.R. 98.

(c) As to the effect of s. 33 of the *Copyright Act* 1912 on this section see *Allan and Co. Pty. Ltd. v. Reed*, 1913 V.L.R. 422; 19 A.L.R. 472. Held by E. A. Douglas, J., of the Supreme Court of Queensland that the record of the Meteorological Bureau is a public document and that certified extracts signed by the State Divisional Meteorologist are admissible in evidence. *Burnett and South Burnett Primary Producers' Co-operative Association Ltd. v. Commonwealth Bank of Australia*, 1939 Q.W.N. 17.

ment, or of papers presented to either House of the Parliament, if purporting to be printed by the Government Printer, shall on their mere production be admitted as evidence thereof in all Courts.

Proof of Certain Matters.

8. The mere production of a paper purporting to be the *Commonwealth of Australia Gazette* shall in all Courts be evidence that the paper is the *Gazette* and was published on the day on which it bears date.

Proof of
*Commonwealth
Gazette.*
See Vict. No.
1088, s. 24.

9. The mere production of a paper purporting to be printed by the Government Printer or by the authority of the Government of the Commonwealth shall in all Courts be evidence that the paper was printed by the Government Printer or by such authority.

Proof of
printing by
Government
Printer.
See Qd. 62 Vict.
No. 15, s. 12.

10. Where by any law at any time in force the Governor-General or a Minister is authorized or empowered to do any act, production of the *Gazette* purporting to contain a copy or notification of any such act shall in all Courts be evidence of the act having been duly done.^(a)

Proof of act
done by
Governor-
General or
Minister.
See Vict. No.
1088, s. 25.

10A.—(1.) The mere production of a document purporting to be published by the Statistician and to contain statistics or abstracts thereof compiled and tabulated by the Statistician pursuant to the *Census and Statistics Act 1905-1930* shall in all Courts be evidence that those statistics or abstracts were compiled and tabulated by the Statistician pursuant to that Act.

Proof of
statistics.
Inserted by
No. 43, 1934,
s. 2.

(2.) In this section "the Statistician" means the Commonwealth Statistician appointed under section four of the *Census and Statistics Act 1905-1930*, and includes any person to whom the Statistician has, under section five of that Act, delegated the power to compile, tabulate and publish the statistics collected pursuant to that Act.

Proof of Judicial Proceedings.

11. Evidence of any judicial proceeding of the High Court or of any Federal Court or of any Justice or Judge thereof, including any affidavit pleading or legal document filed or deposited in any such Court, may be given in all Courts by the production of a document purporting to be a copy thereof, and—

Proof of
judicial
proceedings.
See N.S.W.
1898, No. 11,
s. 20.
Vict. ib. s. 16.

- (a) proved to be an examined copy thereof; or
- (b) purporting to be sealed with the seal of the Court; or
- (c) purporting to be certified as a true copy by a registrar or chief officer of the Court.

Affidavits.

12. Affidavits for use in the High Court or any Court exercising federal jurisdiction may be sworn before any Justice of the Peace without the issue of any commission for taking affidavits.^(b)

Affidavit may
be sworn
before Justice
of the Peace.
Cf. Queensland
1891 No. 14,
s. 3.

(a) See *R. v. Quirke*, (1919) 25 A.L.R. 98.

(b) In the case of *In re Trade Mark of Ryan Lewis and Co. Pty. Ltd.: Ex parte Autotone Co.*, (1918) 24 C.L.R. 460; 24 A.L.R. 194, the High Court allowed the filing of an affidavit purporting to be signed and sworn before a notary public of a foreign country.

EXCISE ACT 1901-1949.^(a)

An Act relating to Excise.

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

PART I.—INTRODUCTORY.

Short title.

Short title
amended
No. 22, 1918,
s. 2.

Commencement.

1. This Act may be cited as the *Excise Act 1901-1949*.^(a)2. This Act shall commence on a day to be fixed by proclamation.^(a)

Parts.

3. This Act is divided in Parts as follows:—

Part I.—Introductory.

Part II.—Administration.

Part III.—Producers and Dealers.

Part IV.—Licensing of Manufacturers.

Part V.—Excise Supervision, Manufacturers' Books, and Regulation of Factories generally.

Part VI.—Payment of Duty, Removal of Excisable Goods from Factories, and Excise Control.

Part VII.—Special Provisions relating to Tobacco.

Part VIII.—Drawbacks.

Part IX.—Officers.

Division 1.—Powers of Officers.

Division 2.—Protection to Officers.

Part X.—Penal Provisions.

Part XI.—Excise Prosecutions.

Part XII.—Disputes as to Duty.

Part XIII.—Settlement of Cases by the Minister.

Part XIV.—Miscellaneous.

^(a) The *Excise Act 1901-1949* comprises the Acts set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Excise Act 1901</i>	1901, No. 9 ..	5th October, 1901 ..	7th October, 1901 (<i>See Gazette 1901</i> , p. 167)
<i>Excise Act 1918</i>	1918, No. 26 ..	7th November, 1918 ..	7th November, 1918
<i>Excise Act 1923</i>	1923, No. 8 ..	11th August, 1923 ..	11th August, 1923
<i>Excise Act 1934</i>	1934, No. 44 ..	4th August, 1934 ..	4th August, 1934
<i>Excise Act 1942</i>	1942, No. 16 ..	18th May, 1942 ..	18th May, 1942
<i>Excise Act 1947</i>	1947, No. 88 ..	11th December, 1947 ..	8th January, 1948
<i>Excise Act 1949</i>	1949, No. 46 ..	27th October, 1949 ..	1st April, 1950 (<i>See Gazette 1950</i> , p. 723*)

* Section 2 of the *Excise Act 1949* is as follows:—“2. This Act shall come into operation on the date on which the *Customs Act 1949* comes into operation.”

The last-mentioned Act came into operation on the date shown in the table.

4. In this Act, except where otherwise clearly intended—
- “By authority” means by the authority of an officer doing duty in the matter in relation to which the expression is used. Definitions.
Amended by
No. 26, 1918,
s. 2; No. 16,
1942, s. 3.
- “Collector” includes the Comptroller and any Collector of Customs for the State and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used.
- “Comptroller” means the Comptroller-General of Customs.
- “Dealer” means a person registered under this Act as a dealer in material.
- “Excise Acts” includes this Act and all other Acts relating to Excise.
- “Excisable goods” means goods in respect of which excise duty is imposed by the Parliament, and includes goods the subject of an Excise Tariff proposal.
- “Factory” means the premises on which any person is licensed to manufacture excisable goods, and includes all adjoining premises used in connexion therewith or with the business of the manufacturer.
- “Gazette notice” means a notice signed by the Minister and published in the *Gazette*.
- “Justice” means any Justice of the Peace having jurisdiction in the place.
- “Licence” means a licence to manufacture excisable goods.
- “Manufacture” includes all processes in the manufacture of excisable goods.
- “Manufacturer” means a person licensed under this Act to manufacture excisable goods.
- “Material” includes all material used in the manufacture of excisable goods and declared by proclamation to be material within the meaning of this Act.
- “Officer” includes all persons employed in the service of the Customs.
- “Permission” means the written permission of the Collector.
- “Prescribed” means prescribed by this Act.
- “Producer” means a person registered under this Act as a producer of material.
- “The Customs” means the Department of Trade and Customs.
- “This Act” includes all Excise Acts incorporated therewith and all regulations made under this Act or any such Excise Act.

5. The penalties referred to at the foot of sections indicate that any contravention of the section whether by act or omission is an offence against this Act punishable on conviction by a penalty not exceeding (except as hereinafter provided) the penalty mentioned. Penalty at foot
of sections.

Application
of Act.

Amended by
No. 8, 1923,
s. 2.

6. Except so far as inconsistent therewith this Act shall be incorporated and read as one with all other Excise Acts, but so that only Parts II., VIII., IX., X., XI., XII., XIII., and XIV., and sections fifty-three, fifty-four and sixty-one, shall apply to beer and spirits which are dealt with by other Acts of the Parliament.

PART II.—ADMINISTRATION.

Minister.

7. Until it is otherwise lawfully determined the Excise Acts shall be administered by the Minister of State for the Commonwealth administering the Customs.

Comptroller-
General.

8. The Comptroller-General of Customs shall under the Minister have chief control of Excise throughout the Commonwealth.

Delegation by
Minister.

9. In relation to any particular matters or class of matters or to any particular State or District the Minister may by writing under his hand delegate any of his powers under any Excise Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or the State or District defined in the instrument of delegation.

Delegation by
Comptroller.

10. The Comptroller with the written approval of the Minister may similarly delegate any of his powers under any Excise Act.

Revocation of
delegation.

11. Every delegation, whether by the Minister or Comptroller, shall be revocable in writing at will, and no delegation shall prevent the exercise of any power by the Minister or Comptroller.

General power
of Collector.

Amended by
No. 88, 1947,
s. 2.

12.—(1.) In all cases not herein otherwise provided for the Collector may exercise any power exercisable by the Customs under any Excise Act.

(2.) The Governor-General may, by proclamation,^(a) declare that, for the purposes of the administration of this Act, a portion of a State, or the whole or portion of a Territory of the Commonwealth, shall be attached to an adjoining State and, in that case, the Collector of Customs for that adjoining State may, in the portion of a State, or in the Territory or portion of a Territory, so attached, exercise any power exercisable by the Customs under any Excise Act.

Customs officers
to be Excise
officers.

13. All officers of Customs shall be officers of Excise and all officers of Excise shall be officers of Customs.

Fees.

14. No fees shall be charged for the registration of producers or dealers under this Act, but licence-fees shall be as prescribed.

(a) For a proclamation declaring the Northern Territory to be attached to the State of Queensland for the purposes of the administration of this Act, see *Gazette*, 1948, p. 3117.

15. Where under any Excise Tariff proposal any excise duty is proposed to be imposed on any goods previously free, any person who manufactures or proposes to manufacture those goods shall be allowed two months from the day on which the proposal is introduced into the House of Representatives for compliance with the provisions of this Act relating to registration and licences, but during that period every unlicensed person who manufactures goods which are excisable goods by virtue of that proposal shall comply with this Act as if he were licensed and the premises on which he manufactures those goods shall be deemed to be a factory.

Time for compliance with this Act. Substituted by No. 16, 1942, s. 4.

16. The Customs shall have the right to require and take securities for compliance with the Excise Acts and generally for the protection of the revenue and pending the giving of the required security in relation to any goods subject to the control of the Customs may refuse to deliver the goods or to pass any entry relating thereto.

Right to require security.

17. Where any security is required to be given it may, at the discretion of the Collector, be by bond or guarantee or cash deposit or all or any of those methods.

Security. Substituted by No. 26, 1918, s. 3.

18. When security is required for any particular purpose security may by the authority of the Comptroller be accepted to cover all transactions for such time and for such amount as the Comptroller may approve.

General security may be given.

19. All Customs securities may after the expiration of three years from the date thereof or from the time specified for the performance of the conditions thereof be cancelled by the Comptroller.

Cancellation of bonds.

20. If the Collector is not at any time satisfied with the sufficiency of any security he may require a fresh security and a fresh security shall be given accordingly.

New sureties.

21. The form of Customs security in Schedule I. hereto shall suffice for all the purposes of a bond or guarantee under any Excise Act and without sealing shall bind its subscribers as if sealed and unless otherwise provided therein jointly and severally and for the full amount.

Form of Customs security.

22. Whenever any such Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed it unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.

Effect of Customs security.

23. A lesser licence may at any time be surrendered for a larger licence and in such case the licensee shall receive credit for a

Surrender of lesser licence for larger licence.

proportionate part of the fee paid for the lesser licence against the amount payable for the larger licence.

Goods for use
in manufacture.

24. Excisable goods and goods liable to duties of Customs may in prescribed cases and subject to the prescribed conditions be delivered free of duty or subject to such lower duty as may be prescribed for use in the manufacture of excisable goods.

PART III.—PRODUCERS AND DEALERS.

Producers to
be registered.

Amended by
No. 26, 1918,
s. 4.

25. No person shall produce material unless he is registered as a producer.

Penalty: Twenty pounds.

How
registration
effected.

26. Registration of producers shall be effected as follows:—

- (a) The producer shall send to the Collector a request for registration as a producer in the form in Schedule II. hereto.
- (b) The Collector shall register the producer's name and the place where he produces material in a book, and shall furnish to the producer a certificate of registration in the form of the Schedule III. hereto.

Dealers to be
registered.

27. No person shall deal in material unless he is registered as a dealer, but this shall not apply to producers who deal only in material of their own production.

Penalty: Twenty pounds.

Mode of
registration
of dealers.

28. Registration of dealers shall be effected as follows:—

- (a) The dealer shall send to the Collector a request for registration in the form in Schedule IV. to this Act.
- (b) The Collector shall register the name and place of business of the dealer in a book, and shall furnish to the dealer a certificate of registration in the form in Schedule V. to this Act.

Storage of
material.

29. Except by permission no producer or dealer shall keep or store material at any place other than the premises in respect of which he is registered.

Penalty: Twenty pounds.

Unregistered
premises.

30. No producer shall produce material except at the premises in respect of which he is registered and no dealer shall carry on business as a dealer except at the premises in respect of which he is registered.

Penalty: Twenty pounds.

Registration
of separate
premises.

31. Any producer or dealer may be severally registered in respect of any number of separate and distinct premises.

32. Every producer who ceases to produce material and every dealer who ceases to carry on business as a dealer shall forthwith give notice to the Collector that he has ceased to produce material or to carry on business, as the case may be, and the Collector shall thereupon cancel his registration.

Notice of
ceasing to
produce or
deal in
material.

33. Producers and dealers shall as prescribed keep accounts and furnish returns of all materials produced or dealt in by them.

Accounts and
returns.

Penalty: Twenty pounds.

PART IV.—LICENSING OF MANUFACTURERS.

34. Licences to manufacture may be granted by the Collector, and may license manufacture without limitation or subject to any specified limitation.

Granting of
licences.

35. No person shall manufacture except pursuant to this Act and a licence granted thereunder.

Manufacturers
to be licensed.

Penalty: One hundred pounds.

* * * * *

Section 36
repealed by
No. 26, 1918,
s. 5.

37.—(1.) Applications for licences may be made to the Collector and shall be in the form and accompanied by the particulars prescribed.

Application
for licence.

(2.) Until otherwise prescribed the application for a licence shall be in accordance with Schedule VI. to this Act.

Substituted by
No. 26, 1918,
s. 6.

38. The applicant shall furnish the Collector with the prescribed drawings and particulars.

Particulars.

39.—(1.) The applicant for a licence shall—

(a) Pay to the Collector the licence fee as prescribed.

(b) Give security to the Collector for compliance with this Act.

Payment of
licence fee
and security.

Amended by
No. 26, 1918,
s. 7.

(2.) The sum in which security is to be given by the applicant for a licence shall be in accordance with the prescribed scale.

(3.) Until otherwise prescribed the amount of security shall be in accordance with the scale in Schedule IX. of this Act.

40. The Collector if satisfied with the security given may grant to the applicant a licence in the form in Schedule VII., but if the application is refused the licence fee shall be returned to the applicant.

Collector to
grant licence.

41.—(1.) The annual fees for licences shall be as prescribed.^(a)

Licence fee.

(2.) Until otherwise prescribed the amount of the fees for licences shall be according to the scale in Schedule VIII. to this Act.

Substituted by
No. 26, 1918,
s. 8.

(a) The annual fees for licences have been prescribed by regulation 11A of the Excise Regulations 1925.

Currency of
licences.

Substituted by
No. 26, 1918,
s. 8; amended
by No. 88,
1947, s. 3.

42.—(1.) A licence shall, unless previously cancelled, remain in force until the thirty-first day of December next after the granting or renewal of the licence.

(1A.) A licence may be renewed by the Collector upon an application for renewal made before the date of expiry of the licence and upon payment of the annual licence fee.

(1B.) The Collector may, in exceptional circumstances, extend for a period not exceeding seven days the time within which an application for the renewal of a licence and payment of the annual licence fee may be made.

(2.) The liability of the subscribers to the security given in respect of the original licence shall, in the absence of any notice of termination on the part of the subscribers, remain in full force for any period for which the licence is renewed.

Transfer or
cancellation.

43. Licences may be transferred with the written permission of the Collector on security being given by the transferee, and may be cancelled by the Minister by *Gazette* notice if the holder is convicted of any offence against this Act.

Fresh security
may be
required.

44. The Collector may at any time require any manufacturer to give fresh security, and fresh security shall be given accordingly and in default the licence may be cancelled by the Minister by *Gazette* notice.

Excisable
goods to be
made in
licensed
factories.

45. No manufacturer shall manufacture excisable goods at any place other than the factory specified in his licence, or shall manufacture in his factory excisable goods to a greater quantity than allowed by his licence or except by permission sell by retail any excisable goods in his factory or at any place within fifty yards thereof.

Penalty: One hundred pounds.

PART V.—EXCISE SUPERVISION, MANUFACTURERS' BOOKS, AND REGULATION OF FACTORIES GENERALLY.

Supervision
by officers.

46. The manufacture of excisable goods shall for the protection of the revenue be subject to the right of supervision by officers.

Office
accommodation
for officers.

47. Every manufacturer shall if required by the Collector provide in connexion with his factory reasonable office accommodation and reasonable board and lodging for the supervising officer in each case to the satisfaction of the Collector.

Penalty: Fifty pounds.

Payment for
board and
lodging.

48. Every manufacturer providing board and lodging for an officer pursuant to the request of the Collector shall be entitled to fair remuneration therefor at such rate as shall be agreed or prescribed.

49. Every manufacturer shall provide all reasonable facilities for enabling officers to exercise their powers under this Act. Facilities to officers.

Penalty: Fifty pounds.

50. For the information of officers every manufacturer shall keep books and prepare and render accounts as prescribed and shall also as prescribed verify such books and accounts. Books.

Penalty: Fifty pounds.

51. The Collector may give directions in writing to any manufacturer directing— Collector may give directions.

(a) In what parts of the factory any process in the manufacture is to be carried on.

(b) In what parts of the factory material and other matters used in the manufacture and excisable goods manufactured are respectively to be kept.

And every manufacturer shall comply with such directions.

Penalty: Fifty pounds.

52. Every manufacturer shall at his own expense provide sufficient lights, correct weights and scales, and all labour necessary for weighing material received into and all excisable goods manufactured in his factory, and for taking stock of all material and excisable goods contained in his factory. Weights and scales.

Penalty: Fifty pounds.

53. Every manufacturer is responsible for the safe custody of all material and excisable goods in his factory and for the observance of this Act within his factory. Responsibility of manufacturers.

PART VI.—PAYMENT OF DUTY, REMOVAL OF EXCISABLE GOODS FROM FACTORIES, AND EXCISE CONTROL.

54. The manufacturer shall be liable to pay to the Collector the Excise duties on all excisable goods manufactured by him. Liability to pay duty.

55. Partly manufactured excisable goods may by authority and subject to the prescribed conditions be transferred from one factory to another for the purpose of completing the manufacture. Transfer of partly made goods.

56. No excisable goods shall be removed from a factory without an entry made and passed authorizing their removal. Removal.

Penalty: One hundred pounds.

57. Excisable goods shall only be removed from a factory in packages of such sizes and marked in such manner as may be prescribed. Size of packages.

Purposes of removal.
Amended by No. 26, 1918, s. 9, and by No. 88, 1947, s. 4.

58. Entries may be made by the manufacturer or owner and passed by an officer and may authorize the removal of excisable goods for

- (a) Home consumption.
- (b) Removal to an approved place.
- (c) Exportation.

When duty to be paid.

59. The Excise duty shall be paid before the entry for home consumption is passed.

Security on removal.
Amended by No. 26, 1918, s. 10.

60. The manufacturer shall give security for the due removal or exportation of the excisable goods before any entry is passed for the removal of excisable goods to an approved place or for exportation.

Customs control.

61. All excisable goods manufactured shall until delivery for home consumption or exportation to parts beyond the seas which ever shall first happen be subject to the control of the Customs, and shall not be moved altered or interfered with except by authority and in accordance with this Act.

Penalty: One hundred pounds.

Deficiency in duty.

62. Whenever, in relation to any factory, it appears, on taking stock of excisable goods manufactured and material by an officer, that duty has not been paid on the full quantity of excisable goods on which duty ought to have been paid, the manufacturer shall forthwith pay to the Collector the amount of the deficiency unless such deficiency is accounted for to the satisfaction of the Collector.

Power to prescribe scales for calculating quantities of excisable goods produced.

63. For the purpose of calculating the full quantity of excisable goods which have been produced in a factory scales may be prescribed showing the quantity of excisable goods which shall be deemed to have been produced from a given quantity of material, and the quantity of fully manufactured excisable goods which shall be deemed to have been produced from a given quantity of partly manufactured excisable goods.

PART VII.—SPECIAL PROVISIONS RELATING TO TOBACCO.

Sections 64-66 repealed by No. 26, 1918, s. 11.

* * * * *

Number of factory and State.

67. The Collector shall furnish to each manufacturer the number of his factory to be called the factory number and the number representing the State in which the factory is situated to be called the State number.

Exemption.

68. No person shall be deemed to manufacture merely because he cures tobacco leaf as stripped from the plant so as to convert it into leaf tobacco.

69. All tobacco and snuff manufactured in a factory shall be put up in packages of the prescribed weights and sizes.

Size of packages.

70. Before any package containing manufactured tobacco, snuff, cigars or cigarettes is removed from a factory, the manufacturer shall mark that package and any packages contained in that package in the prescribed manner and the marking shall be in distinct characters and shall be effected by a method approved by the Collector.

Marking of packages.

Substituted by No. 88, 1947, s. 5.

Penalty: Fifty pounds.

* * * * *

Sections 71 and 72 repealed by No. 88, 1947, s. 5.

73. Manufactured tobacco may by authority be received into a factory for renovation or for cutting or for any other prescribed purpose but for no other purpose.

Receipt of manufactured tobacco in factory.

Penalty: Twenty pounds.

74. Manufactured tobacco received into a factory shall be dealt with in the manner prescribed and shall be treated separately and kept separate from tobacco manufactured in the factory.

Manufactured tobacco received in factory to be treated separately.

Penalty: Twenty pounds.

75. Notwithstanding the provisions of section fifty-six of this Act, stalks, refuse, clippings or waste arising from the manufacture of tobacco in a factory may be removed, as prescribed, from the factory for destruction as prescribed.

Destruction of waste tobacco.

Substituted by No. 46, 1949, s. 3.*

76. No manufacturer shall have in his factory any manufactured tobacco containing more than thirty per centum of moisture.

Limitation of amount of moisture in tobacco.

Penalty: Fifty pounds.

77. Any manufactured tobacco which on being dried at a temperature of two hundred and twelve degrees as indicated by Fahrenheit's thermometer is decreased in weight by more than thirty per centum shall be deemed to have contained more than thirty per centum of moisture.

How moisture determined.

* * * * *

Section 78 repealed by No. 26, 1918, s. 12.

PART VIII.—DRAWBACKS.

79. Drawbacks of Excise duty may be allowed on exportation in respect of such excisable goods in such cases to such amount and in such manner as may be prescribed.

Drawbacks allowed.

* Sub-section (2.) of section 3 of the *Excise Act* 1949 reads as follows:—

"(2.) The provisions of the section repealed by the last preceding sub-section shall, notwithstanding the repeal of that section, continue to apply in relation to leaf tobacco entered for home consumption before the commencement of this Act."

Section 80
repealed by
No. 26, 1918,
s. 13.

* * * * *

Limit of value.

81. No drawbacks shall be allowed on any goods of a less value for home consumption than the amount of the drawback or on which the Excise duty paid did not amount to One pound.

Examination
of goods under
drawback.

82. All goods in respect of which any claim for drawback shall be made shall before exportation be produced for examination by the Customs and shall be examined accordingly.

Debenture to
be passed.

83. For the purpose of claiming drawback a drawback debenture shall be presented to the Collector who shall as soon as the goods have been exported cause the debenture to be passed for payment.

Declaration on
debenture.

84. The person claiming drawback on any goods shall make a declaration upon the debenture that the goods have been exported, and have not been re-landed and are not intended to be re-landed, and that such person at the time of shipping was entitled to the drawback, and the name of such person shall be stated in the debenture and the receipt of such person on the debenture countersigned by the holder of such debenture if the same shall have been transferred in the meantime shall be a sufficient discharge for such drawback.

Payment of
drawback
debentures.

85. No drawback debenture shall be paid except with the consent of the Minister—

(a) unless presented for payment within one year from the date of the shipment of the goods for export.

And the Minister may—

(b) prohibit the payment in whole or in part of any drawback debenture, but so as not to deprive the person entitled thereto of any remedy he may have for such drawback.

PART IX.—OFFICERS.

Division 1.—Powers of Officers.

Access to
factory and
books.

86. Officers shall at all times have complete access to every part of any factory, and may examine, take account of, and note all vessels utensils material and excisable goods in the factory, and may examine and take copies of or extracts from, all books and accounts required to be kept by the manufacturer in relation to the factory or the making or sale of excisable goods.

Power to enter
premises of
producers and
dealers.

87. Any officer may at any time between sunrise and sunset enter and search the premises of any producer or dealer or person who sells excisable goods, or any land upon which material is

produced, or any premises where he has reasonable cause to suspect that excisable goods are made, or not having paid duty are kept or stored.

88. Any officer having with him a writ of assistance or a Customs warrant under the *Customs Act* 1901 may at any time in the day or night enter into and search any house, premises or place, and may break open the same and search any depository, chests, trunks, or packages in which excisable goods may be or are supposed to be.

Power under writ of assistance.

89. Any officer acting under a writ of assistance or Customs warrant may take with him and have the assistance of any police officer and such assistants as he may think necessary.

Power to take assistants.

90. Any officer upon reasonable suspicion may stop and search any vehicle or boat for the purpose of ascertaining whether any excisable goods upon which duty has not been paid are thereon, and the driver of any vehicle or the person in charge of any boat shall stop and permit an officer to search his vehicle or boat when required by an officer so to do.

Power to search vehicles.

Penalty: Fifty pounds.

91. Any officer may open packages and examine weigh mark and seal any excisable goods subject to the control of the Customs and may lock up seal mark or fasten any plant in or on a factory, and the expense of the examination of the goods including the cost of their removal to the place of examination shall be borne by the owner.

Examine all goods.

92. No fastening, lock, mark, or seal placed by an officer upon any goods or upon any plant in a factory shall be opened, altered, broken, or erased, except by authority.

Seals, &c., not to be broken.

Penalty: Fifty pounds.

93. Any officer may seize any forfeited goods or any goods which he has reasonable cause to believe are forfeited.

Power to seize goods.

94. Any officer lawfully making any seizure under any Excise Act may call upon any person present in the King's name to assist him, and such assistance shall be rendered accordingly.

Power to call for aid.

Penalty: Twenty pounds.

95. All seized goods shall be taken to the nearest King's warehouse or to such other place of security as the Collector shall direct.

Seized goods to be secured.

96. When any goods have been seized as forfeited the seizing officer shall give notice in writing of such seizure and the cause thereof to the owner of the goods (unless such owner be present at the seizure in which case no notice shall be necessary) either

Notice to be given of goods seized.

by delivering such notice to him personally or by letter addressed to him and transmitted by post to or delivered at his last known place of abode or business and all the goods seized shall be deemed to be condemned and may be sold by the Collector unless the person from whom the goods were seized or the owner shall within one month from the date of seizure give notice in writing to the Collector that he claims them; but if any goods so seized are of a perishable nature or are live animals they may be forthwith sold by the Collector.

Seized goods may be returned on security.

97. The Comptroller or the Collector may authorize any goods seized to be delivered to the claimant on his giving security to pay their value in case of their condemnation.

Collector may retain goods and require owner to proceed for restoration.

98. Whenever any goods have been seized by an officer and claim to such goods has been served on the Collector by the owner of such goods, the Collector may retain possession of the goods without taking any proceedings for their condemnation, and may by notice under his hand require the claimant to enter an action against him for the recovery of the goods, and if the claimant does not within four months after the date of such notice enter such action the goods shall be deemed to be condemned without any further proceedings.

Disposal of forfeited goods.

99. All forfeited goods shall be disposed of or destroyed in such manner as may be prescribed or as the Comptroller may direct.

Power of arrest.

100. Any officer of Customs or police may without warrant arrest any person whom he has reasonable cause to believe is guilty of—

- (a) Unlawfully manufacturing any excisable goods;
- (b) Unlawfully receiving carrying conveying or having upon his premises or in his custody or under his control any excisable goods;
- (c) Being found without lawful excuse upon any premises where excisable goods are being illegally manufactured.

Reasons for arrest.

101. Any officer arresting any person shall as soon as practicable after arrest give him a statement in writing of the reason for his arrest.

Arrested persons to go before Justices.

102. Every person arrested may be detained until such time as he can without undue delay be taken before a Justice.

Powers of Justices with offenders.

103. Any Justice before whom any person is brought under this Act may—

- (1) Commit such person to gaol until he can be brought before Justices to be dealt with according to law; (or)
- (2) Admit him to bail upon his giving sufficient security for

his appearance before Justices at the time and place appointed for the hearing of the charge.

104. If any officer of Customs or police has reasonable cause to suspect that any person is unlawfully carrying or has any goods subject to the control of the Customs secreted about him:— Power to detain and search suspected persons.

(a) The officer may detain and search the suspected person;

(b) Before the suspected person is searched he may require to be taken before a Justice or the Collector;

(c) The Justice or Collector may order the suspected person to be searched or may discharge him without search.

But females shall only be searched by a female searcher appointed by the Justice or Collector.

105. An officer may at any time check the stock of material of any producer or dealer, and if any deficiency is found which cannot be accounted for to the satisfaction of the Collector the producer or dealer shall pay duty on the amount of material found to be deficient as if it had been manufactured into excisable goods. Stock may be checked.

106. Samples of material and of partly manufactured excisable goods and of excisable goods subject to the control of the Customs may for any purpose deemed necessary by the Collector be taken utilized and disposed of by any officer in manner prescribed. Samples.

107. Any officer may purchase samples of excisable goods from any person being the owner or in possession of excisable goods; and no person being the owner of or in possession of any excisable goods shall refuse to deliver to an officer samples of such excisable goods on tender of a reasonable price for such samples. Power to purchase samples.

Penalty: Twenty pounds.

Division 2.—Protection to Officers.

108. No person shall be liable for any seizure under this Act for which there shall have been reasonable cause, and when any claimant recovers any goods seized or any proceeds thereof and at the same time reasonable cause for the seizure is found such finding shall bar all proceedings against all persons concerned in the seizing. Reasonable cause for seizure a bar to action.

109. No proceeding shall be commenced against any officer for anything done in execution of or by reason of his office until one month next after notice in writing shall have been delivered to him or left at his usual place of abode by the plaintiff his attorney or agent in which notice shall be clearly stated the cause and nature of the proceeding and the court in which the same is intended to be instituted, the name and place of abode of the plaintiff and the name and place of business of such attorney or agent unless a justice of the High Court of Australia or of the Supreme Court Notice of action to be given.

of a State has granted leave to the plaintiff to proceed without notice, which leave such Justice may grant on such terms as he may think just.

Defect in
notice not
to invalidate.

110. No notice under the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the Court is of opinion that the defect or inaccuracy would prejudice the defendant in his defence, and the Court may give leave to amend such notice as it thinks just.

No evidence to
be produced but
that contained
in notice.

111. Upon any proceeding instituted in pursuance of notice the plaintiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in such notice nor shall the plaintiff be entitled to a verdict without proving on the trial that such notice has been duly served.

Officer may
tender amends.

112. It shall be lawful for any officer to whom notice of proceeding shall have been given at any time within one month after such notice to tender amends to the plaintiff his attorney or agent and in case such amends be not accepted to plead such tender in defence either alone or with other defences and if the amends tendered shall be found to have been sufficient no costs shall be recovered against an officer and he shall be entitled to costs if he shall have brought the amount into court when entering his defence.

Commencement
of proceedings
against officers.

113. Every proceeding against any officer shall except as mentioned in the next section be commenced within six months after its cause shall have arisen and not afterwards and the venue shall be local and the defendant may plead the general issue and give any special matter in evidence.

Time for
commencing
action.

114. No proceeding whether against an officer or otherwise for anything done for the protection of the revenue in relation to any Tariff or Tariff alteration proposed in Parliament shall except as mentioned in the next section be commenced before the close of the session in which such Tariff or Tariff alteration is proposed. For the purposes of this section "Tariff" shall include any Excise duty.

Security may
be required.

115. The High Court of Australia or the Supreme Court of any State on the application of any person who desires to commence any proceeding mentioned in the last section against an officer may require the officer to give security to the satisfaction of the court to abide the result of the proceeding and in default of the giving of such security may sanction the immediate commencement of the proceeding.

PART X.—PENAL PROVISIONS.

Forfeiture.
Substituted by
No. 88, 1947,
s. 6.

116. The following goods shall be forfeited to the King:—

- (a) all excisable goods manufactured or partly manufactured by a person not licensed under this Act;

- (b) all material found on any premises where the manufacture of excisable goods is unlawfully carried on;
- (c) all goods used, or capable of being used, in, or in connexion with, the manufacture of excisable goods, found on any premises where the manufacture of excisable goods is unlawfully carried on;
- (d) all excisable goods which, being subject to the control of the Customs, are moved, altered or interfered with except by authority of and in accordance with this Act;
- (e) all vehicles and animals conveying, or having packed therein or thereon, any forfeited goods, and all animals and harness used in drawing any such vehicle; and
- (f) all packages in which forfeited goods are contained.

117. No person other than a manufacturer shall, except by authority, have in his possession custody or control any manufactured or partly manufactured excisable goods upon which Excise duty has not been paid, and no person other than a manufacturer, producer, or dealer shall except by authority keep or store any material.

Unlawful possession of excisable goods.

Penalty: Fifty pounds.

118. All persons to the number of two or more assembled for the purpose of preventing the seizure of, or for rescuing after seizure any forfeited goods shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding five years.

Illegal prevention of seizures.

119. A person shall not unlawfully convey any excisable goods upon which excise duty has not been paid and the person in charge of a ship, boat or aircraft shall not use the ship, boat or aircraft, or knowingly suffer the ship, boat or aircraft to be used, in the unlawful conveyance of any such goods.

Unlawfully conveying excisable goods.
Substituted by No. 88, 1947, s. 7.

Penalty: One hundred pounds.

120. No person shall—

- (I.) Sell except by authority any excisable goods unlawfully removed from a factory;
- (II.) Buy material from any person who is not a manufacturer producer or dealer;
- (III.) Sell material to any person who is not a manufacturer or dealer;
- (IV.) Evade payment of any duty which is payable;
- (V.) Obtain any drawback which is not payable;
- (VA.) Obtain any refund of duty which is not payable;
- (VI.) Make any entry which is false in any particular;
- (VII.) Make in any declaration or document produced to any officer any statement which is untrue in any parti-

Offences.
Amended by No. 26, 1918, s. 14.

cular or produce or deliver to any officer any declaration or document containing any such statement;^(a)

(VIII.) Mislead any officer in any particular likely to affect the discharge of his duty;

(IX.) Sell or offer for sale any goods upon the pretence that such goods are excisable goods upon which Excise duty has not been paid.

Penalty: One hundred pounds.

False oath
or affirmation.

121. Whoever wilfully makes any false statement on oath under this Act shall be guilty of an indictable offence and shall be liable to imprisonment with hard labour for any period not exceeding four years.

Personating
officers.

122. Whoever falsely represents himself to be an officer shall be guilty of an indictable offence, and shall be liable to imprisonment with or without hard labour for any term not exceeding two years.

Obstructing
officers.

123. No person shall obstruct, molest, resist, or hinder any officer in the performance of his duty under this Act.

Penalty: Fifty pounds.

Collusive
seizures,
penalty.

124. Whoever

(a) Being an officer makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any goods liable to forfeiture or conspires or connives with any person to neglect his duty or do any act whereby the provisions of any Excise Act may be evaded;

Bribe offered
to officer,
penalty.

(b) Gives, or procures to be given, or offers or promises to give or procure to be given any bribe recompense or reward to, or makes any collusive agreement with any officer to induce him in any way to neglect his duty, or who by threats demands or promises attempts to influence any officer in the discharge of his duty;

Rescuing
goods.

(c) Rescues any goods which have been seized or destroys any goods or documents relating thereto to prevent the seizure thereof or the securing the same or the proof of any offence;

Persons
assaulting or
obstructing
officers.

(d) Assaults or by force resists molests or obstructs or endeavours to intimidate any officer or any person acting in his aid or assistance in the execution of his duties,

shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding Five years.

(a) Necessity for proof of *mens rea* in prosecutions under this section discussed by the Supreme Court of Queensland. *Walker v. Chapman, ex parte Chapman*, 1904 St.R.Qd. 330; 1904 Q.W.N. 83.

125. Any person by act or omission guilty of any contraven- Penalty in cases not provided for.
tion of this Act for which no other penalty is provided shall be
liable to a penalty of not more than Ten pounds.

126. Whoever aids, abets, counsels, or procures, or by act or Aiders and abettors.
omission is directly or indirectly concerned in the commission of
any offence against this Act, shall be deemed to have committed
such offence and shall be punishable accordingly.

127. Any attempt to commit an offence against this Act shall Attempted offences.
be an offence against this Act punishable as if the offence had been
committed.

128. All penalties shall be in addition to any forfeiture. Penalties in addition to forfeitures.

129. If any penalty hereby provided shall be less than three Maximum penalty in certain cases.
times the value of any goods in respect of which the offence has
been committed the maximum penalty shall be thrice the value of
the goods.

130. Any person may at the same time be charged with an Maximum penalty in case of intent to defraud.
offence against this Act and with an intent to defraud the revenue
and if in addition to such offence he is convicted of such intent the
maximum penalty shall be double that otherwise provided.

131. When any person is convicted of any offence against this If previous conviction defendant may be imprisoned.
Act for which a pecuniary penalty is provided and it shall appear
that such person had been previously convicted of any similar
offence the Court may in lieu of or in addition to imposing any
penalty order that such person shall be imprisoned with hard
labour for a period of not less than six months nor more than two
years and with or without the right of release on payment of a
penalty.

132. The minimum penalty for any offence against this Act Minimum penalty.
shall be one-twentieth of the prescribed maximum which is pre-
scribed in pounds.

PART XI.—EXCISE PROSECUTIONS.

133. Proceedings by the Customs for the recovery of penalties Interpretation.
under any Excise Act or for the condemnation of goods seized as
forfeited are herein referred to as Excise Prosecutions.

134. Excise prosecutions may be instituted in the name of the How instituted.
Minister by action information or other appropriate proceeding— Amended by No. 26, 1918, s. 15.

- (a) In the High Court of Australia; or
- (b) In the Supreme Court of any State,

and when the penalty does not exceed Five hundred pounds or the excess is abandoned the Excise prosecution may be instituted in the name of the Collector or of an officer acting under the direction of the Collector in

(c) Any Court of summary jurisdiction.

Evidence of authority to institute proceedings.
Inserted by No. 8, 1923, s. 3.

134A.—(1.) Where any Excise prosecution has been instituted by an officer in the name of the Collector the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Collector.

(2.) The production of a telegram purporting to be signed by the Collector and purporting to authorize an officer to institute any Excise prosecution or proceedings, shall be admissible in evidence in the prosecution or proceedings, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Collector.

Defendant to have right of trial in High or State Court.

135. In any Excise prosecution where the penalty exceeds One hundred pounds and the excess is not abandoned the defendant within seven days after service of process shall have the right in manner prescribed to elect to have the case tried in the option of the prosecutor either in the High Court of Australia or in the Supreme Court of the State in which such prosecution has been instituted and thereupon the proceedings shall stand removed accordingly and may be continued as if originally instituted in the Court to which they are so removed.

Prosecution in accordance with practice rules.

136. Every Excise prosecution in the High Court of Australia or the Supreme Court of any State may be commenced prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

State Court practice.

137. Subject to the provisions of this Act the provisions of the law relating to summary proceedings before Justices in force in the State where the proceedings are instituted shall apply to all Excise prosecutions before a Court of summary jurisdiction in such State, and an appeal^(a) shall lie from any conviction order for condemnation or order of dismissal to the Court and in the manner provided by the law of the State where such conviction or order is made for appeals from convictions or orders of dismissal.

Commencement of prosecutions.

138. Excise prosecutions may be instituted at any time within five years after the cause thereof.

(a) Held by the High Court that "appeal" includes in New South Wales a statutory prohibition granted by the Supreme Court. *Wilcox v. Donohoe*, (1905) 3 C.L.R. 83; 12 A.L.R. 54 (overruling *ex parte Stelling*, (1904) 4 S.R. (N.S.W.) 201; 21 W.N. (N.S.W.) 65). See also cases on *Customs Act 1901-1950*, s. 248, *supra*.

139. All informations summonses convictions condemnations and warrants shall suffice if the offence or forfeiture is set forth as nearly as may be in the words of this Act.

Information &c. to be valid &c. if in words of Act.

140. No objection shall be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between such information or summons and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

No objection for informality.

141. No conviction warrant of commitment or condemnation order or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any Excise Act shall be held void quashed or set aside by reason of any defect therein or want of form and no party shall be entitled to be discharged out of custody on account of such defect.

Conviction not to be quashed.

142. No witness on behalf of the Minister Collector or officer in any Excise prosecution shall be compelled to disclose the fact that he received or gave any information or the nature thereof or the name of the person who gave such information, and no officer appearing as a witness shall be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Protection to witnesses.

143.—(1.) In every Excise prosecution the defendant shall be competent to give evidence.

Defendant a competent witness.

(2.) In every Excise prosecution except for an indictable offence or for an offence directly punishable by imprisonment the defendant shall be compellable to give evidence.

Amended by No. 26, 1918, s. 16.

144.—(1.) In any Excise prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred.^(a)

Averment of prosecution sufficient.

Substituted by No. 26, 1918, s. 17.

(2.) This section shall apply to any matter so averred although—

- (a) Evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (b) The matter averred is a mixed question of law and fact but in that case the averment shall be *prima facie* evidence of the fact only.

(3.) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the

(a) As to the scope of this section as it read prior to the amending Act of 1918 (which substantially altered the provisions of the section) see *ex parte Healy*, (1903) 3 S.R. (N.S.W.) 14; 20 W.N. (N.S.W.) 12, and *Walker v. Chapman*, 1904 St.R.Qd. 330; 1904 Q.W.N. 83. As to the power of the Commonwealth Parliament to enact the section, see *per Griffith, C.J.*, *Wileox v. Donohoe*, (1905) 3 C.L.R. 83, at p. 90; 12 A.L.R. 54, at p. 55. See also cases on *Customs Act 1901-1950*, s. 253, *supra*.

credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) Sub-section (1.) of this section shall not apply to—

- (a) An averment of the intent of the defendant; or
- (b) Proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

Proof of
proclamations,
&c.

145. The production of the *Gazette* containing any proclamation *Gazette* notice or regulation appearing to have been issued or made under this Act or the production of any document certified by the Comptroller or the Collector to be a true copy of or extract from any such proclamation, *Gazette* notice, or regulation issued or made under this Act shall be *prima facie* evidence of the issue or making of such proclamation, *Gazette* notice, or regulation, and that the same is in force.

Minimum
penalties.

146. No minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the Court.

Treatment of
convicted
offenders.

147. Where any pecuniary penalty is adjudged to be paid by any convicted person the Court may—

- (1) commit the offender to gaol until the penalty is paid; or
- (2) may release the offender upon his giving security for the payment of the penalty; or
- (3) may exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the Court for the enforcement and recovery of penalties in any other case.

Offender may
be committed
to gaol if
security not
enforced.

Inserted by
No. 44, 1934,
s. 2.

147A.—(1.) Where any convicted person has, whether before or after the commencement of this section, been released in pursuance of section one hundred and forty-seven of this Act upon his giving security for the payment of the pecuniary penalty adjudged to be paid by him, and the penalty has not been paid, or part only thereof has been paid, the prosecutor or plaintiff may apply to the Court for an order committing the offender to gaol until the penalty, or the balance thereof, as the case may be, has been paid, and the Court shall, if it is satisfied that enforcement of the security is impracticable or would occasion hardship to the surety, make an order accordingly.

(2.) The provisions of section one hundred and forty-nine of this Act shall apply to the imprisonment of an offender for whose committal to gaol an order has been made in pursuance of this section:

Provided that, in the calculation of the period at the expiration

of which the defendant is to be discharged, there shall be taken into account any period of imprisonment served by the defendant prior to his release upon his giving security for the payment of the penalty:

Provided further, that where the penalty has been paid in part, the amount of penalty, for the purposes of the table contained in section one hundred and forty-nine of this Act, shall be the unpaid balance of the penalty.

(3.) Notice of an application under this section shall be served upon the convicted person.

148. When any pecuniary penalty adjudged against any person is unpaid the Collector may levy the same by sale of any goods belonging to such person which may then or thereafter be subject to the control of the Customs. Collector may levy on goods in his possession.

149. The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge such person— Release of offenders.

- (i.) on payment to him of the penalty adjudged;
- (ii.) on a certificate by the Collector that the penalty has been paid or realized;
- (iii) if the penalty adjudged to be paid is not paid or realized according to the following table:—

Amount of Penalty.	Period after commencement of imprisonment at the expiration of which defendant is to be discharged.
£2 or under	Seven days.
Over £2 and not more than £5	Fourteen days.
Over £5 and not more than £20	One month.
Over £20 and not more than £50	Two months.
Over £50 and not more than £100	Three months.
Over £100 and not more than £200	Six months.
Over £200	One year.

150. No person shall be twice imprisoned upon the same conviction but the suffering of imprisonment for non-payment of a penalty shall not release the penalty or affect the right of the Customs to collect the amount in any manner provided by this Act other than by imprisonment of the person convicted. Imprisonment not to release penalty.

151. Where the committal of any offence causes a forfeiture of any goods the conviction of any person for such offence shall have effect as a condemnation of the goods in respect of which the offence is committed. Conviction to operate as a condemnation.

152. In all Excise prosecutions the Court may award costs against any party or claimant, and all provisions relating to the recovery of penalties except commitment to gaol shall extend to the recovery of any costs adjudged to be paid. Parties may recover costs.

Application
of penalties.

153. All penalties and forfeitures recovered under any Excise Act shall be applied to such purposes and in such proportions as the Minister may direct.

PART XII.—DISPUTES AS TO DUTY.

Deposit of
duty.

154. If any dispute shall arise as to the amount or rate of duty or as to the liability of goods to duty the owner may deposit with the Collector the amount of duty demanded and thereupon the following consequences shall ensue:—

- (1) The owner upon making proper entry shall be entitled to delivery of the goods.
- (2) The deposit shall be deemed the proper duty unless by action commenced^(a) by the owner against the Collector within six months after making the deposit the contrary shall be determined, in which case any excess of the deposit over the proper duty shall be refunded by the Collector to the owner with Five pounds per centum per annum interest added.

The provisions of the section shall not apply in cases where the Minister is of opinion that any evasion of this Act has been committed or attempted.

PART XIII.—SETTLEMENT OF CASES BY THE MINISTER.

Settlement of
disputes by
Minister.

Amended by
No. 26, 1918,
s. 18.

155. If any dispute shall arise between any officer and any person with reference to any contravention of this Act, the Minister may in manner prescribed with the written consent of such person inquire into and determine the dispute and shall have power by order a notification of which shall be published in the *Gazette* to impose enforce mitigate or remit any penalty or forfeiture which he shall determine shall have been incurred.

Orders to
be final.

156. Every such order shall be final and without appeal and shall not be liable to be quashed on any account and a copy thereof shall be delivered to such person and may be enforced in the same manner as the order of a court of summary jurisdiction.

Powers of
Minister at
inquiries.

157. The Minister in holding any inquiry under this Part of this Act shall hold such inquiry in public and may—

- (a) Summon the parties and any witnesses before him.
- (b) Take evidence on oath.
- (c) Require the production of documents.
- (d) Allow reasonable expenses to witnesses and costs to successful parties.

Procedure.

158. No person being summoned as a witness at any inquiry under this Act shall—

^(a) As to right of appeal to the Privy Council in an action commenced under this section before the passing of the *Judiciary Act* 1903, but in which judgment was not delivered until after the passing of that Act, see *Colonial Sugar Refining Co. Ltd. v. Irving*, 1904 St.R.Qd. 18.

- (a) Disobey such summons;
- (b) Refuse to be sworn as such witness;
- (c) Refuse or fail to produce any document he may be required to produce;
- (d) Being sworn as a witness refuse or fail to answer any question lawfully put to him.

Penalty: Twenty pounds.

159. Any matter of difference arising under this Act, or in relation to the Customs, and not involving a contravention of this Act, may, at the request of the parties interested, be referred to the Minister for decision, and thereupon the Minister may in such manner as he shall think fit inform his mind of the circumstances, and finally decide the difference. Minister may determine differences.

PART XIV.—MISCELLANEOUS.

160. If after any agreement is made for the sale or delivery of excisable goods duty paid any alteration takes place in the duty collected affecting such goods before they are entered for home consumption then in the absence of express written provision to the contrary the agreement shall be altered as follows:— Alteration of agreements where duty altered.

- (a) In the event of the alteration being a new or increased duty the seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.
- (b) In the event of the alteration being the abolition or reduction of duty the purchaser may deduct the difference caused by the alteration from the agreed price.
- (c) Any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

161. All Excise duties shall constitute Crown debts charged upon the goods in respect of which the same are payable and payable by the owner of the goods and recoverable at any time in any court of competent jurisdiction by proceedings in the name of the Collector. Recovery of duties.

162. If any rebate is allowed in respect of any Excise duty, the allowance shall be made and duty paid as prescribed. Rebate.

163. Any declaration prescribed may be made before any Justice of the Peace in any State a Commissioner for Declarations, or before any officer of Customs, postmaster, or electoral officer. Declarations. Amended by No. 26, 1913, s. 19.

(a) See also s. 7 of the *Statutory Declarations Act 1911-1950, infra.*

Regulations.

164. The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Excise.

Section 165
repealed by
No. 26, 1918,
s. 20.

* * * * *

SCHEDULES.

SCHEDULE I.

COMMONWEALTH OF AUSTRALIA.

Security to the Customs.

By this security the Subscribers are, pursuant to *The Excise Act 1901*, bound to the Customs of the Commonwealth of Australia in the sum of—
[here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition]—subject only to this condition that if—[here insert the condition of the security]—then this security shall be thereby discharged.*

Dated the	day of	19 .
Names and Descriptions of Subscribers.	Signatures of Subscribers.	Signatures of Witnesses.

SCHEDULE II.

COMMONWEALTH OF AUSTRALIA.

The Excise Act 1901.

Request for Registration as producer.
To the Collector of Customs, State of
I HEREBY request you to register me as a producer under the above Act.
Full name—
Address—
Occupation—
Kind of material to be produced—
Place and description of area on which material is to be produced—
Dated the day of 19 .
(Signature of Producer)
Witness—

* NOTE.—If liability is not intended to be joint and several and for the full amount, here state what is intended, as, for example, thus:—"The liability of the subscribers is joint only," or "the liability of (mentioning subscribers) is limited to (here state amount of limit of liability or mode of ascertaining limit)."

COMMONWEALTH OF AUSTRALIA.

CERTIFICATE OF REGISTRATION OF PRODUCER.

This Certificate of Registration will remain in force until cancelled.

Dated the _____ day of _____ 19 ____
Collector of Customs for the State of _____

COMMONWEALTH OF AUSTRALIA.

REQUEST FOR REGISTRATION AS A DEALER.

Full name—

Address—

Occupation—

Situation of premises on which business is to be carried on—

Dated the _____ day of _____ 19__.

(Signature of Dealer)

Witness—

COMMONWEALTH OF AUSTRALIA.

CERTIFICATE OF REGISTRATION AS A DEALER.

This Certificate of Registration will remain in force until cancelled.

Dated the _____ day of _____ 19__.

Collector of Customs for the State of

APPLICATION FOR LICENCE TO MANUFACTURE.

The aggregate quantity of such excisable goods proposed to be manufactured in any one year will not exceed

Name in full

Address

Occupation

Situation of premises

(Signature of Applicant)

Witness

Schedule VI.
Substituted by
No. 26, 1918,
s. 21.

Amended by
No. 88, 1947,
§ 8.

SCHEDULE VII.

COMMONWEALTH OF AUSTRALIA.

The Excise Act 1901.

MANUFACTURER'S LICENCE.

A.B., of [here state place of residence and occupation] is hereby licensed, pursuant to *The Excise Act 1901*, to manufacture [here set out kind of excisable article and add in quantities not exceeding in any one year or in any quantity] in the factory situate at [here give name of place or town and street] drawings and particulars of which have been furnished to me as prescribed.

This licence commences on the _____ day of _____ and will, unless cancelled, continue in force until 31st December, 19____, but may be renewed in accordance with section 42 of the Act.

Dated the _____ day of _____ 19____
Collector of Customs for the State of _____

SCHEDULE VIII.

Schedule VIII.

Substituted by
No. 26, 1918,
s. 21.

SCALE OF FEES FOR LICENCES TO MANUFACTURE.*

For every factory wherein the weight of tobacco, cigars, cigarettes and snuff or any of them proposed to be manufactured in one year, shall in the aggregate—

(a)	Not exceed 5,000 lbs.	..	..	..	..	£5
(b)	Exceed 5,000 lbs. but not 10,000 lbs.	..	..	..	..	£10
(c)	Exceed 10,000 lbs. but not 20,000 lbs.	..	..	..	..	£20
(d)	Exceed 20,000 lbs. but not 50,000 lbs.	..	..	..	..	£50
(e)	Exceed 50,000 lbs. but not 100,000 lbs.	..	..	..	..	£100
(f)	Exceed 100,000 lbs. but not 200,000 lbs.	..	..	..	..	£150
(g)	Exceed 200,000 lbs. but not 350,000 lbs.	..	..	..	..	£250
(h)	Exceed 350,000 lbs. but not 500,000 lbs.	..	..	..	..	£350
(i)	Exceed 500,000 lbs. but not 1,000,000 lbs.	..	..	..	..	£500
(j)	Exceed 1,000,000 lbs.—for the first 1,000,000 lbs., £500, and for each additional 1,000,000 lbs. or part thereof £100					

The fees shall be computed as from the first day of January to the thirty-first day of December and when by reason of the time of the granting of the licence it will not continue for a full year the amount of fee shall be reduced proportionately.

SCHEDULE IX.

Schedule IX.

Substituted by
No. 26, 1918,
s. 21.

SCALE OF AMOUNTS IN WHICH SECURITY IS TO BE GIVEN BY MANUFACTURERS.

For every manufacturer paying a licence fee of—

£5 per annum...	..	..	..	..	..	£200
£10	25	25	..	..	..	£300
£20	25	25	..	..	..	£500
£50	25	25	..	..	..	£800
£100	25	25	..	..	..	£1,200
£150	25	25	..	..	..	£1,800
£250	25	25	..	..	..	£2,500
£350	25	25	..	..	..	£3,500
£500	25	25	..	..	..	£5,000
£600	25	25	and over	..	..	£7,500

Schedule X.
repealed by
No. 26, 1918,
s. 21.

* These fees have now been prescribed by regulation 11A of the Excise Regulations 1925.

EXCISE TARIFF 1921-1950.^(a)

An Act relating to Duties of Excise.

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

1. This Act may be cited as the *Excise Tariff* 1921-1950.^(a)

Short title.
Short title
amended, No.
32, 1918, s. 2.

2. The *Distillation Act* 1901-1918, the *Beer Excise Act* 1901-1918, the *Coal Excise Act* 1949 and the *Excise Act* 1901-1918 shall be incorporated and read as one with this Act.

Incorporation.
Amended by
No. 82, 1949,
s. 2.

* * * * *

Section 3
repealed by
No. 80, 1950,
s. 3 and First
Schedule.

4. The time of imposition of the Duties of Excise imposed by this Act^(b) is the twenty-fifth day of March, One thousand nine

Time of
imposition of
Duties of
Excise.

(a) The *Excise Tariff* 1921-1950 comprises the *Excise Tariff* 1921 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Excise Tariff</i> 1921 ..	1921, No. 26 ..	16th December, 1921	25th March, 1920
<i>Excise Tariff</i> 1924 ..	1924, No. 28 ..	26th September, 1924	1st January, 1925
<i>Excise Tariff</i> 1926 ..	1926, No. 28 ..	21st July, 1926 ..	21st July, 1926
<i>Excise Tariff</i> 1928 ..	1928, No. 4 ..	31st March, 1928 ..	31st March, 1928
<i>Excise Tariff</i> 1933 ..	1933, No. 20 ..	21st November, 1933	26th February, 1932
<i>Excise Tariff</i> (No. 2) 1933 ..	1933, No. 21 ..	21st November, 1933	5th October, 1933
<i>Excise Tariff</i> 1936 ..	1936, No. 17 ..	27th May, 1936 ..	29th November, 1935
<i>Excise Tariff</i> 1938 ..	1938, No. 24 ..	5th July, 1938 ..	1st January, 1938
<i>Excise Tariff</i> (No. 2) 1938 ..	1938, No. 70 ..	10th December, 1938	22nd September, 1938
<i>Excise Tariff</i> 1939 ..	1939, No. 29 ..	26th September, 1939	5th May, 1938
<i>Excise Tariff</i> (No. 2) 1939 ..	1939, No. 54 ..	15th December, 1939	9th September, 1939
<i>Excise Tariff</i> (No. 3) 1939 ..	1939, No. 65 ..	15th December, 1939	1st December, 1939
<i>Excise Tariff</i> 1948 ..	1948, No. 3 ..	27th April, 1948 ..	15th November, 1946
<i>Excise Tariff</i> (No. 2) 1948 ..	1948, No. 4 ..	27th April, 1948 ..	5th June, 1947
<i>Excise Tariff</i> (No. 3) 1948 ..	1948, No. 14 ..	27th April, 1948 ..	19th February, 1948
<i>Excise Tariff</i> (No. 4) 1948 ..	1948, No. 93 ..	21st December, 1948	9th September, 1948
<i>Excise Tariff</i> 1949 ..	1949, No. 77 ..	28th October, 1949 ..	8th September, 1949
<i>Excise Tariff</i> (No. 2) 1949 ..	1949, No. 82 ..	28th October, 1949 ..	1st November, 1949
<i>Excise Tariff</i> 1950 ..	1950, No. 61 ..	14th December, 1950	1st July, 1950
<i>Excise Tariff</i> (No. 2) 1950 ..	1950, No. 62 ..	14th December, 1950	6th December, 1950
<i>Statute Law Revision Act</i> 1950 ..	1950, No. 80 ..	16th December, 1950	31st December, 1950

(b) Section 4 of the *Excise Tariff* 1924 provides that the amendments effected by that Act shall commence as from the date of the commencement of that Act, viz., 9 a.m. on 1st January, 1925.

Section 3 of the *Excise Tariff* 1926 reads:—

"3. The duties imposed by the Schedule to this Act shall be deemed to have been imposed as from the fourth day of March One thousand nine hundred and twenty-six at nine o'clock in the forenoon, reckoned according to standard time in the State of Victoria."

Section 3 of the *Excise Tariff* 1928 reads:—

"3. The duties imposed by the Schedule to this Act shall be deemed to have been imposed as from the twenty-fifth day of November One thousand nine hundred and twenty-seven at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government."

Section 3 of the *Excise Tariff* 1933 reads:—

"3.—(1.) The time of the imposition of the Duties of Excise imposed by this Act, except in respect of items in the Schedule to this Act in respect of which a later date is specified, is the twenty-sixth day of February, One thousand nine hundred and thirty-two, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government, and this Act shall be deemed to have come into operation at that time.

(2.) The time of the imposition of the Duties of Excise imposed by this Act in respect of items in the Schedule to this Act in respect of which a date later than the twenty-sixth day of February, One thousand nine hundred and thirty-two is fixed, is the later date so fixed, at nine o'clock in the forenoon reckoned according to standard time in the Territory for the Seat of Government."

Section 3 of the *Excise Tariff* (No. 2) 1933 reads:—

"3.—(1.) The time of the imposition of the Duties of Excise imposed by this Act, except in respect of items in the Schedule to this Act in respect of which a later date is specified, is the fifth day of October, One thousand nine hundred and thirty-three, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government, and this Act shall be deemed to have come into operation at that time.

(2.) The time of the imposition of the Duties of Excise imposed by this Act in respect of items in the Schedule to this Act in respect of which a date later than the fifth day of October, One thousand nine hundred and thirty-three is fixed, is the later date so fixed, at nine o'clock in the forenoon reckoned according to standard time in the Territory for the Seat of Government."

Section 3 of the *Excise Tariff* 1936 reads:—

"3.—(1.) The time of the imposition of the duties of Excise imposed by this Act, except in respect of items in the Schedule to this Act in respect of which a later date is specified, is the twenty-ninth day of November, One thousand nine hundred and thirty-five at nine o'clock in the forenoon, reckoned according to the standard time in the Territory for the Seat of Government, and this Act shall be deemed to have come into operation at that time.

(2.) The time of imposition of the duties of Excise imposed by this Act in respect of items in the Schedule to this Act in respect of which a date later than the twenty-ninth day of November, One thousand nine hundred and thirty-five is fixed, is the later date so fixed, at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government."

Section 3 of the *Excise Tariff* 1938 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the first day of January, One thousand nine hundred and thirty-eight at nine o'clock in the forenoon, reckoned according to standard time in the Territory for the Seat of Government, and this Act shall be deemed to have come into operation at that time."

Section 3 of the *Excise Tariff* (No. 2) 1938 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the twenty-second day of September, One thousand nine hundred and thirty-eight, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

Section 3 of the *Excise Tariff* 1939 reads:—

"3. The time of the imposition of the duty of Excise imposed by this Act is the fifth day of May, One thousand nine hundred and thirty-eight, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

Section 3 of the *Excise Tariff* (No. 2) 1939 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the ninth day of September, One thousand nine hundred and thirty-nine, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

Section 3 of the *Excise Tariff* (No. 3) 1939 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the first day of December, One thousand nine hundred and thirty-nine, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

Section 3 of the *Excise Tariff* 1948 reads:—

"3.—(1.) The time of the imposition of the duties of Excise (not being duties of Excise the time of the imposition of which is fixed by the next succeeding sub-section) imposed by this Act is the fifteenth day of November, One thousand nine hundred and forty-six, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time.

(2.) The time of the imposition of the duties of Excise imposed by this Act in respect of items in the Schedule to this Act in respect of which a date later than the fifteenth day of November, One thousand nine hundred and forty-six is fixed, is the later date so fixed, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory."

Section 3 of the *Excise Tariff* (No. 2) 1948 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the fifth day of June, One thousand nine hundred and forty-seven, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

Section 3 of the *Excise Tariff* (No. 3) 1948 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the nineteenth day of February, One thousand nine hundred and forty-eight, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

hundred and twenty at nine o'clock in the forenoon reckoned according to the standard time in the State of Victoria, and this Act shall be deemed to have come into operation at that time.^(a)

5. The^(b) Duties of Excise specified in the Schedule are hereby imposed in accordance with the Schedule, as from the time of the imposition of such duties or such later dates as are mentioned in the Schedule in regard to any particular items, and such duties shall

Duties of
Excise.

Section 3 of the *Excise Tariff* (No. 4) 1948 reads:—

"3.—(1.) The time of the imposition of the duties of Excise (not being duties of Excise the time of the imposition of which is fixed by the next succeeding sub-section) imposed by this Act is the ninth day of September, One thousand nine hundred and forty-eight, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time.

(2.) The time of imposition of duties of Excise imposed by this Act in respect of which a date earlier than the ninth day of September, One thousand nine hundred and forty-eight, is specified in the Schedule to this Act, is the earlier date so specified at nine o'clock in the forenoon reckoned according to standard time in the Australian Capital Territory."

Section 3 of the *Excise Tariff* 1949 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the eighth day of September, One thousand nine hundred and forty-nine, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

Section 4 of the *Excise Tariff* (No. 2) 1949 reads:—

"4. The date of the imposition of the duties of Excise imposed by this Act is the first day of November, One thousand nine hundred and forty-nine, and this Act shall come into operation on that date."

Section 3 of the *Excise Tariff* 1950 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the first day of July, One thousand nine hundred and fifty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

Section 3 of the *Excise Tariff* (No. 2) 1950 reads:—

"3. The time of the imposition of the duties of Excise imposed by this Act is the sixth day of December, One thousand nine hundred and fifty, at nine o'clock in the forenoon, reckoned according to standard time in the Australian Capital Territory, and this Act shall be deemed to have come into operation at that time."

(a) The retro-active operation of a similar section in the *Excise Tariff* 1902 was upheld by the Full Court of Queensland (and, on appeal, by the Privy Council), in *Colonial Sugar Refining Co. Ltd. v. Irving*, 1903 St.R.Qd. 261, (and, on appeal, [1906] A.C. 360). As to the effect, upon the Distillation Acts of the States, of the imposition of uniform duties by the Parliament of the Commonwealth, see *Robinson v. Hall*, 1906 S.A.L.R. 16.

(b) Section 4 of the *Excise Tariff* 1933 and section 4 of the *Excise Tariff* (No. 2) 1933 read:—

"4. Each Duty of Excise specified in the Schedule to this Act in relation to an item contained therein, is hereby imposed in accordance with the Schedule as from such time as is specified in the last preceding section* as the time of imposition of the Duty of Excise in respect of that item, and that duty shall be deemed to have been imposed at that time, and the Duties of Excise imposed by this section shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on the following goods, namely:—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the times when such duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia before the times when such duties are deemed to have been imposed, and which were at those times subject to the control of the Customs, or to Excise supervision, or in the stock, custody or possession of, or belonging to, any distiller or manufacturer thereof, and on which no duty of Excise had been paid before the times when such duties are deemed to have been imposed."

* i.e. section 3; see footnote (b) to s. 4, *supra*.

Section 4 of the *Excise Tariff* 1936 reads:—

"4. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of such duties or such later dates as are mentioned in that Schedule in respect of any particular items, and such duties shall be deemed to have been imposed at such time or dates, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on the following goods, namely:—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time or dates when such duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia before the time or dates when such duties are deemed to have been imposed."

imposed, and which were at that time or those dates subject to the control of the Customs, or to Excise supervision, or in the stock, custody or possession of, or belonging to, any distiller or manufacturer thereof, and on which no duty of Excise had been paid before the time or dates when such duties are deemed to have been imposed."

Section 4 of the *Excise Tariff* 1938 reads:—

"4. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of those duties, and those duties shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on the following goods, namely:—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when those duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia before the time when those duties are deemed to have been imposed, and which were at that time subject to the control of the Customs, or to Excise supervision, or in the stock, custody or possession of, or belonging to, any distiller or manufacturer thereof, and on which no duty of Excise had been paid before the time when those duties are deemed to have been imposed."

Section 4 of the *Excise Tariff* (No. 2) 1938 reads:—

"4. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of those duties, and those duties shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on the following goods, namely:—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when those duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia before the time when those duties are deemed to have been imposed, and which were at that time subject to the control of the Customs, or to Excise supervision, or in the stock, custody or possession of, or belonging to, any manufacturer thereof, and on which no duty of Excise had been paid before the time when those duties are deemed to have been imposed."

Section 4 of the *Excise Tariff* 1939 reads:—

"4. The duty of Excise specified in the Schedule to this Act is hereby imposed in accordance with that Schedule, as from the time of the imposition of that duty and that duty shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on the following goods, namely:—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when that duty is deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia before the time when that duty is deemed to have been imposed, and which were at that time subject to the control of the Customs, or to Excise supervision, or in the stock, custody or possession of, or belonging to, any manufacturer thereof, and on which no duty of Excise had been paid before the time when that duty is deemed to have been imposed."

Section 4 of the *Excise Tariff* (No. 2) 1939 and section 4 of the *Excise Tariff* (No. 3) 1939 read:—

"4. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of those duties, and those duties shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on the following goods, namely:—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when those duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia before the time when those duties are deemed to have been imposed, and which were at that time subject to the control of the Customs, or to Excise supervision, or in the stock, custody or possession of, or belonging to, any distiller or manufacturer thereof, and on which no duty of Excise had been paid before the time when those duties are deemed to have been imposed."

Section 4 of the *Excise Tariff* 1948, section 4 of the *Excise Tariff* (No. 2) 1948 and section 4 of the *Excise Tariff* (No. 3) 1948 read:—

"4. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of those duties, and those duties shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when those duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act which were manufactured or produced in Australia before the time when those duties are deemed to have been imposed and at that time were subject to the control of the Customs, or to Excise supervision, or were in the stock, custody or possession of, or belonging to, any distiller or manufacturer thereof and on which no duty of Excise had been paid before the time when those duties are deemed to have been imposed."

Section 5 of the *Excise Tariff* (No. 4) 1948 reads:—

"5. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of those duties, and those duties shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when those duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act which were manufactured or

be deemed to have been imposed at such time or dates, and shall be charged, collected, and paid to the use of the King for the purposes of the Commonwealth, on the following goods, namely:—

- (a) all goods dutiable under the Schedule and manufactured or produced in Australia after the time or dates when such duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule and manufactured or produced in Australia before the time or dates when such duties are deemed to have been imposed, and which were at that time or those dates subject to the control of the Customs, or to Excise supervision, or in the stock, custody, or possession of, or belonging to, any distiller or manufacturer thereof, and on which no duty of Excise had been paid before the time or dates when such duties are deemed to have been imposed.^(a)

produced in Australia before the time when those duties are deemed to have been imposed and at that time were subject to the control of the Customs, or to Excise supervision, or were in the stock, custody or possession of, or belonging to, any distiller or manufacturer thereof and on which no duty of Excise had been paid before the time when those duties are deemed to have been imposed."

Section 4 of the *Excise Tariff* 1949 reads:—

"4. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of those duties, and those duties shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when those duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act which were manufactured or produced in Australia before the time when those duties are deemed to have been imposed and at that time were subject to the control of the Customs, or to Excise supervision, or were in the stock, custody or possession of, or belonging to, any manufacturer thereof and on which no duty of Excise had been paid before the time when those duties are deemed to have been imposed."

Section 5 of the *Excise Tariff* (No. 2) 1949 reads:—

"5. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the date of the imposition of those duties, and those duties shall be imposed on that date and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth on all goods dutiable under the Schedule to this Act and produced in Australia on and after that date."

Section 4 of the *Excise Tariff* 1950 reads:—

"4. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of those duties, and those duties shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when those duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act which were manufactured or produced in Australia before the time when those duties are deemed to have been imposed and at that time were subject to the control of the Customs, or to Excise supervision, or were in the stock, custody or possession of, or belonging to, a manufacturer thereof and on which no duty of Excise had been paid before the time when those duties are deemed to have been imposed."

Section 5 of the *Excise Tariff* (No. 2) 1950 reads:—

"5. The duties of Excise specified in the Schedule to this Act are hereby imposed in accordance with that Schedule, as from the time of the imposition of those duties, and those duties shall be deemed to have been imposed at that time, and shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on—

- (a) all goods dutiable under the Schedule to this Act and manufactured or produced in Australia after the time when those duties are deemed to have been imposed; and
- (b) all goods dutiable under the Schedule to this Act which were manufactured or produced in Australia before the time when those duties are deemed to have been imposed and at that time were subject to the control of the Customs, or to Excise supervision, or were in the stock, custody or possession of, or belonging to, a manufacturer thereof and on which no duty of Excise had been paid before the time when those duties are deemed to have been imposed."

(a) Held by the Full Court of Queensland (and, on appeal, by the Privy Council), that a similar section in the *Excise Tariff* 1902 was not a discrimination between the States within the meaning of section 51 (ii) of the Constitution, *Colonial Sugar Refining Co. Ltd. v. Irving*, 1903 St.R.Qd. 261, (and, on appeal, [1906] A.C. 360).

Section 6
repealed by
No. 80, 1950,
s. 3 and First
Schedule. (a).

* * * * *

Substitutes
for excisable
goods.

7. Whenever any goods are manufactured which in the opinion of the Minister are a substitute for any excisable goods, or are intended to be or can be used as such substitute, or for any purpose for which such excisable goods can be used, or for any similar purpose, the Minister may by notice published in the *Gazette* direct that such first-mentioned goods shall be charged with the Excise duty at a specified rate, such rate to be proportionate to the rate of duty chargeable on the excisable goods according to a standard to be prescribed by Regulations under the *Excise Act* 1901-1918, and upon the publication of the notice in the *Gazette* the goods specified therein shall be deemed to be excisable goods.

Sections 8 and 9
repealed by No.
80, 1950, s. 3
and First
Schedule.

* * * * *

THE SCHEDULE.

All imitations to be dutiable at the rate chargeable on the goods they imitate, unless such rate is less than the rate which would otherwise be chargeable on the imitations.

"Proof" or "Proof Spirit" means spirit of a strength equal to that of pure ethyl alcohol compounded with distilled water so that the resultant mixture, at a temperature of 60° Fahrenheit, has a specific gravity of 0.91976 as compared with that of distilled water at the same temperature.

"N.E.I." means "not elsewhere included."

"Departmental By-law" means By-law made by the Minister, and published in the *Gazette*.

(a) Section 4 of the *Excise Tariff* 1926 reads:—

"4. Notwithstanding anything contained in this Act, where the duty which would be payable on any goods under the *Excise Tariff* 1921-1924 is higher than the duty payable on the goods under this Act, such higher duty, or, if more than one, the highest duty, shall be charged, collected and paid to the use of the King for the purposes of the Commonwealth, on all such goods entered for home consumption prior to the date of assent to this Act, and no refund shall be given of any duty paid or deposited at such higher or highest rate, as the case may be:

Provided that no higher duty than that set out in the Schedule shall in pursuance of this section, be charged on any goods, entered for home consumption prior to the date of assent to this Act, on which, with the consent of the Minister, a duty lower than the higher or highest duty authorized by this section was paid or deposited at the time of such entry."

THE SCHEDULE—continued.

Articles.	Rate of Duty.
1. Beer—	
(A) Ale porter, and other beer, containing not less than 2 per cent. of proof spirit - - - per gallon	4s. 7d.
(B) Any other fermented liquors n.e.i. containing not less than 2 per cent. of proof spirit which may by Proclamation be declared dutiable under this item per gallon	4s. 7d.
For the purposes of this item beer means any fermented liquor brewed from a mash of malted or other grains or extracts from malted or other grains with or without sugars or glucose or both sugars and glucose, hops or other vegetable bitters.	
2. Spirits—	
(A) Brandy, distilled wholly from wine, the fermented juice of fresh grapes, by a pot-still or similar process at a strength not exceeding 40 per cent. over proof, matured by storage in wood for a period of not less than two years and certified by an officer to be pure brandy - - - - - per proof gallon	53s. 6d.
(B) Blended Brandy, distilled wholly from wine, the fermented juice of fresh grapes, and containing not less than 25 per cent. of pure spirit (which has been separately distilled from wine, the fermented juice of fresh grapes, by a pot-still or similar process at a strength not exceeding 40 per cent. over proof), the whole being matured by storage in wood for a period of not less than two years, and certified by an officer to be brandy so blended and matured per proof gallon	53s. 6d.
(C) Apple Brandy, distilled wholly from apple cider and Brandies distilled from other approved fruit juices by a pot-still or similar process at a strength not exceeding 40 per cent. over proof, matured by storage in wood for a period of not less than two years, and certified by an officer to be pure apple or pure fruit brandy - - - - - per proof gallon	53s. 6d.
(D) Whisky, distilled wholly from barley malt by a pot-still or similar process at a strength not exceeding 45 per cent. over proof, matured by storage in wood for a period of not less than two years, and certified by an officer to be pure malt whisky per proof gallon	54s. 6d.
(E) (1) Australian Blended Whisky, distilled partly from barley malt and partly from other grain, containing not less than 25 per cent. of pure barley malt spirit (which has been separately distilled by a pot-still or similar process at a strength not exceeding 45 per cent. over proof), the whole being matured by storage in wood for a period of not less than two years, and certified by an officer to be whisky so blended and matured per proof gallon	54s. 6d.
(2) Blended Whisky, n.e.i., distilled partly from barley malt and partly from other grain, containing not less than 25 per cent. of pure barley malt spirit (which has been separately distilled by a pot-still or similar process at a strength not exceeding 45 per cent. over proof), provided that the blended whisky contains not less than 15 per cent. of Australian pure barley malt spirit and contains not more than 20 per cent. of spirit upon	Substituted by No. 14, 1948, s. 2 and Schedule.
	Substituted by No. 14, 1948, s. 2 and Schedule.
	Substituted by No. 14, 1948, s. 2 and Schedule.
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	Substituted by No. 14, 1948, s. 2 and Schedule.
	Substituted by No. 14, 1948, s. 2 and Schedule.

THE SCHEDULE—continued.

	Articles.	Rate of Duty.
	2.—continued.	
	(E)—continued.	
	which import duty has been paid, the whole being matured by storage in wood for a period of not less than two years, and certified by an officer to be whisky so blended and matured per proof gallon	54s. 6d.
Substituted by No. 14, 1948, s. 2 and Schedule.	(F) Rum, distilled wholly from sugar, sugar syrup, molasses, or the refuse of sugar cane, by a pot-still or similar process at a strength not exceeding 45 per cent. over proof, matured by storage in wood for a period of not less than two years, and certified by an officer to be pure rum - - - per proof gallon	56s. 6d.
Substituted by No. 14, 1948, s. 2 and Schedule.	(G) Blended Rum, distilled wholly from sugar, sugar syrup, molasses, or the refuse of sugar cane, containing not less than 25 per cent. of pure spirit (which has been separately distilled from sugar, sugar syrup, molasses, or the refuse of sugar cane, by a pot-still or similar process at a strength not exceeding 45 per cent. over proof), the whole being matured by storage in wood for a period of not less than two years and certified by an officer to be rum so blended and matured - - - per proof gallon	57s. 6d.
Substituted by No. 14, 1948, s. 2 and Schedule.	(H) Gin, distilled from barley malt, grain, grape wine, apples, or other approved fruit and certified by an officer to be pure gin - - - per proof gallon	56s. 6d.
Sub-item (I.) omitted by No. 93, 1948, s. 2 and Schedule.*	* * * * *	
Substituted by No. 4, 1948, s. 2 and Schedule.	(J) Spirit for fortifying Australian wine or for fortifying Australian grape must for use in the manufacture of wine, subject to Regulations - per proof gallon	4s.
	The duties imposed by this sub-item apply to the spirit whether, at the time of entry for home consumption, it is or is not mixed with wine or grape must. If the spirit is mixed with wine or grape must, the quantity for duty is the total quantity of spirit which has been added to the wine or grape must less any allowance for waste, including evaporation waste, which may be prescribed by Regulations.	
	(K) Spirit for making Vinegar, subject to Regulations per proof gallon	2s.
Substituted by No. 24, 1938, s. 2 and Schedule.	(L) (1) Spirit for use in the manufacture of essences, subject to such conditions as may be prescribed by Departmental By-laws:—	
Substituted by No. 14, 1948, s. 2 and Schedule.	(a) To each liquid gallon of which are added six ounces avoirdupois of citrus essential oil or one-half ounce avoirdupois of approved citrus terpeneless essential oil, produced in Australia from Australian raw materials per proof gallon	12s.
	Provided that, for each additional ounce avoirdupois of such essential oil or for each additional one-twelfth ounce avoirdupois of such approved citrus terpeneless essential oil which is added to each liquid gallon of spirit the rate of duty shall be reduced by	

* The date of the omission of sub-item (I) was 4th October, 1948. See *Gazette*, 1948, pp. 3431-2. See footnote (a) to item 5, *infra*.

THE SCHEDULE—continued.

Articles.	Rate of Duty.
2.—continued.	
(L)—continued.	
sixpence per proof gallon—with a minimum duty of - - - per proof gallon	10s.
(b) To which are added essential oils (except citrus essential oils) or other flavouring materials produced in Australia from Australian natural vegetable products—such flavouring materials and the quantities thereof to be prescribed by Departmental By-laws - - - per proof gallon	12s.
(c) To which are added oleo resins, essential oils, or other flavouring materials, wholly produced in Australia from imported natural vegetable products — such flavouring materials and the quantities thereof to be prescribed by Departmental By-laws	
per proof gallon	12s.
(d) For use in the manufacture of essence of vanilla from imported vanilla beans by the maceration process - - - per proof gallon	12s.
(2) Spirit for use in the manufacture of scents and toilet preparations, subject to such conditions as may be prescribed by Departmental By-laws:—	Substituted by No. 24, 1938, s. 2 and Schedule.
(a) To each liquid gallon of which is added one-half ounce avoirdupois of citrus essential oil produced in Australia from Australian raw materials, or one-half ounce avoirdupois of any one of such other essential oils or perfuming materials produced in Australia from Australian natural vegetable products as may be prescribed by Departmental By-laws	
per proof gallon	16s.
Provided that, for each additional quarter-ounce avoirdupois (in the aggregate) of such essential oils and perfuming materials as are allowed under this sub-paragraph which is added to each liquid gallon of spirit, the rate of duty shall be reduced by three half-pence per proof gallon —with minimum duty of - per proof gallon	14s.
(b) To which are added essential oils or perfuming materials (except essential oils or perfuming materials allowed under Item 2 (L) (2) (a)) produced in Australia from Australian natural vegetable products — such materials and the quantities thereof to be prescribed by Departmental By-laws	
per proof gallon	16s.
(c) To which are added essential oils or perfuming materials wholly produced in Australia from imported natural vegetable products—such materials and the quantities thereof to be prescribed by Departmental By-laws	
per proof gallon	16s.
(3) Spirit for use in the manufacture of essences, scents and toilet preparations, as prescribed by Departmental By-laws - - - per proof gallon	Substituted by No. 24, 1938, s. 2 and Schedule.

THE SCHEDULE—continued.

	Articles.	Rate of Duty.
	2.—continued.	
	(M) Spirit for industrial and scientific purposes, n.e.i., subject to Regulations - - - per proof gallon	25s.
	And on and after 17th September, 1920 - - - per proof gallon	28s.
	And on and after 8th July, 1921 - - - per proof gallon	25s.
	(N) Methylated spirits, subject to Regulations - - -	Free
	(O) Spirits, n.e.i. - - - - - per proof gallon	65s. 6d.
Substituted by No. 14, 1948, s. 2 and Schedule.	(P) Absolute Alcohol and White Spirit for use in Universities for scientific purposes, subject to Regulations - - - - -	Free
Substituted by No. 28, 1926, s. 2 and Schedule.	(Q) Spirit for use in Public Hospitals, or for use in the manufacture of Medicinal Preparations for use in Public Hospitals, subject to Regulations - - -	Free
Substituted by No. 14, 1948, s. 2 and Schedule.	3. (A) Amylic Alcohol and Fusel Oil - - - per gallon	26s.
	And on and after 17th September, 1920 - - - per gallon	29s.
Substituted by No. 14, 1948, s. 2 and Schedule.	(B) Amylic Alcohol and Fusel Oil, as prescribed by Departmental By-laws - - - - -	Free
	4. Saccharin and other similar substitutes for sugar per lb.	20s.
	And on and after 11th November, 1921 - - -	
	(A) Saccharin n.e.i., and other similar substitutes for sugar - - - - - per lb.	20s.
Substituted by No. 14, 1948, s. 2 and Schedule.	(B) Saccharin for all medicinal purposes, as prescribed by Departmental By-laws - - - - -	Free
	On and after a date to be fixed by Proclamation—(a)	
Added by No. 93, 1948, s. 2 and Schedule.	5. Liqueurs—	
	(A) As prescribed by Departmental By-laws - - - per proof gallon	55s. 6d.
	(B) N.E.I. - - - - - per proof gallon	65s. 6d.
	6. Tobacco—	
Substituted by No. 17, 1936, s. 2 and Schedule.	(A) *Tobacco, hand-made strand:—	
Sub-item (A) substituted by No. 14, 1948, s. 2 and Schedule.	(1) In the manufacture of which all the tobacco leaf used is Australian grown - - - per lb.	10s.
	(2) Otherwise - - - - - per lb.	10s. 8d.
	* HAND-MADE TOBACCO.—“Hand-made Tobacco” shall mean tobacco in the manufacture of which all operations are entirely carried on by hand without the aid of machine tools or machinery other than that used in the pressing of the tobacco.	
Substituted by No. 14, 1948, s. 2 and Schedule.	(B) Tobacco, manufactured, n.e.i.:—	
	(1) In the manufacture of which all the tobacco leaf used is Australian-grown - - - per lb.	10s. 3d.
	(2) Otherwise - - - - - per lb.	10s. 11d.

(a) The date fixed was 4th October, 1948: See *Gazette*, 1948 pp. 3431-2. See also section 4 of the *Excise Tariff* (No. 4) 1948 which reads:—

“4.—(1.) Where, in the Schedule to this Act, it is provided that, on a date to be fixed by Proclamation, the omission of an item or portion of an item from the Schedule to the Principal Act shall be effective, every Proclamation issued on or after the eighth day of September, One thousand nine hundred and forty-eight, and prior to the date on which this Act receives the Royal Assent, fixing the date on which the omission of that item or portion of an item from the Schedule to the Principal Act shall be effective, shall be deemed to have been lawfully made.

(2.) Where, in the Schedule to this Act, it is provided that on and after a date to be fixed by Proclamation, rates of duty shall be imposed on goods covered by an item or portion of an item in the Schedule to this Act, every Proclamation issued on or after the eighth day of September, One thousand nine hundred and forty-eight, and prior to the date on which this Act receives the Royal Assent, fixing the date on and after which those rates of duty shall be imposed on goods covered by an item or portion of an item in the Schedule to this Act, shall be deemed to have been lawfully made.”

THE SCHEDULE—continued.

Articles.	Rate of Duty.
6.— <i>continued.</i>	
(c) Tobacco, fine cut suitable for the manufacture of cigarettes:—	Substituted by No. 14, 1948, s. 2 and Schedule.
(1) In the manufacture of which all the tobacco leaf used is Australian-grown - - - per lb.	20s. 1d.
(2) Otherwise - - - - - per lb.	20s. 9d.
(D) Tobacco, in the manufacture of which all the tobacco leaf used is Australian-grown, for consumption by Australian aborigines, as prescribed by Departmental By-laws - - - - - per lb.	6s. 11d.
* * * * *	Sub-item (E) omitted by No. 14, 1948, s. 2 and Schedule.
7. Cigars—	
(A) *Hand-made - - - - - per lb.	11s. 7d.
* HAND-MADE CIGARS.—“Hand-made Cigars” shall mean cigars in the manufacture of which every operation is performed by hand, provided that moulds may be used.	Substituted by No. 14, 1948, s. 2 and Schedule.
(B) Machine-made - - - - - per lb.	12s. 7d.
8. Cigarettes, including the weight of the outer portion of each cigarette:—	Substituted by No. 14, 1948, s. 2 and Schedule.
(A) †Hand-made - - - - - per lb.	20s. 6d.
† HAND-MADE CIGARETTES.—“Hand-made” shall mean that the whole of the operations connected with the filling and completion of cigarettes shall be performed exclusively by hand.	
(B) N.E.I. - - - - - per lb.	20s. 9d.
9. Snuff - - - - - per lb.	4s.
10. (A) Articles being the property of the Commonwealth Government not being for purposes of trade - -	Free
(B) Articles which are owned (prior to clearance for home consumption) by, and are for the personal or official use of—	Substituted by No. 14, 1948, s. 2 and Schedule.
(1) the Governor-General or any member of his family - - - - -	Free
(2) a member of the staff of the Governor-General, provided that that member is not an Australian citizen - - - - -	Free
(c) Articles which are owned (prior to clearance for home consumption) by, and are for the personal or official use of—	Substituted by No. 14, 1948, s. 2 and Schedule.
(1) a State Governor or any member of his family - - - - -	Free
(2) a member of the staff of a State Governor, provided that that member is not an Australian citizen - - - - -	Free
(D) Articles which are owned (prior to clearance for home consumption) by, and are for the personal or official use of—	Added by No. 14, 1948, s. 2 and Schedule.
(1) the diplomatic representative in the Commonwealth of any foreign country - - - - -	Free
(2) the High Commissioner in the Commonwealth of any part of the King's dominions - - - - -	Free
(3) the official representative (not being a High Commissioner) in the Commonwealth of a part of the King's dominions, being a citizen of that part - - - - -	Free
(4) a consular representative in the Commonwealth of any foreign country, provided that that consular representative is a citizen of the country he represents and is not otherwise engaged in any business, occupation or profession - - - - -	Free

THE SCHEDULE—continued.

Articles.	Rate of Duty.
10.—continued.	
(5) a Trade Commissioner in the Commonwealth of any British or foreign country, provided that that Trade Commissioner is a citizen of the country he represents and is not otherwise engaged in any business, occupation or profession	Free
(6) a member of the staff of any person mentioned in paragraphs (1) to (5) (both inclusive) of this sub-item, provided that that member is a citizen of the country represented	Free
(7) a member of the family of any person mentioned in the preceding paragraphs of this sub-item	Free
The Minister may determine that the application of this sub-item in relation to any country shall be conditional on that country granting freedom from excise duty to the representatives of the Commonwealth holding corresponding positions in that country, to their families, and to members of their staffs (being Australian citizens)	
Added by No. 14, 1948, s. 2 and Schedule.	(E) Articles which are owned (prior to clearance for home consumption) by and are for the official use of the representative in the Commonwealth of a British or foreign country, not being a citizen of the country represented, and declared as being for such official use, subject to the approval of the Minister
Added by No. 93, 1948, s. 2 and Schedule.	(F) Articles which are owned (prior to clearance for home consumption) by and are for the official use of the United Nations Organization or a Specialized Agency of the United Nations Organization
Added by No. 93, 1948, s. 2 and Schedule.	(G) Articles which are owned (prior to clearance for home consumption) by and are for the personal or official use of the Secretary-General or an Assistant Secretary-General of the United Nations Organization or the Executive Head or an Assistant Executive Head of a Specialized Agency of the United Nations Organization or a member of the family of any person mentioned in this sub-item
Substituted by No. 3, 1948, s. 2 and Schedule; amended by No. 93, 1948, s. 2 and Schedule and by No. 62, 1950, s. 2 and Schedule.*	11. (A) Petroleum or Shale Products, viz.:—Petrol, Benzine, Benzoline, Gasoline, Naphtha, Pentane and any other petroleum or shale spirit, having a flash point of under 73 degrees Fahrenheit when tested in an Abel Pensky closed test apparatus—
	(1) As prescribed by Departmental By-laws
	(2) N.E.I. per gallon
	(3) Produced from shale mined in Australia
Substituted by No. 3, 1948, s. 2 and Schedule; amended by No. 93, 1948, s. 2 and Schedule; and by No. 62, 1950, s. 2 and Schedule.*	(B) Petroleum or Shale Distillates, viz.:—Turpentine Substitutes—
	(1) As prescribed by Departmental By-laws
	(2) N.E.I. per gallon
	(3) Produced from shale mined in Australia
Substituted by No. 3, 1948, s. 2 and Schedule; amended by No. 93, 1948, s. 2 and Schedule.	(C) Coal Tar and Coke Oven Distillates, Aromatic Hydrocarbons and Light Oils consisting principally of Aromatic Hydrocarbons (not being petroleum

* Section 4 of the *Excise Tariff* (No. 2) 1950 reads:—

"4. Duties of Excise demanded or collected on or after the date of commencement of the *Excise Tariff* 1948 and before the date of commencement of this Act at the rate of Eight pence half-penny per gallon on goods covered by paragraph (2.) of sub-item (A) or paragraph (2.) of sub-item (B) of item eleven in the Schedule to the *Excise Tariff* 1921-1948 shall be deemed to have been lawfully imposed and lawfully demanded or collected.

THE SCHEDULE—continued.

Articles.	Rate of Duty.	
11.—continued.		
or shale products), suitable for use as petrol substitutes and having a flash point of under 73 degrees Fahrenheit when tested in an Abel Pensky closed test apparatus, viz.:—		
(1) As prescribed by Departmental By-laws - - -	Free	
(2) Produced directly or indirectly from coal mined in Australia - - - - -	Free	
(3) N.E.I. - - - - - per gallon	4½d.	
12. Playing Cards - - - - - per dozen packs	10s.	Substituted by No. 14, 1948, s. 2 and Schedule.
13. Concentrated Grape Must*—		
(A) Fortified or unfortified, for use in the manufacture of wine, subject to Regulations—		
(1) Not exceeding 15 degrees Beaumé† - - -	Free	
(2) Exceeding 15 degrees Beaumé†—for each degree Beaumé† or part thereof exceeding 15 degrees Beaumé† - - - - - per gallon	3d.	
(B) N.E.I., subject to Regulations - - - per gallon	3d.	Substituted by No. 17, 1936, s. 2 and Schedule.
* "Concentrated Grape Must" includes any must or juice of grapes from which water has been extracted by evaporation, refrigeration or any other method.		
† "Degrees Beaumé" means the specific gravity expressed in degrees as indicated by the use of the Beaumé hydrometer.		
14. Cigarette tubes, paper and papers—		
For each 60 cigarette tubes - - - - -	1½d.	Substituted by No. 14, 1948, s. 2 and Schedule.
For each 60 cigarette papers or the equivalent of 60 cigarette papers - - - - -	1½d.	
15. Matches - - - - - per 8,640 matches On and after 7th April, 1933	6s. 6d.	Substituted by No. 61, 1950, s. 2 and Schedule.
16. Wine produced on or after 7th April, 1933—		
(A) wholly or partly made from dried grapes or extracts therefrom;		Added by No. 20, 1933, s. 2 and Schedule.
(B) containing added sugar in any form other than concentrated grape must produced from fresh grapes; or		
(C) containing honey, glucose or any other sweetening matter prescribed by Departmental By-laws, not being—		
(i) natural or artificial sparkling wine;		
(ii) Vermouth;		
(iii) wine contained in liqueurs, cocktails or wine cordials;		
(iv) wine produced from fruit other than grapes; or		
(v) Medicated Wine, as prescribed by Departmental By-laws;		
On and after 7th April, 1933	20s.	
17. Wine produced on or after 7th April, 1933, containing added glycerine - - - - - per gallon	5s.	Added by No. 20, 1933, s. 2 and Schedule.
18. Ale Porter and other Beer, Brandy, Whisky, Rum, Gin, Liqueurs, Tobacco, Cigars and Cigarettes, for consumption by the personnel of sea-going vessels of the Royal Australian Navy when such vessels are in full commission and when consumed on such vessels - - -	Free	Added by No. 17, 1936, s. 2 and Schedule.
19. Valves for wireless telegraphy and telephony including rectifying valves - - - - - each	2s. 9d.	Substituted by No. 77, 1949, s. 2 and Schedule.
20. Coal, not being coal the property of a State, as prescribed by Departmental By-laws - - - per ton	6d.	Added by No. 82, 1949, s. 3 and Schedule.

—EXCISE TARIFF REBATE ACT 1944.^(a)

An Act to provide for a Rebate of certain Duties of Excise.

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. **1.** This Act may be cited as the *Excise Tariff Rebate Act 1944*.^(a)

Commencement. **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

Rebate of
Excise duties. **3.** The duties of Excise collected, or to be collected, under items six, seven and eight in the Schedule to the *Excise Tariff 1921-1939*, or under the amendments proposed to be made to those items by Excise Tariff Proposals introduced into the House of Representatives on the fifth day of March, One thousand nine hundred and forty-two, the twenty-fifth day of March, One thousand nine hundred and forty-two and the second day of September, One thousand nine hundred and forty-two, shall be subject to a rebate at the rate of four and one-half per centum in respect of goods entered for home consumption on or after the first day of November, One thousand nine hundred and forty-three, at nine o'clock in the forenoon reckoned according to summer time in the Australian Capital Territory.

^(a) No. 21, 1944; assented to, and commenced, on 6th April, 1944. See s. 2.

EXTRADITION ACT 1903-1950.^(a)

An Act relating to Extradition.

WHEREAS by the Imperial Act known as the *Extradition Act* 1870, it is enacted that that Act when applied by Order in Council shall, unless it is otherwise provided by such Order, extend to every British possession, but with the following among other modifications, namely:—No warrant of a Secretary of State shall be required, and all powers vested in or acts authorized or required to be done under that Act by the Police Magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone:

And whereas by that Imperial Act it is also enacted that if, by any law made by the Legislature of any British possession, provision is made for carrying into effect within that possession the surrender of fugitive criminals who are in or suspected of being in that possession, the King may by Order in Council direct that such law, or any part thereof, shall have effect in that possession, with or without modifications and alterations, as if it were part of that Imperial Act:

And whereas by other Imperial Acts known as the *Extradition Act* 1873 the *Extradition Act* 1895 the *Extradition Act* 1906, the *Extradition Act* 1932 and the *Counterfeit Currency (Convention) Act* 1935, it is enacted that those Acts shall be construed as one with the *Extradition Act* 1870, and that the six Acts may be cited together as the Extradition Acts 1870 to 1932.^(b)

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

1. This Act may be cited as the *Extradition Act* 1903-1950.^(a)

1A. In this Act, unless the contrary intention appears—"the Commonwealth" includes the Territories of Papua and Norfolk Island.

(a) The *Extradition Act* 1903-1950 comprises the *Extradition Act* 1903 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Extradition Act</i> 1903 ..	1903, No. 12 ..	21st October, 1903 ..	16th July, 1904 (See <i>Gazette</i> , 1904 p. 837)
<i>Extradition Act</i> 1933 ..	1933, No. 35 ..	9th December, 1933 ..	9th December, 1933
<i>Statute Law Revision Act</i> 1934 ..	1934, No. 45 ..	6th August, 1934 ..	6th August, 1934
<i>Statute Law Revision Act</i> 1950 ..	1950, No. 80 ..	16th December, 1950 ..	31st December, 1950

(b) The *Statute Law Revision Act* 1950 by s. 3 and the First Schedule amended this paragraph of the Preamble by omitting "1870-1932" and inserting "1870-1935".

Preamble.

Extradition Act 1870, sec. 17.

Extradition Act 1870, sec. 18.

Extradition Acts 1873, 1895, 1906 and 1932.

Amended by No. 35, 1933, s. 2; by No. 45, 1934, s. 2 (3) and 4th Schedule; and by No. 80, 1950, s. 3 and First Schedule.

Short title.

Short title amended. No. 32, 1918, s. 2.

Interpretation.

Added by No. 35, 1933, s. 3.

Commencement.

2. This Act shall commence on the day on which the Governor-General makes known by Proclamation^(a) that the King has by Order in Council directed that this Act, or any part thereof, shall have effect in the Commonwealth as if it were part of the *Extradition Act 1870*.

Terms defined in Imperial Extradition Acts.

Amended by No. 35, 1933, s. 4 and by No. 80, 1950, s. 3 and First Schedule.

Powers of the Governor-General in relation to extradition.

Amended by No. 35, 1933, s. 4 and by No. 80, 1950, s. 3 and First Schedule.

3. In this Act, unless the contrary intention appears, terms defined in the Extradition Acts 1870 to 1935 have the same meaning as in those Acts.*

Extradition from the Commonwealth.

4. All powers vested in and Acts authorized or required to be done by a Secretary of State, under the Extradition Acts 1870 to 1935, in relation to the surrender of a fugitive criminal, are hereby vested in, and may in the Commonwealth be exercised and done by, the Governor-General, and may in any part of the Commonwealth be exercised and done by any deputy of the Governor-General^(b) thereto authorized.

* *Extradition Act 1870.*

Part of Section 26—

In this Act, unless the context otherwise requires—

The term "extradition crime" means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the First Schedule to this Act.

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign State who is in or is suspected of being in some part of Her Majesty's dominions.

First Schedule—

The following list of crimes is to be construed according to the law existing in England, or in a British possession (as the case may be), at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act:—

Murder, and attempt and conspiracy to murder; manslaughter; counterfeiting and altering money, and uttering counterfeit or altered money; forgery, counterfeiting and altering and uttering what is forged or counterfeited, or altered; embezzlement and larceny; obtaining money or goods by false pretences; crimes by bankrupts against bankruptcy law; fraud by a bailee, banker, agent, factor, trustee or director, or member, or public officer of any company made criminal by any Act for the time being in force; rape; abduction; child stealing, burglary and house-breaking; arson; robbery with violence; threats by letter or otherwise with intent to extort; piracy by law of nations; sinking or destroying a vessel at sea, or attempting or conspiring to do so; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm; revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Extradition Act 1873

Section 8—

The Principal Act shall be construed as if there were included in the First Schedule to that Act the list of crimes contained in the schedule to this Act.

Schedule—

The following list of crimes is to be construed accordingly to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime, whether by common law or by statute made before the passing of this Act:—

Kidnapping and false imprisonment; perjury, and subornation of perjury, whether under common or statute law; any indictable offence under *The Larceny Act 1861*, *The Malicious Damage Act 1861*, *The Forgery Act 1861*, *The Coinage Offences Act 1861*, *The Offences against the Person Act 1861*, or any Act amending or substituted for the same, which is not included in the First Schedule to the Principal Act; any indictable offence under the laws for the time being in force in relation to bankruptcy, which is not included in the First Schedule to the Principal Act.

Extradition Act 1906.

Section 1—

The *Extradition Act, 1870*, shall be construed as if bribery were included in the list of crimes in the First Schedule to that Act.

Extradition Act 1932.

Section 1—

The *Extradition Act, 1870*, shall be construed as if offences against any enactment for the time being in force relating to dangerous drugs, and attempts to commit such offences, were included in the list of crimes in the First Schedule to that Act.

(a) Commenced on 16th July, 1904. See *Gazette*, 16th July, 1904, p. 837. A similar Order in Council with respect to the *Extradition Act 1933* was issued on 14th August, 1934.

(b) Held by James J. of the Supreme Court of New South Wales that there is no necessity for each successive Governor-General to appoint a deputy as the deputation is made by the Governor-General as such and not in an individual capacity. *Ex parte Bradshaw* (1921) 38 W.N. (N.S.W.) 82.

5. All powers vested in and acts authorized or required to be done by a Police Magistrate or any Justice of the Peace under the Extradition Acts 1870 to 1935, in relation to the surrender of a fugitive criminal, are hereby vested in, and may in the Commonwealth be exercised and done by, any Stipendiary or Police or Special Magistrate of the Commonwealth or of a State, or any Magistrate of any Territory of the Commonwealth (not including any Territory governed by the Commonwealth under a Trusteeship Agreement), or any Magistrate of a State thereto specially authorized by the Governor-General.

Powers of magistrates in relation to extradition.

See Vic. No. 588; Qu. 41
Vic. No. 2;
S.A. 1877 No. 59; W.A. 41
Vic. No. 1;
Tas. 41 Vic. No. 29.

Amended by No. 35, 1933, s. 5 and by No. 80, 1950, s. 3 and First Schedule.

Extradition from Foreign States.

6. Where the *Extradition Act* 1870 applies in the case of any foreign State, a requisition for the surrender of a person, accused or convicted of an extradition crime in the Commonwealth, who is or is suspected to be in that foreign State, may be made by the Attorney-General to a consular officer of that State in the Commonwealth, or to any Minister of that State through the diplomatic representative of His Majesty in that State, or in such other mode as is settled by arrangement.

Requisition for surrender of fugitive criminal.

See Canada. Rev. Stat. c. 142 s. 21.

7. Any person accused or convicted of an extradition crime who is surrendered by a foreign State may, under the warrant for his surrender issued in the foreign State, be brought into the Commonwealth and delivered to the proper authorities to be dealt with according to law.

Persons surrendered may be brought into the Commonwealth. Canada. Rev. Stat. c. 142, s. 22.

FINANCIAL AGREEMENT ACT 1928.^{(a)(b)}

An Act to approve an agreement between the Commonwealth of Australia of the First Part and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania of the Second, Third, Fourth, Fifth, Sixth and Seventh Parts respectively and for other purposes.

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. | 1. This Act may be cited as the <i>Financial Agreement Act 1928</i> . ^(a) |
| Approval of Agreement. | 2. The Agreement (a copy of which is set forth in the Schedule to this Act) is approved. |
| Appropriation. | 3. The Consolidated Revenue Fund is hereby appropriated for the purposes of this Act to the extent necessary for the purpose of carrying out the Agreement on the part of the Commonwealth. |
| Treasurer may borrow on behalf of States. | <p>4.—(1.) The Treasurer may, under the provisions of the <i>Commonwealth Inscribed Stock Act 1911–1918</i> or under the provisions of any Act authorizing the issue of Treasury Bills, borrow such moneys for the States as he is authorized or required to borrow for the States under the Agreement.</p> <p>(2.) Moneys borrowed under this Act shall be issued and applied only for the expenses of borrowing, and for the purpose of making loans to the States under the Agreement.</p> |
| Advances to States. | 5. The Treasurer may make to any State such advances as in his opinion are required by that State pending the raising under the Agreement of any loan on behalf of that State. |

(a) No. 5, 1928; assented to, and commenced, on 2nd April, 1928.

(b) The *Financial Agreement Act 1944* varies the Agreement set out in this Schedule, and the Schedule to that Act contains a reprint of the Agreement as varied by provisions of other Agreements. See also Acts No. 43, 1928, Nos. 14 and 52, 1931 and No. 26, 1935.

Held by the High Court (Rich, Starke, Dixon and McTiernan, JJ.; Gavan Duffy, C.J. and Evatt, J. dissenting) that legislation for enforcing this agreement against the revenue of a State is a valid exercise of the power of the Parliament. *New South Wales v. Commonwealth* (No. 1) (1932) 46 C.L.R. 155; 38 A.L.R. 245; 5 A.L.J. 433; 6 A.L.J. 38. (Certificate under s. 74 of the Constitution refused. *New South Wales v. Commonwealth* (No. 2), (1932) 46 C.L.R. 235; 6 A.L.J. 41.)

THE SCHEDULE. ^(a)Part I,
Clauses 1-2.

AGREEMENT^(a) made the twelfth day of December One thousand nine hundred and twenty-seven BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this Agreement called the Commonwealth) of the first part, THE STATE OF NEW SOUTH WALES of the second part, THE STATE OF VICTORIA of the third part, THE STATE OF QUEENSLAND of the fourth part, THE STATE OF SOUTH AUSTRALIA of the fifth part, THE STATE OF WESTERN AUSTRALIA of the sixth part, and THE STATE OF TASMANIA of the seventh part (each of the parties of the second, third, fourth, fifth, sixth, and seventh parts being in this Agreement referred to as a State and the expression "the States" hereinafter used meaning where the context so permits or requires all of such parties).

WHEREAS with a view to making provision for the adjustment of Commonwealth and State financial relations the general principle of a draft scheme was affirmed by a Conference of Commonwealth and State Ministers in Melbourne which commenced on the sixteenth day of June One thousand nine hundred and twenty-seven;

AND WHEREAS permanent effect cannot be given to the proposals contained in the said scheme unless the Constitution of the Commonwealth is altered so as to confer on the Parliament of the Commonwealth power to make laws for carrying out or giving permanent effect to such proposals;

AND WHEREAS pending the submission to the electors of a proposed law for the alteration of the said Constitution as aforesaid and in order to obtain immediately some of the advantages which would result from united action by adoption of the said scheme the Commonwealth and the States have agreed that for the period commencing on the first day of July One thousand nine hundred and twenty-seven and ending on the thirtieth day of June One thousand nine hundred and twenty-nine certain of the proposed provisions of the said scheme shall be temporarily adopted:

NOW THIS AGREEMENT WITNESSETH:

PART I.

1. This Agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the States.

2. DEFINITIONS.

In this Agreement—

"*Net Public debt of a State existing on 30th June, 1927,*" means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz.:—

New South Wales..	..	..	..	£234,088,501
Victoria ..	..	..	..	136,949,942
Queensland..	..	..	..	101,977,855
South Australia ..	..	..	..	84,834,364
Western Australia..	..	..	..	61,060,675
Tasmania ..	..	..	..	22,434,060
				<hr/> £641,345,397

The said amount of the net public debt of each State includes the debts of that State secured by—

- (i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock;
- (ii) Instalment Stock;
- (iii) Registered Stock;
- (iv) Funded Stock;
- (v) Stock payable to bearer;
- (vi) Bonds, including registered bonds;
- (vii) Debentures, including registered debentures and instalment debentures;
- (viii) Treasury Bills not repayable within twelve months from the date of issue; or

(a) See footnote (b) on previous page.

(ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes; issued or created by the State or by or on behalf of a Colony the predecessor of the State in respect of moneys borrowed by the Colony or State together with debts of the State to the Commonwealth of the amount set out respectively hereunder opposite to the name of the State so far as those last mentioned debts are not included by being secured in manner aforesaid:—

New South Wales	£12,553,698
Victoria	23,688,269
Queensland	16,082,583
South Australia	18,446,197
Western Australia	16,739,872
Tasmania	3,948,613
	<hr/>
	£91,459,232

after deducting therefrom the amount for which the Commonwealth by this Agreement assumes liability under Part III., Clause 4, of this Agreement and the amount of any moneys or securities standing to the credit of a sinking fund, redemption fund, or a fund of a like nature of the State as on 30th June, 1927, and does not include any moneys raised by the State by way of overdraft, fixed deposit, or special deposit for temporary purposes only.

The said sum of £234,088,501 (being the amount of the debt of New South Wales abovementioned) comprises the debts referred to in, and has been computed in the manner shown in, the statement signed by representatives of the Commonwealth and of New South Wales.

“*Gross Public Debt of a State existing on 30th June, 1927*,” means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz.:—

New South Wales	£239,441,363
Victoria	144,844,530
Queensland	105,259,916
South Australia	87,614,005
Western Australia	70,705,913
Tasmania	24,254,688
	<hr/>
	£672,120,415

The said amount of the gross public debt of each State includes the net public debt of that State together with the amount for which the Commonwealth by this Agreement assumes liability under Part III., Clause 4, of this Agreement and the amount of any moneys or securities standing to the credit of any sinking fund redemption fund or fund of a like nature of the State as on 30th June, 1927.

“*Transferred Properties*” means the properties mentioned or specified in the Schedule of Transferred Properties signed by representatives of the Commonwealth and the States as revised to the 30th June, 1927, being properties which became vested in the Commonwealth pursuant to Section 85 (i) of the Constitution of the Commonwealth.

“*The Loan Council*” means the Australian Loan Council created in pursuance of this Agreement.

“*Bondholder*” means an owner of any—

- (i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock;
- (ii) Instalment Stock;
- (iii) Registered Stock;
- (iv) Funded Stock;
- (v) Stock payable to bearer;
- (vi) Bonds, including registered bonds;
- (vii) Debentures including registered debentures and instalment debentures;

THE SCHEDULE—*continued*.Part I.,
Clauses 2-3.

- (viii) Treasury Bills not repayable within twelve months from the date of issue or
 - (ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes;
- issued or created by a State or by or on behalf of a Colony the predecessor of the State in respect of borrowed moneys but does not include the Commonwealth.

3. AUSTRALIAN LOAN COUNCIL.

(a) There shall be an Australian Loan Council, which shall consist of one Minister of State of the Commonwealth to be appointed in writing from time to time by the Prime Minister of the Commonwealth to represent the Commonwealth, and one Minister of State of each State to be appointed in writing from time to time by the Premier of that State to represent that State. Provided that, if in the opinion of the Prime Minister or of any Premier of a State, special circumstances exist at any time which make it desirable so to do, a person who is not a Minister may instead of a Minister be appointed by the Prime Minister or the Premier as the case may be to represent the Commonwealth or a State as a member of the Loan Council. The name of each person appointed to represent a State shall be notified in writing by the Premier of that State to the Prime Minister.*

(b) The member representing the Commonwealth on the Loan Council shall hold office during the pleasure of the Prime Minister of the Commonwealth and a member representing a State shall hold office during the pleasure of the Premier of the State which the member was appointed to represent.

(c) A decision in which all the members for the time being of the Loan Council concur shall be a unanimous decision of the Loan Council notwithstanding any vacancy then existing in its membership.

(d) A meeting of the Loan Council may at any time be convened by the member representing the Commonwealth, and shall be so convened upon the request of at least three members representing States.

(e) A majority of the members of the Loan Council shall constitute a quorum of the Loan Council for the exercise of its powers at any meeting. Provided that—

- (i) a member may at any time appoint in writing a deputy to act in his absence; and any deputy so appointed may in the absence of the member exercise all the powers and functions of the member and his presence shall be deemed the presence of the member; and
- (ii) an absent member who has not appointed a deputy may vote by letter or by telegram, and in such case that member shall be counted as being present in relation only to the questions on which he has voted.

(f) The Loan Council may make rules of procedure including rules relating to places, times, and notices of meetings, and conduct of business at meetings, and from time to time may alter such rules.

(g) The Commonwealth and each State will from time to time while Part II. of this Agreement is in force, and while Part III. of this Agreement is in force, submit to the Loan Council a programme setting forth the amount it desires to raise by loans for each financial year for purposes other than the conversion renewal or redemption of existing loans or temporary purposes. Each programme shall state the estimated total amount of such loan expenditure for the year, and the estimated amount of repayments which will be available towards meeting that expenditure. Any revenue deficit to be funded shall be included in such loan programme, and the amount of such deficit shall be set out. Loans for Defence purposes approved by the Parliament of the Commonwealth shall not be included in the Commonwealth's loan programme or be otherwise subject to this Agreement.

(h) If the Loan Council decides that the total amount of the loan programme for the year cannot be borrowed at reasonable rates and conditions it shall

* N.B.—This paragraph has since been substituted by a further agreement approved by the *Soldier Settlement Loans (Financial Agreement) Act 1935, infra*.

decide the amount to be borrowed for the year, and may by unanimous decision allocate such amount between the Commonwealth and the States.

(i) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub-clause allocating the amount to be borrowed for any year, the amount to be borrowed for that year shall be allocated as follows:—

- (i) The Commonwealth shall, if it so desires, be entitled to have one-fifth or any less proportion of such amount allocated to the Commonwealth; and
- (ii) Each State shall be entitled to have allocated to it a sum (being a portion of the balance of such amount) bearing to the balance of such amount the same proportion which the net loan expenditure of that State in the preceding five years bears to the net loan expenditure of all the States during the same period. Provided that any State may, if it so desires, have allocated to it a sum less than the sum to which it is entitled under this sub-clause or no sum, and that when a less sum or no sum has been allocated to any State or States in manner aforesaid the amount then remaining available for allocation shall be allocated to the other States in the proportion which the net loan expenditure of each of such other States in the preceding five years bears to the net loan expenditure of all such other States during the same period. For the purposes of this sub-clause net loan expenditure does not include expenditure for the conversion, renewal, or redemption of loans, but means the gross other loan expenditure of a State less any amounts of such expenditure repaid to the State other than moneys repaid to the State in manner stated in Part II., clause 4 (e), or Part III., clause 3 (i), of this Agreement.

(j) If the total amount to be borrowed as aforesaid for any year is to be borrowed by means of more than one loan the Loan Council may by unanimous decision apportion between the Commonwealth and the States the amount to be borrowed by each such loan other than the loan by means of which the balance of the total amount to be borrowed as aforesaid for the year is borrowed.

(k) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub-clause apportioning the amount to be borrowed as aforesaid by any loan the amount to be borrowed by that loan shall be apportioned between the Commonwealth and the States in proportion to the amount then to be borrowed as aforesaid for the Commonwealth and for each State for the year.

(l) The Commonwealth and each State will also from time to time, while Part II. of this Agreement is in force and while Part III. of this Agreement is in force, submit to the Loan Council a statement setting out the amount it requires for each financial year for the conversion, renewal or redemption of existing loans.

(m) If the members of the Loan Council fail to arrive at a unanimous decision on any matter other than the matters referred to in sub-clauses (h) and (j) of clause 3 and sub-clause (b) of clause 4 of this part of this Agreement, the matter shall be determined by a majority of votes of the members.

On every question for decision by the Loan Council the member representing the Commonwealth shall have two votes and a casting vote, and each member representing a State shall have one vote.

(n) A decision of the Loan Council in respect of a matter which the Loan Council is by this Agreement empowered to decide shall be final and binding on all parties to this Agreement.

(o) In this clause the expressions "Prime Minister" and "Premier" include the persons for the time being respectively acting as such.

4. FUTURE BORROWINGS OF COMMONWEALTH AND STATES.

(a) Except in cases where the Loan Council has decided under sub-clause (b) of this clause that moneys shall be borrowed by a State, the Commonwealth, while Part II. or Part III. of this Agreement is in force, shall, subject to the

THE SCHEDULE—*continued.*Part I.,
Clauses 4-5.

decisions of the Loan Council and subject also to Clauses 5 and 6 of this Part of this Agreement, arrange for all borrowings for or on behalf of the Commonwealth or any State, and for all conversions, renewals, redemptions, and consolidations of the Public Debts of the Commonwealth and of the States.

(b) If at any time the Loan Council by unanimous decision so decides, a State may in accordance with the terms of the decision borrow moneys outside Australia in the name of the State, and issue securities for the moneys so borrowed. The Commonwealth shall guarantee that the State will perform all its obligations to bondholders in respect of the moneys so borrowed. For all the purposes of this Agreement, including the making of sinking fund contributions, the moneys so borrowed shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of that State.

(c) If any State after the 30th June, 1927, and before this Agreement has been approved by the Parliaments of the Commonwealth and of the States, has borrowed moneys in the name of the State and issued securities for the moneys so borrowed, such moneys shall for all the purposes of this Agreement, including the making of sinking fund contributions, be deemed to be moneys borrowed by the Commonwealth for and on behalf of that State.

(d) While Part II. or Part III. of this Agreement is in force, moneys shall not be borrowed by the Commonwealth or any State otherwise than in accordance with this Agreement.

5. BORROWING BY STATES.

For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) a State may, while Part II. or Part III. of this Agreement is in force:—

- (a) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the State from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and
- (b) use any public moneys of the State which are available under the laws of the State.

Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply.

Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State, and may be retained by the State. A State may convert securities given or issued at any time by that State for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council. The amount for which such new securities are issued shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State.

If the moneys deemed under this clause to be moneys borrowed by the Commonwealth on behalf of a State, together with the amounts raised by the Commonwealth for and on behalf of the State exceed the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the State for the financial year in which the money is deemed to be borrowed, the excess shall, unless the Loan Council otherwise decides, be deemed to be moneys received by the State in the following year on account of its loan programme for that year.

For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the offices of the State Treasury, and at such other places as may be decided upon by the Loan Council.

The Commonwealth shall not be under any obligation to make sinking fund contributions in respect of moneys borrowed or used pursuant to this

Part I.,
Clauses 5-6.

THE SCHEDULE—*continued*.

clause to meet a revenue deficit of a State, but the provisions of clause 4 (d) of Part II. and of clause 3 (j) of Part III. of this Agreement shall apply respectively to all moneys borrowed or used for that purpose.

Except in cases where the Loan Council has otherwise decided under sub-clause (b) of clause 4 of Part I. of this Agreement a State shall not have the right to invite loan subscriptions by the issue of a public prospectus.

Notwithstanding anything contained in this Agreement, any State may use for temporary purposes any public moneys of the State which are available under the laws of the State, or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount, and other charges, borrow money for temporary purposes by way of overdraft, or fixed, special, or other deposit, and the provisions of this Agreement other than this paragraph shall not apply to such moneys.

6. BORROWING BY COMMONWEALTH.

For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) the Commonwealth may—while Part II. or Part III. of this Agreement is in force—

- (a) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the Commonwealth from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and
- (b) use any public moneys of the Commonwealth which are available under the laws of the Commonwealth.

Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

purpose Where any such borrowing or use is solely for temporary ~~purchases~~, the provisions of this Agreement, other than this clause, shall not apply.

Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used may be retained by the Commonwealth. The Commonwealth may convert securities given or issued at any time by the Commonwealth for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council.

If the moneys so borrowed or used are not borrowed or used solely for temporary purposes and Commonwealth securities are issued in respect thereof, and such moneys, together with other moneys borrowed by the Commonwealth for and on behalf of the Commonwealth as part of the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the Commonwealth for the financial year in which the securities are issued, exceed such total amount the excess shall unless the Loan Council otherwise decides be deemed to be moneys received by the Commonwealth in the following year on account of its loan programme for that year.

For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the offices of the Commonwealth Treasury, and at such other places as may be decided upon by the Loan Council.

Notwithstanding anything contained in this Agreement, the Commonwealth may use for temporary purposes any public moneys of the Commonwealth which are available under the laws of the Commonwealth or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount, and other charges, borrow money for temporary purposes by way of overdraft, or fixed, special or other deposit, and the provisions of this Agreement other than this paragraph shall not apply to such moneys.

THE SCHEDULE—continued.

Part I.,
Clause 7,
Part II.,
Clauses 1-3.

7. PAYMENT OF INTEREST AND SINKING FUNDS.

In the event of Part III. of this Agreement not coming into force each State shall in respect of all moneys borrowed by the Commonwealth for and on behalf of that State during the period commencing on the 1st July, 1927, and ending on the 30th June, 1929—

- (a) pay to the Commonwealth interest at the full rate of interest payable by the Commonwealth in respect of the loan by which such moneys were borrowed or such other rate of interest as may be payable by that State to the Commonwealth under any agreement made or to be made between the Commonwealth and that State in respect of such moneys. Such interest shall be payable for the full term of that loan and be paid to the Commonwealth on the respective days upon which interest is payable by the Commonwealth in respect of that loan; and
- (b) make sinking fund contributions to the National Debt Commission in respect of the loan by which such moneys were borrowed at the full rate, and for the portion unexpired on the 30th June, 1929 of the full period, provided for in the conditions under which the public were invited to subscribe to that loan; and
- (c) pay to the Commonwealth when the loan matures an amount which (together with the sinking fund contributions made by the Commonwealth and the State in respect of that loan and the accumulations of such contributions) will be sufficient to provide for the redemption of that loan. For the purposes of this sub-clause such contributions shall be deemed to accumulate at the rate of $4\frac{1}{2}$ per centum per annum compounded.

PART II.

1. This part of this Agreement shall be in force only during and in respect of the period of two years, commencing on 1st July, 1927, and ending on 30th June, 1929.

2. CONTRIBUTION BY COMMONWEALTH TO INTEREST.

The Commonwealth will in each of the said two years pay to each State by equal monthly instalments the amount set out opposite to the name of that State as shown hereunder:—

	£
New South Wales.. ..	2,917,411
Victoria	2,127,159
Queensland.. ..	1,096,235
South Australia	703,816
Western Australia.. ..	473,432
Tasmania	266,859
	<u>£7,584,912</u>

Each State shall apply the amount so paid to it towards payment of interest due by that State on the Public Debt of that State. All amounts paid by the Commonwealth to a State in pursuance of Section 6 of the *States Grants Act 1927* of the Commonwealth shall be deemed to be payments to that State under this clause.

3. TRANSFERRED PROPERTIES.

The Commonwealth will in each of the said two years pay to each State interest at the rate of 5 per centum per annum on the agreed value of transferred properties in the State, such value being in the case of each State as follows:—

	£
New South Wales.. ..	4,788,005
Victoria	2,302,862
Queensland.. ..	1,560,639
South Australia	1,035,631
Western Australia.. ..	736,432
Tasmania	500,754
Total	<u>£10,924,323</u>

THE SCHEDULE—continued.

4. SINKING FUNDS.

(a) In each of the said two years the Commonwealth will pay from revenue a sinking fund contribution at the rate of 2s. 6d. per annum for each £100 of the net Public Debts of the States existing on 30th June, 1927, and each State (other than the State of New South Wales) will pay from revenue a sinking fund contribution at the rate of 5s. per annum for each £100 of the net public debt of that State existing on 30th June, 1927. The State of New South Wales will in the financial year commencing 1st July, 1928, pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of that State existing on 30th June, 1927.

(b) Where in respect of any debt included in the gross public debt of a State existing on 30th June, 1927, there is under laws or contracts existing at that date an obligation to provide a sinking fund at a rate in excess of 7s. 6d. per annum for each £100, any amount to be so provided in excess of the rate of 7s. 6d. per annum for each £100 shall be provided out of the National Debt Sinking Fund established under the laws of the Commonwealth. Provided that if any law imposing such an obligation is repealed or is amended so as to reduce the rate of sinking fund to be provided, the only amount (if any) to be provided out of the National Debt Sinking Fund pursuant to this sub-clause in respect of that debt shall, as from the date of such repeal or amendment, be the amount (if any) by which the reduced rate of sinking fund for the time being exceeds 7s. 6d. per annum for each £100.

(c) In respect of each loan raised after the 30th June, 1927, either by a State or by the Commonwealth for and on behalf of a State (other than a loan raised for the conversion, renewal, or redemption of a loan or for temporary purposes) the Commonwealth and that State shall, subject to the next succeeding sub-clause as from the date of the raising of that loan, each pay from revenue a sinking fund contribution at the rate of five shillings (5s.) per annum for each £100 of the amount of such loan. Provided, however, that the liability of the State of New South Wales to make sinking fund contributions under this sub-clause shall commence on the 1st July, 1928. The provisions of this sub-clause apply to a loan raised after the 30th June, 1927, to meet a revenue deficit which accrued on or before that date.

(d) In respect of any loan raised after 30th June, 1927, by a State or by the Commonwealth for and on behalf of a State to meet a revenue deficit accruing after that date no sinking fund contribution shall be payable by the Commonwealth, but that State shall pay from revenue a sinking fund contribution at a rate of not less than 4 per centum per annum on the amount of that loan.

(e) Where loan moneys have been advanced by a State under terms providing for the repayment of such moneys, the State shall as and when such moneys are repaid pay such moneys either to the State Loan Fund or to the account or fund from which such moneys were advanced, or to the sinking fund hereinafter mentioned, and shall, in addition, make from revenue its sinking fund contributions in respect of the loan or loans from which the moneys so advanced were provided.

Provided that when loan moneys have been advanced by a State to a Public or Local Authority or body constituted by the State or under the laws of the State and the Authority or body repays such moneys out of its revenue the State may out of moneys so repaid make its sinking fund contributions in respect of the loan moneys so advanced.

(f) All sinking fund contributions to be made in pursuance of this Part of this Agreement shall be paid to the National Debt Commission constituted under the *National Debt Sinking Fund Act 1923-25*, of the Commonwealth (herein called the National Debt Commission) as follows:—

- (i) as regards the net public debt of a State existing on 30th June, 1927—by half-yearly instalments on 30th September and 31st March in each financial year, or on such other dates as may be agreed between the Commonwealth and the State;
- (ii) as regards loans raised after 30th June, 1927—by equal instalments on the dates on which interest on such loans is payable or on such

THE SCHEDULE—*continued*.Part II.,
Clause 4.

other dates as may be agreed upon between the Commonwealth and the State concerned.

Part III.,
Clauses 1-2.

(g) Where the conditions relating to sinking funds, redemption funds, and funds of a like nature require payments to be made to trustees, the National Debt Commission will either directly or through any State concerned, make the necessary payments to those trustees.

(h) The sinking fund contributions made under this Part of this Agreement in respect of the Public Debt of a State (other than contributions paid or to be paid to trustees under the last preceding sub-clause hereof) shall so far as the same will suffice be applied in the repurchase or redemption of the Public Debt of that State and in the event of the proposed law for the alteration of the Constitution referred to in Part IV. of this Agreement not becoming law and of this Agreement not being validated thereunder, on or before the 30th June, 1929, all State securities repurchased or redeemed as aforesaid shall be cancelled with the exception of securities the market value of which represents the amount of money provided in excess of the rate of 7s. 6d. per annum for each £100 under paragraph (b) of this clause, which latter securities shall be retained by and belong to the National Debt Commission.

PART III.

This Part of this Agreement shall not come into force or be binding upon any party hereto unless before the 1st July, 1929, the Constitution of the Commonwealth has been altered in accordance with the proposals referred to in Part IV. of this Agreement and a law of the Parliament of the Commonwealth has been made thereunder validating this Agreement, but shall come into full force and effect if and when before the said date the Constitution is so altered and this Agreement is so validated.

When this Part of this Agreement comes into force every matter or thing done and payment made under or in pursuance of Part II. of this Agreement shall be deemed, so far as is practicable, to have been done or made under this Part of this Agreement to the same extent as if this Part had then in fact been in force, and all necessary adjustments shall be made in respect of moneys so paid in order to ensure that no party hereto shall be liable for or make double payments in respect of the same matter.

PERMANENT PROVISIONS.

1. TAKING OVER STATES' PUBLIC DEBTS.^(a)

Subject to the provisions of this Part of this Agreement the Commonwealth will take over on the 1st July, 1929:—

- (i) the balance then unpaid of the gross public debt of each State existing on 30th June, 1927; and
- (ii) all other debts of each State existing on the 1st July, 1929, for moneys borrowed by that State which by this Agreement are deemed to be moneys borrowed by the Commonwealth for and on behalf of that State—

and will in respect of the debts so taken over assume as between the Commonwealth and the States the liabilities of the States to bondholders.

2. PAYMENT OF INTEREST.

(a) Subject to this clause the Commonwealth will pay to bondholders from time to time interest payable on the Public Debts of the States taken over by the Commonwealth as aforesaid other than debts due by the States to the Commonwealth.

(b) The Commonwealth will in each year during the period of 58 years, commencing on 1st July, 1927, provide by equal monthly instalments the following amounts in respect of each State as shown hereunder towards the interest payable by that State:—

New South Wales..	..	..	..	£2,917,411
Victoria ..	..	..	..	2,127,159
Queensland..	..	..	..	1,096,235
South Australia ..	..	..	..	703,816
Western Australia..	..	..	..	473,432
Tasmania ..	..	..	..	266,859
				<hr/> £7,584,912

(a) See the *Financial Agreement (Commonwealth Liability) Act 1932, infra*.

(c) Each State shall in each year during the same period of 58 years pay to the Commonwealth the excess over the amounts to be provided by the Commonwealth under the last preceding sub-clause necessary to make up as they fall due the interest charges falling due in that year on the public debt of that State taken over by the Commonwealth as aforesaid and then unpaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid, and after the expiration of the said period each State shall in each year pay to the Commonwealth, as they fall due, the whole of the interest charges on any debt then unpaid and included in the public debt of that State taken over by the Commonwealth as aforesaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid.

(d) The method by which payments shall be made by a State under sub-clause (c) of this clause shall be arranged from time to time between the Commonwealth and that State.

(e) The rate of interest payable under sub-clause (c) of this clause in respect of moneys borrowed by the Commonwealth on behalf of a State shall be the full rate of interest payable by the Commonwealth in respect of the loan by which such moneys were borrowed or such other rate of interest as may be payable by the State to the Commonwealth under any Agreement made or to be made between the Commonwealth and that State in respect of such moneys and such interest shall be payable by the State for the full term of that loan.

3. SINKING FUNDS.

(a) A sinking fund at the rate of 7s. 6d. per annum for each £100 of the net public debts of the States existing on 30th June, 1927, shall be established in the manner hereinafter set forth.

(b) During the period of fifty-eight years commencing on the 1st July, 1927, the Commonwealth shall pay from revenue annually a sinking fund contribution at the rate of 2s. 6d. for each £100 of the net public debts of the States existing on 30th June, 1927, and each State (other than the State of New South Wales) shall in each year during the said period pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of such State existing on 30th June, 1927. The State of New South Wales during the period of fifty-eight years commencing on the 1st July, 1928, shall in each year pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of that State existing on 30th June, 1927.

(c) Where in respect of any debt included in the gross Public Debt of a State existing at the 30th June, 1927, there is under laws or contracts existing at that date an obligation to provide a sinking fund at a rate in excess of 7s. 6d. per annum for each £100, any amount to be so provided in excess of 7s. 6d. per annum for each £100 shall be provided out of the National Debt Sinking Fund, established under the laws of the Commonwealth. Provided that if any law imposing such an obligation is repealed or is amended so as to reduce the rate of sinking fund to be provided the only amount (if any) to be provided out of the National Debt Sinking Fund pursuant to this sub-clause in respect of that debt shall as from the date of such repeal or amendment be the amount (if any) by which the reduced rate of sinking fund for the time being exceeds 7s. 6d. per annum for each £100.

(d) When a loan is issued for the conversion, renewal, or redemption of any debt of a State included in the gross Public Debt of that State existing on 30th June, 1927, the only sinking fund contributions to be made by the Commonwealth and that State in respect of the debt so converted, renewed, or redeemed shall be sinking fund contributions at the same rate and for the same period and upon the same amount as if such debt had not been converted, renewed, or redeemed.

(e) Subject to sub-clauses (h) and (j) of this clause a sinking fund at the rate of 10s. per annum for each £100 of the amount of each new loan raised by a State or by the Commonwealth for and on behalf of a State after 30th June, 1927, shall be established.

(f) Subject to sub-clauses (h) and (j) of this clause, in each year during the period of fifty-three years from the date of the raising after 30th June, 1927, of any new loan by a State or by the Commonwealth for and on behalf of a

THE SCHEDULE—*continued*.Part III.,
Clause 3.

State the Commonwealth and that State shall each pay from revenue a sinking fund contribution of a sum equal to 5s. for each £100 of the amount of the new loan.

Provided that the period of fifty-three years during which the State of New South Wales shall make sinking fund contributions in respect of new loans raised in the financial year beginning on the 1st July, 1927, shall commence on the 1st July, 1928.

(g) For the purpose of the last two preceding sub-clauses a loan issued after the 30th June, 1927, to meet a revenue deficit which accrued on or before that date shall be deemed to be a new loan, but a loan issued for the conversion, renewal or redemption of a debt shall not be deemed to be a new loan, and where a loan is issued partly for the conversion, renewal, or redemption of a debt and partly for other purposes so much only of the loan as has been issued for other purposes, shall be deemed to be a new loan.

(h) Where it is agreed between the Commonwealth and a State that a loan or any portion of a loan raised after 30th June, 1927, and expended or to be expended upon wasting assets should be redeemed within a shorter period than fifty-three years, the annual sinking fund contributions of the State in respect of that loan or the portion thereof, shall be increased to an amount which with the sinking fund contributions of the Commonwealth in respect of that loan or the portion thereof will provide for the redemption of that loan or the portion thereof within such shorter period. All sinking fund contributions of the State in respect of that loan or the portion thereof shall cease on the expiration of the shorter period, but the Commonwealth contributions in respect of that loan shall continue for the remainder of the period of fifty-three years from the date of the raising of that loan, and during such remainder of the period the State contributions to the sinking fund in respect of other loans of that State shall be reduced by the amount of the Commonwealth contributions during that remainder of the period in respect of such redeemed loan or the portion thereof. For the purposes of this sub-clause the sinking fund contributions of the Commonwealth and the State shall be deemed to accumulate at the rate of $4\frac{1}{2}$ per centum per annum compounded.

(i) Where loan moneys have been advanced by a State under terms providing for the repayment of such moneys the State shall as and when such moneys are repaid pay such moneys either to the State Loan Fund or to the account or fund from which such moneys were advanced, or to the sinking fund and shall in addition make from revenue its sinking fund contributions in respect of the loan or loans from which the moneys so advanced were provided.

Provided that when loan moneys have been advanced by a State to a Public or Local Authority or body constituted by the State or under the laws of the State and the Authority or body repays such moneys out of its revenue the State may out of moneys so repaid make its sinking fund contributions in respect of the loan moneys so advanced.

(j) In respect of any loan raised after the 30th June, 1927, by a State or by the Commonwealth for and on behalf of a State to meet a revenue deficit accruing after that date no sinking fund contributions shall be payable by the Commonwealth, but that State shall for a period sufficient to provide for the redemption of that loan pay from revenue in each year during such period a sinking fund contribution at a rate of not less than 4 per centum per annum of the amount of that loan. For the purposes of this sub-clause the sinking fund contributions of the State shall be deemed to accumulate at the rate of $4\frac{1}{2}$ per centum per annum compounded.

(k) All sinking fund contributions to be made in pursuance of this part of this Agreement shall be debts payable to the National Debt Commission as follows:—

- (i) As regards the net public debt of a State existing on 30th June, 1927—by half-yearly instalments on 30th September and 31st March in each financial year or on such other dates as may be agreed between the Commonwealth and that State.

THE SCHEDULE—continued.

- (ii) As regards loans raised after 30th June, 1927—by equal instalments on the dates on which interest on such loans is payable or on such other dates as may be agreed upon between the Commonwealth and the State concerned.

(l) Subject to the next succeeding sub-clause all moneys and securities standing to the credit of sinking funds, redemption funds and funds of a like nature of a State existing on 30th June, 1929, shall forthwith be transferred by the States to the National Debt Commission. Nothing in this sub-clause contained shall be deemed to limit the power of a State to cancel before 30th June, 1929, any such securities.^(a)

(m) Where the conditions relating to sinking funds, redemption funds, and funds of a like nature as aforesaid held by a State on trust or by trustees under statutory or contractual obligations preclude the transfer of those funds to the National Debt Commission, such funds shall remain under the control of the State or those trustees, and the National Debt Commission will either directly or through the State concerned make all future payments to the State or to those trustees from the sinking fund.

(n) The sinking funds to be established under this Agreement shall be controlled by the National Debt Commission. The National Debt Commission may arrange with any State to act as its agent in connexion with payments due to bondholders.

(o) Sinking Fund contributions made under this Agreement in respect of the debts of a State and funds of that State transferred to the National Debt Commission under sub-clause (l) of this clause will not be accumulated, but (subject to sub-clauses (m) and (p) of this clause) will be applied to the redemption of the public debts of that State and of loans raised by the Commonwealth for and on behalf of that State, or to the purchase of securities issued in respect thereof.

(p) If at any time it is deemed inexpedient by the National Debt Commission to apply sinking funds in the manner set forth in sub-clause (o) of this clause, such funds may be temporarily invested in any securities in which the National Debt Commission is from time to time by law authorized to invest moneys.

(q) When a security issued in respect of a public debt of a State or of a loan raised by the Commonwealth for and on behalf of a State is repurchased or redeemed by the National Debt Commission such security shall be cancelled—

- (i) if a repurchased security—on the last day of September, December, March, or June next ensuing after the date of repurchase, or on the date of maturity of the security whichever shall first occur; and
- (ii) if a redeemed security—on the date of redemption.

In addition to the sinking fund contributions otherwise payable in respect of that debt or loan the State concerned shall—

- (i) as from the date of cancellation of each security and for the full period during which the said sinking fund contributions are payable make from revenue a further sinking fund contribution at the rate of $4\frac{1}{2}$ per centum per annum of the face value of the cancelled security; and
- (ii) also pay to the National Debt Commission interest on the face value of each repurchased security at the rate provided by the security from the last date preceding the repurchase upon which interest was payable under the terms of the security up to the date of cancellation of the security.

4. TRANSFERRED PROPERTIES.

It is agreed that all questions between the Commonwealth and the States relating to State properties transferred to the Commonwealth or acquired by the Commonwealth under section 85 of the Constitution shall be settled as follows:—

The States will as from 1st July, 1929, and as between the Commonwealth and the States be completely free and discharged from all liability whether

(a) As to the State of Tasmania see *Tasmania Sinking Fund Agreement Act 1928, infra*.

THE SCHEDULE—*continued*.Part III.,
Clause 4.Part IV.,
Clauses 1-2.

in respect of principal, interest or sinking fund, or otherwise, which liability shall be assumed by the Commonwealth in respect of so much of the public debts of the States bearing interest at the rate of 5 per centum per annum, taken over by the Commonwealth as aforesaid as amounts to the agreed value of transferred properties, namely, £10,924,323, apportioned to the several States as follows:—

New South Wales	..	..	..	..	£4,788,005
Victoria	..	..	..	..	2,302,862
Queensland	..	..	..	..	1,560,639
South Australia	..	..	..	..	1,035,631
Western Australia	..	..	..	..	736,432
Tasmania	..	..	..	..	500,754
Total	..	..	..	..	£10,924,323

The particular portion of the public debt of each State in respect of which the States shall become free and discharged from liability shall be determined by the Commonwealth.

Each State will issue to the Commonwealth freehold titles (or, if the laws of any State do not permit of the issue of freehold titles, then titles as near to freehold as the laws of that State will permit) for transferred properties consisting of land or interests in land in that State, and all liability of the Commonwealth to the State in respect of transferred properties shall as from the 1st July, 1929, be extinguished.

The provisions of clauses 2 and 3 of this Part of this Agreement shall not apply to the said amount of £10,924,323.

PART IV.—MISCELLANEOUS.

1. EXPENSES OF LOAN FLOTATION.

Each State shall repay to the Commonwealth all expenses incurred or payments made by the Commonwealth in the performance of this Agreement in relation to the State including the following expenses and payments:—

- (i) Loan flotation charges;
- (ii) Management charges;
- (iii) Stamp duties on transfer of securities;
- (iv) Commission on payment of interest;
- (v) Expenses incurred in the conversion renewal redemption or consolidation of loans;
- (vi) Exchange on transference of moneys.

Unless it is otherwise agreed between the Commonwealth and a State the Commonwealth will not do anything in connexion with a loan of that State existing on the 30th June, 1927, or raised thereafter pursuant to this Agreement which if done by that State would be a breach of any now existing agreement by that State with any Bank.

A certificate by the Auditor-General of the Commonwealth stating the amount to be repaid by a State to the Commonwealth and the matter in respect of which the repayment is to be made shall in the event of a dispute be conclusive as to the amount and matter stated.

2. ALTERATION OF THE CONSTITUTION.

The Commonwealth will take the necessary action to submit to the Parliament of the Commonwealth and to the electors proposals for the alteration of the Constitution of the Commonwealth in the following form:—

"105A. (1) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

- (a) the taking over of such debts by the Commonwealth;
- (b) the management of such debts;
- (c) the payment of interest and the provision and management of sinking funds in respect of such debts;
- (d) the consolidation, renewal, conversion, and redemption of such debts;
- (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and
- (f) the borrowing of money by the States or by the Commonwealth or by the Commonwealth for the States.

(2) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(3) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

(4) Any such agreement may be varied or rescinded by the parties thereto.

(5) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto, notwithstanding anything contained in this Constitution or the constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.

(6) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section 105 of this Constitution."

3. INDEMNITY.

Each State agrees with the Commonwealth that it will by the faithful performance of its obligations under this Agreement indemnify the Commonwealth against all liabilities whatsoever in respect of the public debt of that State taken over by the Commonwealth as aforesaid (other than the liabilities of the Commonwealth under this Agreement to pay interest and to make sinking fund contributions and under clause 4 of Part III. of this Agreement), and in respect of all loans of that State in respect of which this Agreement provides that sinking fund contributions shall be made.

4. ACCOUNTS.

Separate accounts shall be kept by the Commonwealth for each State in respect of Debt, Interest, and Sinking Funds.

IN WITNESS whereof the Prime Minister of the Commonwealth of Australia and the Premiers of each of the States of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania have signed this Agreement respectively for and on behalf of the Commonwealth of Australia and of the said States.

Signed by the Prime Minister of the Commonwealth of Australia for and on behalf of the said Com- monwealth in the presence of—	}	S. M. BRUCE.
EARLE PAGE.		

Signed by the Premier of the State of New South Wales for and on behalf of the said State in the presence of—	}	T. R. BAVIN.
B. S. STEVENS.		

Signed by the Premier of the State of Victoria for and on behalf of the said State in the presence of—	}	E. J. HOGAN.
H. A. PITT.		

Signed by the Premier of the State of Queensland for and on behalf of the said State in the presence of—	}	W. McCORMACK.
J. MULLAN.		

Signed by the Premier of the State of South Australia for and on behalf of the said State in the presence of—	}	R. L. BUTLER.
H. TASSIE.		

Signed by the Premier of the State of Western Australia for and on be- half of the said State in the pre- sence of—	}	P. COLLIER.
GEO. W. SIMPSON.		

Signed by the Premier of the State of Tasmania for and on behalf of the said State in the presence of—	}	J. A. LYONS.
J. ALLAN GUY.		

FINANCIAL AGREEMENT ACT 1944.^{(a)(b)}

An Act to approve an Agreement between the Commonwealth of Australia of the First Part, and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania of the Second, Third, Fourth, Fifth, Sixth and Seventh Parts respectively, and for other purposes.^(b)

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

1. This Act may be cited as the *Financial Agreement Act 1944*. Citation.
2. This Act shall commence on a date to be fixed by proclamation.^(a) Commencement.
3. The Agreement made on the fifteenth day of November, One thousand nine hundred and forty-four, a copy of which is set forth in the Schedule to this Act, is approved. Approval of Agreement.
- 4.—(1.) The Consolidated Revenue Fund is hereby appropriated to the extent necessary for the purpose of carrying out the Financial Agreement on the part of the Commonwealth. Appropriation.
- (2.) In this section, "the Financial Agreement" means the Agreement a copy of which is set forth in the Schedule to the *Financial Agreement Act 1928*, as varied prior to the date of commencement of this Act and as varied by the Agreement specified in the last preceding section.

THE SCHEDULE.

Section 3.

AGREEMENT made the fifteenth day of November, One thousand nine hundred and forty-four BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this Agreement called "the Commonwealth") of the first part, THE STATE OF NEW SOUTH WALES of the second part, THE STATE OF VICTORIA of the third part, THE STATE OF QUEENSLAND of the fourth part, THE STATE OF SOUTH AUSTRALIA of the fifth part, THE STATE OF WESTERN AUSTRALIA of the sixth part, and THE

(a) No. 46, 1944; assented to on 7th December, 1944; commenced on 28th December, 1944. See *Gazette*, 1944, p. 2859.

(b) See the *Financial Agreement Act 1928*, *supra*.

THE SCHEDULE—continued.

STATE OF TASMANIA of the seventh part (each of the parties of the second, third, fourth, fifth, sixth and seventh parts being in this Agreement referred to as a "State" and the expression "the States" hereinafter used meaning where the context so permits or requires all of such parties):

WHEREAS an Agreement (hereinafter referred to as "the Financial Agreement") was made on the twelfth day of December One thousand nine hundred and twenty-seven between the parties hereto with respect to the public debts of the States:

AND WHEREAS the Financial Agreement has been approved by the Parliaments of the Commonwealth and of the States:

AND WHEREAS the Financial Agreement has been varied by the following agreements made pursuant to Section 105A of the Constitution of the Commonwealth between the parties hereto, namely, an Agreement made the twenty-first day of July One thousand nine hundred and thirty-one a copy of which Agreement is set forth in the Schedule to the *Debt Conversion Agreement Act 1931* of the Commonwealth, an Agreement made the twenty-second day of October One thousand nine hundred and thirty-one a copy of which Agreement is set forth in the Schedule to the *Debt Conversion Agreement Act (No. 2) 1931* of the Commonwealth, and an Agreement made the third day of July One thousand nine hundred and thirty-four a copy of which Agreement is set forth in the Schedule to the *Soldier Settlement Loans (Financial Agreement) Act 1935* of the Commonwealth (each of such Agreements being hereinafter referred to as an "Amending Agreement" and the expression "the Amending Agreements" hereinafter used meaning all of such Agreements):

AND WHEREAS the Amending Agreements have been severally approved by the Parliaments of the Commonwealth and of the States:

AND WHEREAS the Commonwealth and the States have agreed pursuant to Section 105A of the Constitution of the Commonwealth that the Financial Agreement as varied by the Amending Agreements shall be further varied as hereinafter provided:

NOW IT IS HEREBY AGREED as follows:—

1. This Agreement shall come into force upon being authorized or approved by the Parliaments of the Commonwealth and of the States but not otherwise.

2. Clause 3 of Part I. of the Financial Agreement is varied—

(a) by inserting after sub-clause (b) the following sub-clause:—

“(ba) The member representing the Commonwealth shall be the Chairman of the Loan Council.”;

(b) by omitting from sub-clauses (g), (i), (j), (k) and (l) the phrases “for each financial year”, “for the year”, “for any year” and “for that year” (wherever occurring) and inserting in their stead the phrases “during each financial year”, “during the year”, “during any year” and “during that year” respectively;

(c) by omitting from sub-clause (h) the words “for the year” (second occurring) and inserting in their stead the words “during the year”;

(d) by inserting in paragraph (ii) of sub-clause (i) after the words “redemption of loans,” the words “or for the funding of revenue deficits or to meet revenue deficits, or any specified amount or class of expenditure which the Loan Council by unanimous decision declares shall not be included,” and

(e) by omitting from sub-clause (m) the words “other than the matters referred to in sub-clauses (h) and (j) of clause 3” and inserting in their stead the words “other than the matters in respect of which unanimous decision is required by sub-clauses (h), (i) and (j) of this clause”.

3. Clause 5 of Part I. of the Financial Agreement is varied—

(a) by omitting from the fifth paragraph the words “for the financial year” and inserting in their stead the words “during the financial year”; and

(b) by adding at the end of the seventh paragraph the words “This paragraph shall not apply to or in respect of any of the loans referred to in sub-clause (ja) of Clause 3 of Part III. of this Agreement.”.

THE SCHEDULE—*continued*.

4. Clause 6 of Part I. of the Financial Agreement is varied by omitting from the fifth paragraph the words "for the financial year" and inserting in their stead the words "during the financial year".

5. Clause 3 of Part III. of the Financial Agreement is varied—

- (a) by omitting from sub-clause (e) the word and letter "and (j)" and inserting in their stead the letters and word "(j) and (ja)";
- (b) by omitting from sub-clause (f) the word and letter "and (j)" and inserting in their stead the letters and word "(j) and (ja)";
- (c) by inserting in sub-clause (j) after the words "In respect of any loan" the words "(except any of the loans referred to in sub-clause (ja) of this clause)";
- (d) by inserting after sub-clause (j) the following sub-clause:—

"(ja) (1) In respect of loans raised by a State or by the Commonwealth for and on behalf of a State on the security of Commonwealth Treasury Bills to meet a revenue deficit accruing after 30th June, 1927, and before 1st July, 1935 (such loans being referred to in this sub-clause as 'special deficit loans'), the Commonwealth and the State shall respectively in each year during the period commencing on 1st July next succeeding the date on which the loans are raised and ending on 30th June, 1944, pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the total amount of the face values of the Commonwealth Treasury Bills which have been issued in respect of special deficit loans of that State and which are current on 30th June next preceding the commencement of the year in which the sinking fund contribution is payable.

- (2) (i) The amount set out hereunder opposite the name of a State shall be applied by the National Debt Commission to the repurchase or redemption of securities issued in respect of special deficit loans of that State:—

New South Wales	..	..	£1,970,000
Victoria	..	..	260,000
Queensland	..	..	125,000
South Australia	..	..	300,000
Western Australia	..	..	335,000
Tasmania	..	..	10,000
			£3,000,000

- (ii) The amount set out in sub-paragraph (i) of this paragraph opposite the name of a State represents the approximate aggregate as on 1st July, 1944, of the sinking fund contributions paid by the Commonwealth and that State under paragraph (1) of this sub-clause together with accumulations on those contributions at the rate of $4\frac{1}{2}$ per centum per annum compounded.
 - (iii) The provisions of sub-clause (g) of this clause, which require the State to make further sinking fund contributions at the rate of $4\frac{1}{2}$ per centum per annum of the face value of a cancelled security, shall not apply to or in respect of any security repurchased or redeemed under this paragraph.
- (3) In each year during the period of 39 years commencing on 1st July, 1944, the Commonwealth and the State concerned shall each pay from revenue a sinking fund contribution which, in the case of the Commonwealth, shall be at the rate of 5s. for each £100 of the amount of the special deficit loans of that State, and, in the case

THE SCHEDULE—*continued*.

of the State, shall be at the rate of 15s. for each £100 of that amount. In this paragraph and paragraphs (4) and (5) of this sub-clause the amount of the special deficit loans of a State shall be taken to be the amount set out hereunder opposite the name of that State, viz. :—

New South Wales..	..	..	£26,120,000
Victoria ..	..	..	3,995,000
Queensland..	..	..	2,148,000
South Australia ..	..	..	4,920,000
Western Australia..	..	..	5,390,000
Tasmania ..	..	..	445,000
			<hr/>
			£43,018,000
			<hr/>

The sum which is to be taken as the amount of the special deficit loans of a State as set out in this paragraph opposite the name of that State represents the gross total of the special deficit loans of that State as on 1st July, 1944, less:

- (i) the amount which the National Debt Commission is required under paragraph (2) of this sub-clause to apply to the repurchase or redemption of securities issued in respect of special deficit loans of that State; and
 - (ii) the amount which that State has undertaken to apply to the redemption or repurchase of such securities.
- (4) All sinking fund contributions payable under paragraph (3) of this sub-clause in respect of the amount of special deficit loans of a State, and all further sinking fund contributions required to be made under sub-clause (7) of this clause upon the cancellation of a security issued in respect of that amount, shall be applied to the repurchase or redemption of securities issued in respect of that amount.
- (5) When a loan is raised for the conversion, renewal or redemption of the whole or any portion of the amount of the special deficit loans of a State, the only sinking fund contributions to be made by the Commonwealth and the State in respect of the amount or portion so converted, renewed or redeemed shall be sinking fund contributions at the same rate and for the same period and upon the same amount as if such amount or portion had not been converted, renewed or redeemed." ; and
- (e) by inserting after sub-clause (q) the following sub-clauses:—
- "(r) (1) Subject to paragraph (2) of this sub-clause, a State may, from time to time, pay to the National Debt Commission a sum in addition to sinking fund contributions for the purpose of being applied to the repurchase or redemption of securities issued in respect of a public debt of the State or a loan raised by the Commonwealth for and on behalf of the State. The provisions of sub-clause (q) of this clause shall apply with respect to any security so repurchased or redeemed (including any security repurchased or redeemed in accordance with paragraph (2) of this sub-clause) provided that the State shall not be required to make any further sinking fund contribution under sub-clause (q) of this clause upon the cancellation of the security.
 - (2) If any such sum is tendered by the State to the National Debt Commission, and is accepted by the National Debt Commission, for the purpose mentioned in paragraph

THE SCHEDULE—*continued*.

- (1) of this sub-clause but subject to either or both of the following conditions, namely,
- (i) that the sum shall be applied to the repurchase or redemption of particular securities specified by the State;
 - (ii) that sinking fund contributions of the Commonwealth and the State payable under sub-clause (b), (f), (h), (j) or (ja) of this clause in respect of the amount represented by the repurchased or redeemed securities shall cease as from the date of cancellation of those securities,
- that sum shall be applied, and the condition or conditions shall take effect, accordingly.
- (s) (1) Where, upon the conversion or partial conversion at a discount of a loan raised by or on behalf of a State, sinking fund moneys are applied to the redemption of any amount of the converted loan, the State shall repay to the National Debt Commission from State revenue so much of the sinking fund moneys so applied as does not exceed the aggregate amount of the discounts allowed to subscribers to the loan raised to effect the conversion or partial conversion.
- (2) Repayment by the State shall, unless otherwise approved by the National Debt Commission, be by equal annual instalments extending over the period of the loan raised to effect the conversion or partial conversion. For the purpose of calculating the amount of the annual instalments any broken portion of a year shall be disregarded.
- (3) Where, by the terms of the loan raised to effect the conversion or partial conversion, the borrower has an option as to the date upon which the borrower shall be entitled to redeem the loan, the period of the loan shall, for the purposes of this sub-clause, be deemed to be the period terminating upon the earliest date of redemption provided for by the terms of the loan.
- (4) All repayment instalments payable to the National Debt Commission in pursuance of this sub-clause shall be payable at such times as shall be fixed by the National Debt Commission, and shall be applied as if they were sinking fund contributions made by the State under this clause, provided that the State shall not be required to make any further sinking fund contribution under sub-clause (g) of this clause upon the cancellation of any security to the repurchase or redemption of which any repayment instalment has been applied.
- (t) All sinking fund contributions payable under this Agreement in respect of overseas debt, and all further sinking fund contributions so payable upon the cancellation of securities in respect of overseas debt, shall be calculated at the mint par of exchange prevailing on 1st July, 1927."

6.—(1.) The variations made by paragraphs (a), (b), and (c) of clause 2, by paragraph (a) of clause 3, and by clause 4, of this Agreement shall come into force on the date on which this Agreement comes into force.

(2.) The variations made by paragraphs (d) and (e) of clause 2, by paragraph (b) of clause 3, and by paragraphs (a), (b) and (c) of clause 5, of this Agreement shall be deemed to have come into force on 1st July, 1927.

(3.) Paragraph (1) of sub-clause (ja) of clause 3 of Part III. of the Financial Agreement, inserted by clause 5 of this Agreement, shall be deemed to have come into force on 1st July, 1927.

(4.) Paragraphs (2), (3), (4) and (5) of sub-clause (ja) of clause 3 of Part III. of the Financial Agreement, inserted by clause 5 of this Agreement, shall be deemed to have come into force on 1st July, 1944.

THE SCHEDULE—*continued.*

(5.) Sub-clause (*r*) of clause 3 of Part III. of the Financial Agreement, inserted by clause 5 of this Agreement, shall come into force on the date on which this Agreement comes into force.

(6.) Sub-clause (*s*) of clause 3 of Part III. of the Financial Agreement, inserted by clause 5 of this Agreement, shall be deemed to have come into force on 1st July, 1937.

(7.) Sub-clause (*t*) of clause 3 of Part III. of the Financial Agreement, inserted by clause 5 of this Agreement, shall be deemed to have come into force on 1st July, 1927.

7.—(1.) The Financial Agreement as varied by clause 18 of the Amending Agreement made the third day of July, One thousand nine hundred and thirty-four and by clauses 2, 3, 4 and 5 of this Agreement is further varied—

(a) by the deletion of clause 7 of Part I. and the whole of Part II. (other than the heading "Part II.") therefrom;

(b) by renumbering and relettering the provisions thereof in accordance with the numbering and lettering of the Agreement set out in the Schedule to this Agreement; and

(c) by such variations of the provisions thereof as are consequential upon the variations effected by paragraphs (*a*) and (*b*) of this clause.

(2.) The Agreement set out in the Schedule to this Agreement shall be taken to be the Financial Agreement as varied by clause 18 of the Amending Agreement made the third day of July One thousand nine hundred and thirty-four and by clauses 2, 3, 4 and 5 of this Agreement and sub-clause (1.) of this clause.

IN WITNESS whereof the Prime Minister of the Commonwealth of Australia and the Premiers of each of the States of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania have signed this Agreement respectively for and on behalf of the Commonwealth of Australia and of the said States.

Signed by the Prime Minister of the Commonwealth of Australia for and on behalf of the said Com- monwealth in the presence of—	}	JOHN CURTIN.
F. A. McLAUGHLIN.		

Signed by the Premier of the State of New South Wales for and on behalf of the said State in the presence of—	}	W. J. McKELL.
M. K. WEIR.		

Signed by the Premier of the State of Victoria for and on behalf of the said State in the presence of—	}	A. A. DUNSTAN.
A. T. SMITHERS.		

Signed by the Premier of the State of Queensland for and on behalf of the said State in the presence of—	}	FRANK A. COOPER.
E. A. CROSSER.		

Signed by the Premier of the State of South Australia for and on behalf of the said State in the presence of—	}	T. PLAYFORD.
R. R. STUCKEY.		

Signed by the Premier of the State of Western Australia for and on behalf of the said State in the presence of—	}	J. WILLCOCK.
A. J. REID.		

Signed by the Premier of the State of Tasmania for and on behalf of the said State in the presence of—	}	ROBERT COSGROVE.
E. PARKES.		

THE SCHEDULE—*continued.*

THE SCHEDULE.

THE FINANCIAL AGREEMENT.*

AGREEMENT made the twelfth day of December One thousand nine hundred and twenty-seven BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this Agreement called the Commonwealth) of the first part, THE STATE OF NEW SOUTH WALES of the second part, THE STATE OF VICTORIA of the third part, THE STATE OF QUEENSLAND of the fourth part, THE STATE OF SOUTH AUSTRALIA of the fifth part, THE STATE OF WESTERN AUSTRALIA of the sixth part, and THE STATE OF TASMANIA of the seventh part (each of the parties of the second, third, fourth, fifth, sixth, and seventh parts being in this Agreement referred to as a State and the expression "the States" hereinafter used meaning where the context so permits or requires all of such parties).

WHEREAS with a view to making provision for the adjustment of Commonwealth and State financial relations the general principle of a draft scheme was affirmed by a Conference of Commonwealth and State Ministers in Melbourne which commenced on the sixteenth day of June One thousand nine hundred and twenty-seven;

AND WHEREAS permanent effect cannot be given to the proposals contained in the said scheme unless the Constitution of the Commonwealth is altered so as to confer on the Parliament of the Commonwealth power to make laws for carrying out or giving permanent effect to such proposals;

AND WHEREAS pending the submission to the electors of a proposed law for the alteration of the said Constitution as aforesaid and in order to obtain immediately some of the advantages which would result from united action by adoption of the said scheme the Commonwealth and the States have agreed that for the period commencing on the first day of July One thousand nine hundred and twenty-seven and ending on the thirtieth day of June One thousand nine hundred and twenty-nine certain of the proposed provisions of the said scheme shall be temporarily adopted:

NOW THIS AGREEMENT WITNESSETH:

PART I.

1. This Agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the States.

DEFINITIONS.

2. In this Agreement—

"Net Public debt of a State existing on 30th June, 1927," means in respect of each State the amount of debt set forth hereunder

* This Agreement is a reprint of the Financial Agreement made the 12th December, 1927, between the Commonwealth and the States, as varied by provisions of other Agreements made between the same parties, namely, by Clause 18 of an Agreement made the 3rd July, 1934, and by Clauses 2, 3, 4 and 5, and sub-clause (1.) of Clause 7, of an Agreement made the 15th November, 1944.

The Financial Agreement is also affected by the following Agreements made between the Commonwealth and the States, namely, an Agreement made the 21st July, 1931, and an Agreement made the 22nd October, 1931, and by provisions, other than Clause 18, of the aforesaid Agreement made the 3rd July, 1934, and by an Agreement made the 11th September, 1928, between the Commonwealth and the State of Tasmania.

The variations made by the Agreement of the 15th November, 1944 (other than those which are noted in the margin of this reprint as being effective from specified dates), came into force on the date on which that Agreement came into force.

THE SCHEDULE—continued.

opposite to the name of that State, viz.:—

New South Wales..	..	..	..	£234,088,501*
Victoria ..	..	..	..	136,949,942*
Queensland..	..	..	..	101,977,855*
South Australia ..	..	..	..	84,834,364*
Western Australia..	..	..	..	61,060,675
Tasmania ..	..	..	..	22,434,060*
				<hr/> £641,345,397*

The said amount of the net public debt of each State includes the debts of that State secured by—

- (i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock;
- (ii) Instalment Stock;
- (iii) Registered Stock;
- (iv) Funded Stock;
- (v) Stock payable to bearer;
- (vi) Bonds, including registered bonds;
- (vii) Debentures, including registered debentures and instalment debentures;
- (viii) Treasury Bills not repayable within twelve months from the date of issue; or
- (ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes;

issued or created by the State or by or on behalf of a Colony the predecessor of the State in respect of moneys borrowed by the Colony or State together with debts of the State to the Commonwealth of the amount set out respectively hereunder opposite to the name of the State so far as those last mentioned debts are not included by being secured in manner aforesaid:—

New South Wales..	..	..	..	£12,553,698
Victoria ..	..	..	..	23,688,269
Queensland..	..	..	..	16,082,583
South Australia ..	..	..	..	18,446,197
Western Australia..	..	..	..	16,739,872
Tasmania ..	..	..	..	3,948,613
				<hr/> £91,459,232

after deducting therefrom the amount for which the Commonwealth by this Agreement assumes liability under Clause 13 of this Agreement and the amount of any moneys or securities standing to the credit of a sinking fund, redemption fund, or a fund of a like nature of the State as on 30th June, 1927, and does not include any moneys raised by the State by way of overdraft, fixed deposit, or special deposit for temporary purposes only.

The said sum of £234,088,501 (being the amount of the debt of New South Wales abovementioned) comprises the debts referred to in, and has been computed in the manner shown in, the statement signed by representatives of the Commonwealth and of New South Wales.

* The amounts of the "Net Public Debt" of the States and "Gross Public Debt" of the States as set out in Clause 2, have been varied as from 1st July, 1927, by the provisions of the Agreement made 3rd July, 1934. The amounts as so varied are as follows:—

				Net Public Debt. £	Gross Public Debt. £
New South Wales ..	..	..	..	233,153,779	238,506,641
Victoria ..	..	..	..	136,348,982	144,243,570
Queensland ..	..	..	..	101,840,622	105,122,683
South Australia ..	..	..	..	84,029,376	86,809,017
Western Australia ..	..	..	..	61,060,675	70,705,913
Tasmania ..	..	..	..	22,314,180	24,134,508
				<hr/> 638,747,614	<hr/> 669,522,632

THE SCHEDULE—*continued*.

"Gross Public Debt of a State existing on 30th June, 1927," means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz.:—

New South Wales..	..	..	..	£239,441,363†
Victoria ..	..	..	..	144,844,530†
Queensland..	..	..	..	105,259,916†
South Australia ..	..	..	..	87,614,005†
Western Australia..	..	..	..	70,705,913
Tasmania ..	..	..	..	24,254,688†
				£672,120,415†

The said amount of the gross public debt of each State includes the net public debt of that State together with the amount for which the Commonwealth by this Agreement assumes liability under Clause 13 of this Agreement and the amount of any moneys or securities standing to the credit of any sinking fund, redemption fund or fund of a like nature of the State as on 30th June, 1927.

"Transferred Properties" means the properties mentioned or specified in the Schedule of Transferred Properties signed by representatives of the Commonwealth and the States as revised to the 30th June, 1927, being properties which became vested in the Commonwealth pursuant to Section 85 (i) of the Constitution of the Commonwealth.

"The Loan Council" means the Australian Loan Council created in pursuance of this Agreement.

"Bondholder" means an owner of any—

- (i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock;
 - (ii) Instalment Stock;
 - (iii) Registered Stock;
 - (iv) Funded Stock;
 - (v) Stock payable to bearer;
 - (vi) Bonds, including registered bonds;
 - (vii) Debentures including registered debentures and instalment debentures;
 - (viii) Treasury Bills not repayable within twelve months from the date of issue; or
 - (ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes;
- issued or created by a State or by or on behalf of a Colony the predecessor of the State in respect of borrowed moneys but does not include the Commonwealth.

AUSTRALIAN LOAN COUNCIL.

3.—(1.) (a) There shall be an Australian Loan Council which shall consist of one representative of the Commonwealth who shall be—

- (i) the Prime Minister of the Commonwealth; or
- (ii) in the absence of the Prime Minister at any time from a meeting of the Council—a Minister nominated in writing by the Prime Minister,

and one representative of each State who shall be—

- (iii) the Premier of that State; or
- (iv) in the absence of the Premier at any time from a meeting of the Council—a Minister nominated in writing by the Premier of that State.

Provided that if, in the opinion of the Prime Minister or of any Premier of a State, special circumstances exist at any time which make it desirable so to do, the Prime Minister or the Premier, as the case may be, may nominate some other person to represent the Commonwealth or the State (as the case may be) as a member of the Loan Council.

(b) Any nomination of a representative of a State shall be notified in writing by the Premier of the State to the Prime Minister.

(2.) The member representing the Commonwealth on the Loan Council shall hold office during the pleasure of the Prime Minister of the Common-

Sub-clause (1.)
substituted by
Agreement of
3rd July, 1934,
Clause 18.

† See footnote to definition of "Net public debt of a State existing on 30th June, 1927," in this clause.

THE SCHEDULE—*continued.*

wealth and a member representing a State shall hold office during the pleasure of the Premier of the State which the member was appointed to represent.

Inserted by
Agreement of
15th November,
1944, Clause 2.

(3.) The member representing the Commonwealth shall be the Chairman of the Loan Council.

(4.) A decision in which all the members for the time being of the Loan Council concur shall be a unanimous decision of the Loan Council notwithstanding any vacancy then existing in its membership.

(5.) A meeting of the Loan Council may at any time be convened by the member representing the Commonwealth, and shall be so convened upon the request of at least three members representing States.

(6.) A majority of the members of the Loan Council shall constitute a quorum of the Loan Council for the exercise of its powers at any meeting. Provided that—

- (a) a member may at any time appoint in writing a deputy to act in his absence; and any deputy so appointed may in the absence of the member exercise all the powers and functions of the member and his presence shall be deemed the presence of the member; and
- (b) an absent member who has not appointed a deputy may vote by letter or by telegram, and in such case that member shall be counted as being present in relation only to the questions on which he has voted.

(7.) The Loan Council may make rules of procedure including rules relating to places, times, and notices of meetings, and conduct of business at meetings, and from time to time may alter such rules.

Varied by
Agreement of
15th November,
1944, Clause 2.

(8.) The Commonwealth and each State will from time to time, while Part III. of this Agreement is in force, submit to the Loan Council a programme setting forth the amount it desires to raise by loans during each financial year for purposes other than the conversion, renewal or redemption of existing loans or temporary purposes. Each programme shall state the estimated total amount of such loan expenditure during the year, and the estimated amount of repayments which will be available towards meeting that expenditure. Any revenue deficit to be funded shall be included in such loan programme, and the amount of such deficit shall be set out. Loans for Defence purposes approved by the Parliament of the Commonwealth shall not be included in the Commonwealth's loan programme or be otherwise subject to this Agreement.

Varied by
Agreement of
15th November,
1944, Clause 2.

(9.) If the Loan Council decides that the total amount of the loan programme for the year cannot be borrowed at reasonable rates and conditions it shall decide the amount to be borrowed during the year, and may by unanimous decision allocate such amount between the Commonwealth and the States.

Varied by
Agreement of
15th November,
1944, Clause
2 (b) and (d).
The variation
made by Clause
2 (d) became
effective from
1st July, 1927.—
Agreement of
15th November,
1944, Clause 6
(2).

(10.) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub-clause allocating the amount to be borrowed during any year, the amount to be borrowed during that year shall be allocated as follows:—

- (a) The Commonwealth shall, if it so desires, be entitled to have one-fifth or any less proportion of such amount allocated to the Commonwealth; and
- (b) Each State shall be entitled to have allocated to it a sum (being a portion of the balance of such amount) bearing to the balance of such amount the same proportion which the net loan expenditure of that State in the preceding five years bears to the net loan expenditure of all the States during the same period. Provided that any State may, if it so desires, have allocated to it a sum less than the sum to which it is entitled under this sub-clause or no sum, and that when a less sum or no sum has been allocated to any State or States in manner aforesaid the amount then remaining available for allocation shall be allocated to the other States in the proportion which the net loan expenditure of each of such other States in the preceding five years bears to the net loan expenditure of all such other States during the same period. For the purposes of this sub-clause net loan expenditure does not include expenditure for the conversion, renewal, or redemption

THE SCHEDULE—continued.

of loans, or for the funding of revenue deficits or to meet revenue deficits, or any specified amount or class of expenditure which the Loan Council by unanimous decision declares shall not be included, but means the gross other loan expenditure of a State less any amounts of such expenditure repaid to the State other than moneys repaid to the State in manner stated in sub-clause (9.) of Clause 12 of this Agreement.

(11.) If the total amount to be borrowed as aforesaid during any year is to be borrowed by means of more than one loan the Loan Council may by unanimous decision apportion between the Commonwealth and the States the amount to be borrowed by each such loan other than the loan by means of which the balance of the total amount to be borrowed as aforesaid during the year is borrowed.

Varied by Agreement of 15th November, 1944, Clause 2.

(12.) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub-clause apportioning the amount to be borrowed as aforesaid by any loan the amount to be borrowed by that loan shall be apportioned between the Commonwealth and the States in proportion to the amount then to be borrowed as aforesaid for the Commonwealth and for each State during the year.

Varied by Agreement of 15th November, 1944, Clause 2.

(13.) The Commonwealth and each State will also from time to time, while Part III. of this Agreement is in force, submit to the Loan Council a statement setting out the amount it requires during each financial year for the conversion, renewal or redemption of existing loans.

Varied by Agreement of 15th November, 1944, Clause 2.

(14.) (a) If the members of the Loan Council fail to arrive at a unanimous decision on any matter other than the matters in respect of which unanimous decision is required by sub-clauses (9), (10) and (11) of this clause and sub-clause (2) of Clause 4 of this Agreement, the matter shall be determined by a majority of votes of the members.

Varied by Agreement of 15th November, 1944, Clause 2. Variation became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (2.).

(b) On every question for decision by the Loan Council the member representing the Commonwealth shall have two votes and a casting vote, and each member representing a State shall have one vote.

(15.) A decision of the Loan Council in respect of a matter which the Loan Council is by this Agreement empowered to decide shall be final and binding on all parties to this Agreement.

(16.) In this clause the expressions "Prime Minister" and "Premier" include the persons for the time being respectively acting as such.

FUTURE BORROWINGS OF COMMONWEALTH AND STATES.

4.—(1.) Except in cases where the Loan Council has decided under sub-clause (2.) of this clause that moneys shall be borrowed by a State, the Commonwealth, while Part III. of this Agreement is in force, shall, subject to the decisions of the Loan Council and subject also to Clauses 5 and 6 of this Agreement, arrange for all borrowings for or on behalf of the Commonwealth or any State, and for all conversions, renewals, redemptions, and consolidations of the Public Debts of the Commonwealth and of the States.

(2.) If at any time the Loan Council by unanimous decision so decides, a State may in accordance with the terms of the decision borrow moneys outside Australia in the name of the State, and issue securities for the moneys so borrowed. The Commonwealth shall guarantee that the State will perform all its obligations to bond holders in respect of the moneys so borrowed. For all the purposes of this Agreement, including the making of sinking fund contributions, the moneys so borrowed shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of that State.

(3.) If any State after the 30th June, 1927, and before this Agreement has been approved by the Parliaments of the Commonwealth and of the States, has borrowed moneys in the name of the State and issued securities for the moneys so borrowed, such moneys shall for all the purposes of this Agreement, including the making of sinking fund contributions, be deemed to be moneys borrowed by the Commonwealth for and on behalf of that State.

(4.) While Part III. of this Agreement is in force, moneys shall not be borrowed by the Commonwealth or any State otherwise than in accordance with this Agreement.

THE SCHEDULE—*continued.*

BORROWING BY STATES.

5.—(1.) For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) a State may, while Part III. of this Agreement is in force:—

(a) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the State from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and

(b) use any public moneys of the State which are available under the laws of the State.

(2.) Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

(3.) Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply.

(4.) Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State, and may be retained by the State. A State may convert securities given or issued at any time by that State for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council. The amount for which such new securities are issued shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State.

(5.) If the moneys deemed under this clause to be moneys borrowed by the Commonwealth on behalf of a State, together with the amounts raised by the Commonwealth for and on behalf of the State exceed the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the State during the financial year in which the money is deemed to be borrowed, the excess shall, unless the Loan Council otherwise decides, be deemed to be moneys received by the State in the following year on account of its loan programme for that year.

(6.) For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the offices of the State Treasury, and at such other places as may be decided upon by the Loan Council.

(7.) The Commonwealth shall not be under any obligation to make sinking fund contributions in respect of moneys borrowed or used pursuant to this clause to meet a revenue deficit of a State, but the provisions of sub-clause (10.) of Clause 12 of this Agreement shall apply respectively to all moneys borrowed or used for that purpose. This sub-clause shall not apply to or in respect of any of the loans referred to in sub-clause (11.) of Clause 12 of this Agreement.

(8.) Except in cases where the Loan Council has otherwise decided under sub-clause (2.) of Clause 4 of this Agreement a State shall not have the right to invite loan subscriptions by the issue of a public prospectus.

(9.) Notwithstanding anything contained in this Agreement, any State may use for temporary purposes any public moneys of the State which are available under the laws of the State, or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow money for temporary purposes by way of overdraft or fixed, special or other deposit, and the provisions of this Agreement other than this sub-clause shall not apply to such moneys.

BORROWING BY COMMONWEALTH.

6.—(1.) For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) the Commonwealth may, while Part III. of this Agreement is in force—

Varied by
Agreement of
15th November,
1944, Clause 3.

Varied by
Agreement of
15th November,
1944, Clause 3.
Variation
became effective
from 1st July,
1927.—Agree-
ment of 15th
November, 1944,
Clause 6 (2.).

THE SCHEDULE—*continued*.

- (a) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the Commonwealth from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and
- (b) use any public moneys of the Commonwealth which are available under the laws of the Commonwealth.

(2.) Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

(3.) Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply.

(4.) Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used may be retained by the Commonwealth. The Commonwealth may convert securities given or issued at any time by the Commonwealth for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council.

(5.) If the moneys so borrowed or used are not borrowed or used solely for temporary purposes and Commonwealth securities are issued in respect thereof, and such moneys, together with other moneys borrowed by the Commonwealth for and on behalf of the Commonwealth as part of the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the Commonwealth during the financial year in which the securities are issued, exceed such total amount the excess shall unless the Loan Council otherwise decides be deemed to be moneys received by the Commonwealth in the following year on account of its loan programme for that year.

Varied by
Agreement of
15th November,
1944, Clause 4.

(6.) For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the offices of the Commonwealth Treasury, and at such other places as may be decided upon by the Loan Council.

(7.) Notwithstanding anything contained in this Agreement, the Commonwealth may use for temporary purposes any public moneys of the Commonwealth which are available under the laws of the Commonwealth or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow money for temporary purposes by way of overdraft or fixed, special or other deposit, and the provisions of this Agreement other than this sub-clause shall not apply to such moneys.

7. * * * * *

Inoperative
provision—
deleted by
Agreement of
15th November,
1944, Clause 7.

PART II.

* * * * *

Part II.—
Temporary
Provisions—
deleted by
Agreement of
15th November,
1944, Clause 7.

PART III.

8. This Part of this Agreement shall not come into force or be binding upon any party hereto unless before the 1st July, 1929, the Constitution of the Commonwealth has been altered in accordance with the proposals referred to in Part IV. of this Agreement and a law of the Parliament of the Commonwealth has been made thereunder validating this Agreement, but shall come into full force and effect if and when before the said date the Constitution is so altered and this Agreement is so validated.

THE SCHEDULE—*continued.*

9. When this Part of this Agreement comes into force every matter or thing done and payment made under or in pursuance of Part II. of this Agreement shall be deemed, so far as is practicable, to have been done or made under this Part of this Agreement to the same extent as if this Part had then in fact been in force, and all necessary adjustments shall be made in respect of moneys so paid in order to ensure that no party hereto shall be liable for or make double payments in respect of the same matter.

PERMANENT PROVISIONS.

TAKING OVER STATES' PUBLIC DEBTS.

10. Subject to the provisions of this Part of this Agreement the Commonwealth will take over on the 1st July, 1929:—

- (i) the balance then unpaid of the gross public debt of each State existing on 30th June, 1927; and
- (ii) all other debts of each State existing on the 1st July, 1929, for moneys borrowed by that State which by this Agreement are deemed to be moneys borrowed by the Commonwealth for and on behalf of that State—

and will in respect of the debts so taken over assume as between the Commonwealth and the States the liabilities of the States to bondholders.

PAYMENT OF INTEREST.

11.—(1.) Subject to this clause the Commonwealth will pay to bondholders from time to time interest payable on the Public Debts of the States taken over by the Commonwealth as aforesaid other than debts due by the States to the Commonwealth.

(2.) The Commonwealth will in each year during the period of 58 years, commencing on 1st July, 1927, provide by equal monthly instalments the following amounts in respect of each State as shown hereunder towards the interest payable by that State:—

New South Wales	..	..	..	..	..	£2,917,411
Victoria ..	..	..	..	..	..	2,127,159
Queensland ..	..	..	..	..	..	1,096,235
South Australia	..	..	..	..	..	703,816
Western Australia	..	..	..	..	..	473,432
Tasmania ..	..	..	..	..	..	266,859
						<hr/>
						£7,584,912

(3.) Each State shall in each year during the same period of 58 years pay to the Commonwealth the excess over the amounts to be provided by the Commonwealth under the last preceding sub-clause necessary to make up as they fall due the interest charges falling due in that year on the public debt of that State taken over by the Commonwealth as aforesaid and then unpaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid, and after the expiration of the said period each State shall in each year pay to the Commonwealth, as they fall due, the whole of the interest charges on any debt then unpaid and included in the public debt of that State taken over by the Commonwealth as aforesaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid.

(4.) The method by which payments shall be made by a State under sub-clause (3.) of this clause shall be arranged from time to time between the Commonwealth and that State.

(5.) The rate of interest payable under sub-clause (3.) of this clause in respect of moneys borrowed by the Commonwealth on behalf of a State shall be the full rate of interest payable by the Commonwealth in respect of the loan by which such moneys were borrowed or such other rate of interest as may be payable by the State to the Commonwealth under any Agreement made or to be made between the Commonwealth and that State in respect of such moneys and such interest shall be payable by the State for the full term of that loan.

THE SCHEDULE—*continued*.

SINKING FUNDS.

12.—(1.) A sinking fund at the rate of 7s. 6d. per annum for each £100 of the net public debts of the States existing on 30th June, 1927, shall be established in the manner hereinafter set forth.

(2.) During the period of fifty-eight years commencing on the 1st July, 1927, the Commonwealth shall pay from revenue annually a sinking fund contribution at the rate of 2s. 6d. for each £100 of the net public debts of the States existing on 30th June, 1927, and each State (other than the State of New South Wales) shall in each year during the said period pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of such State existing on 30th June, 1927. The State of New South Wales during the period of fifty-eight years commencing on the 1st July, 1928, shall in each year pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of that State existing on 30th June, 1927.

(3.) Where in respect of any debt included in the gross Public Debt of a State existing at the 30th June, 1927, there is under laws or contracts existing at that date an obligation to provide a sinking fund at a rate in excess of 7s. 6d. per annum for each £100, any amount to be so provided in excess of 7s. 6d. per annum for each £100 shall be provided out of the National Debt Sinking Fund, established under the laws of the Commonwealth. Provided that if any law imposing such an obligation is repealed or is amended so as to reduce the rate of sinking fund to be provided the only amount (if any) to be provided out of the National Debt Sinking Fund pursuant to this sub-clause in respect of that debt shall as from the date of such repeal or amendment be the amount (if any) by which the reduced rate of sinking fund for the time being exceeds 7s. 6d. per annum for each £100.

(4.) When a loan is issued for the conversion, renewal, or redemption of any debt of a State included in the gross Public Debt of that State existing on 30th June, 1927, the only sinking fund contributions to be made by the Commonwealth and that State in respect of the debt so converted, renewed, or redeemed shall be sinking fund contributions at the same rate and for the same period and upon the same amount as if such debt had not been converted, renewed, or redeemed.

(5.) Subject to sub-clauses (8.), (10.) and (11.) of this clause a sinking fund at the rate of 10s. per annum for each £100 of the amount of each new loan raised by a State or by the Commonwealth for and on behalf of a State after 30th June, 1927, shall be established.

(6.) Subject to sub-clauses (8.), (10.) and (11.) of this clause, in each year during the period of fifty-three years from the date of the raising after 30th June, 1927, of any new loan by a State or by the Commonwealth for and on behalf of a State the Commonwealth and that State shall each pay from revenue a sinking fund contribution of a sum equal to 5s. for each £100 of the amount of the new loan.

Provided that the period of fifty-three years during which the State of New South Wales shall make sinking fund contributions in respect of new loans raised in the financial year beginning on the 1st July, 1927, shall commence on the 1st July, 1928.

(7.) For the purpose of the last two preceding sub-clauses a loan issued after the 30th June, 1927, to meet a revenue deficit which accrued on or before that date shall be deemed to be a new loan, but a loan issued for the conversion, renewal or redemption of a debt shall not be deemed to be a new loan, and where a loan is issued partly for the conversion, renewal, or redemption of a debt and partly for other purposes so much only of the loan as has been issued for other purposes, shall be deemed to be a new loan.

(8.) Where it is agreed between the Commonwealth and a State that a loan or any portion of a loan raised after 30th June, 1927, and expended or to be expended upon wasting assets should be redeemed within a shorter period than fifty-three years, the annual sinking fund contributions of the State in respect of that loan or the portion thereof, shall be increased to an amount which with the sinking fund contributions of the Commonwealth in respect of that loan or the portion thereof will provide for the redemption of that loan or the portion thereof within such shorter period. All sinking fund contributions of

Sub-clauses (5.) and (6.) varied by Agreement of 15th November, 1944, Clause 5. Variations became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (2.).

THE SCHEDULE—continued.

the State in respect of that loan or the portion thereof shall cease on the expiration of the shorter period, but the Commonwealth contributions in respect of that loan shall continue for the remainder of the period of fifty-three years from the date of the raising of that loan, and during such remainder of the period the State contributions to the sinking fund in respect of other loans of that State shall be reduced by the amount of the Commonwealth contributions during that remainder of the period in respect of such redeemed loan or the portion thereof. For the purposes of this sub-clause the sinking fund contributions of the Commonwealth and the State shall be deemed to accumulate at the rate of $4\frac{1}{2}$ per centum per annum compounded.

(9.) Where loan moneys have been advanced by a State under terms providing for the repayment of such moneys the State shall as and when such moneys are repaid pay such moneys either to the State Loan Fund or to the account or fund from which such moneys were advanced, or to the sinking fund and shall in addition make from revenue its sinking fund contributions in respect of the loan or loans from which the moneys so advanced were provided. Provided that when loan moneys have been advanced by a State to a Public or Local Authority or body constituted by the State or under the laws of the State and the Authority or body repays such moneys out of its revenue the State may out of moneys so repaid make its sinking fund contributions in respect of the loan moneys so advanced.

Varied by Agreement of 15th November, 1944, Clause 5. Variation became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (2.).

(10.) In respect of any loan (except any of the loans referred to in sub-clause (11.) of this clause) raised after the 30th June, 1927, by a State or by the Commonwealth for and on behalf of a State to meet a revenue deficit accruing after that date no sinking fund contribution shall be payable by the Commonwealth, but that State shall for a period sufficient to provide for the redemption of that loan pay from revenue in each year during such period a sinking fund contribution at a rate of not less than 4 per centum per annum of the amount of that loan. For the purposes of this sub-clause the sinking fund contributions of the State shall be deemed to accumulate at the rate of $4\frac{1}{2}$ per centum per annum compounded.

Sub-clause (11.) inserted by Agreement of 15th November, 1944, Clause 5. Paragraph (a) became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (3.).

(11.) (a) In respect of loans raised by a State or by the Commonwealth for and on behalf of a State on the security of Commonwealth Treasury Bills to meet a revenue deficit accruing after 30th June, 1927, and before 1st July, 1935 (such loans being referred to in this sub-clause as "special deficit loans"), the Commonwealth and the State shall respectively in each year during the period commencing on 1st July next succeeding the date on which the loans are raised and ending on 30th June, 1944, pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the total amount of the face values of the Commonwealth Treasury Bills which have been issued in respect of special deficit loans of that State and which are current on 30th June next preceding the commencement of the year in which the sinking fund contribution is payable.

Effective from 1st July, 1944.—Agreement of 15th November, 1944, Clause 6 (4.).

(b)—(i) The amount set out hereunder opposite the name of a State shall be applied by the National Debt Commission to the repurchase or redemption of securities issued in respect of special deficit loans of that State:—

New South Wales	..	..	..	..	£1,970,000
Victoria	..	..	..	..	260,000
Queensland	..	..	..	..	125,000
South Australia	..	..	..	..	300,000
Western Australia	..	..	..	..	335,000
Tasmania	..	..	..	..	10,000
					<hr/>
					£3,000,000
					<hr/>

(ii) The amount set out in sub-paragraph (i) of this paragraph opposite the name of a State represents the approximate aggregate as on 1st July, 1944, of the sinking fund contributions paid by the Commonwealth and that State under paragraph (a) of this sub-clause together with accumulations on those contributions at the rate of $4\frac{1}{2}$ per centum per annum compounded.

THE SCHEDULE—*continued*.

(iii) The provisions of sub-clause (18.) of this clause, which require the State to make further sinking fund contributions at the rate of $4\frac{1}{2}$ per centum per annum of the face value of a cancelled security, shall not apply to or in respect of any security repurchased or redeemed under this paragraph.

(c) In each year during the period of 39 years commencing on 1st July, 1944, the Commonwealth and the State concerned shall each pay from revenue a sinking fund contribution which, in the case of the Commonwealth, shall be at the rate of 5s. for each £100 of the amount of the special deficit loans of that State, and, in the case of the State, shall be at the rate of 15s. for each £100 of that amount. In this paragraph and paragraphs (d) and (e) of this sub-clause the amount of the special deficit loans of a State shall be taken to be the amount set out hereunder opposite the name of that State, viz.:—

New South Wales	..	..	..	..	..	£26,120,000
Victoria ..	..	..	..	..	..	3,995,000
Queensland ..	..	..	..	..	..	2,148,000
South Australia ..	..	..	..	..	..	4,920,000
Western Australia ..	..	..	..	..	..	5,390,000
Tasmania ..	..	..	..	..	..	445,000
						£43,018,000

The sum which is to be taken as the amount of the special deficit loans of a State as set out in this paragraph opposite the name of that State represents the gross total of the special deficit loans of that State as on 1st July, 1944, less:—

- (i) the amount which the National Debt Commission is required under paragraph (b) of this sub-clause to apply to the repurchase or redemption of securities issued in respect of special deficit loans of that State; and
- (ii) the amount which that State has undertaken to apply to the redemption or repurchase of such securities.

(d) All sinking fund contributions payable under paragraph (c) of this sub-clause in respect of the amount of special deficit loans of a State, and all further sinking fund contributions required to be made under sub-clause (18.) of this clause upon the cancellation of a security issued in respect of that amount, shall be applied to the repurchase or redemption of securities issued in respect of that amount.

(e) When a loan is raised for the conversion, renewal or redemption of the whole or any portion of the amount of the special deficit loans of a State, the only sinking fund contributions to be made by the Commonwealth and the State in respect of the amount or portion so converted, renewed or redeemed shall be sinking fund contributions at the same rate and for the same period and upon the same amount as if such amount or portion had not been converted, renewed or redeemed.

(12.) All sinking fund contributions to be made in pursuance of this Part of this Agreement shall be debts payable to the National Debt Commission as follows:—

- (a) As regards the net public debt of a State existing on 30th June, 1927—by half-yearly instalments on 30th September and 31st March in each financial year or on such other dates as may be agreed between the Commonwealth and that State,
- (b) As regards loans raised after 30th June, 1927—by equal instalments on the dates on which interest on such loans is payable or on such other dates as may be agreed upon between the Commonwealth and the State concerned.

(13.) Subject to the next succeeding sub-clause all moneys and securities standing to the credit of sinking funds, redemption funds and funds of a like nature of a State existing on 30th June, 1929, shall forthwith be transferred by the States to the National Debt Commission. Nothing in this sub-clause contained shall be deemed to limit the power of a State to cancel before 30th June, 1929, any such securities.

Effective from
1st July, 1944.—
Agreement of
15th November,
1944, Clause 6
(4.).

Effective from
1st July, 1944.—
Agreement of
15th November,
1944, Clause 6
(4.).

Effective from
1st July, 1944.—
Agreement of
15th November,
1944, Clause 6
(4.).

THE SCHEDULE—*continued.*

(14.) Where the conditions relating to sinking funds, redemption funds, and funds of a like nature as aforesaid held by a State on trust or by trustees under statutory or contractual obligations preclude the transfer of those funds to the National Debt Commission, such funds shall remain under the control of the State or those trustees, and the National Debt Commission will either directly or through the State concerned make all future payments to the State or to those trustees from the sinking fund.

(15.) The sinking funds to be established under this Agreement shall be controlled by the National Debt Commission. The National Debt Commission may arrange with any State to act as its agent in connexion with payments due to bondholders.

(16.) Sinking fund contributions made under this Agreement in respect of the debts of a State and funds of that State transferred to the National Debt Commission under sub-clause (13.) of this clause will not be accumulated, but (subject to sub-clauses (14.) and (17.) of this clause) will be applied to the redemption of the public debts of that State and of loans raised by the Commonwealth for and on behalf of that State, or to the purchase of securities issued in respect thereof.

(17.) If at any time it is deemed inexpedient by the National Debt Commission to apply sinking funds in the manner set forth in sub-clause (16.) of this clause, such funds may be temporarily invested in any securities in which the National Debt Commission is from time to time by law authorized to invest moneys.

(18.) (a) When a security issued in respect of a public debt of a State or of a loan raised by the Commonwealth for and on behalf of a State is repurchased or redeemed by the National Debt Commission such security shall be cancelled—

- (i) if a repurchased security—on the last day of September, December, March, or June next ensuing after the date of repurchase, or on the date of maturity of the security whichever shall first occur; and
- (ii) if a redeemed security—on the date of redemption.

(b) In addition to the sinking fund contributions otherwise payable in respect of that debt or loan the State concerned shall—

- (i) as from the date of cancellation of each security and for the full period during which the said sinking fund contributions are payable make from revenue a further sinking fund contribution at the rate of $4\frac{1}{2}$ per centum per annum of the face value of the cancelled security; and
- (ii) also pay to the National Debt Commission interest on the face value of each repurchased security at the rate provided by the security from the last date preceding the repurchase upon which interest was payable under the terms of the security up to the date of cancellation of the security.

Inserted by
Agreement of
15th November,
1944, Clause 5.

(19.) (a) Subject to paragraph (b) of this sub-clause, a State may, from time to time, pay to the National Debt Commission a sum in addition to sinking fund contributions for the purpose of being applied to the repurchase or redemption of securities issued in respect of a public debt of the State or a loan raised by the Commonwealth for and on behalf of the State. The provisions of sub-clause (18.) of this clause shall apply with respect to any security so repurchased or redeemed (including any security repurchased or redeemed in accordance with paragraph (b) of this sub-clause) provided that the State shall not be required to make any further sinking fund contribution under sub-clause (18.) of this clause upon the cancellation of the security.

(b) If any such sum is tendered by the State to the National Debt Commission, and is accepted by the National Debt Commission, for the purpose mentioned in paragraph (a) of this sub-clause but subject to either or both of the following conditions, namely,

- (i) that the sum shall be applied to the repurchase or redemption of particular securities specified by the State;
- (ii) that sinking fund contributions of the Commonwealth and the State payable under sub-clause (2.), (6.), (8.), (10.) or (11.) of this clause in respect of the amount represented by the repurchased or

THE SCHEDULE—*continued*.

redeemed securities shall cease as from the date of cancellation of those securities,

that sum shall be applied, and the condition or conditions shall take effect, accordingly.

(20.) (a) Where, upon the conversion or partial conversion at a discount of a loan raised by or on behalf of a State, sinking fund moneys are applied to the redemption of any amount of the converted loan, the State shall repay to the National Debt Commission from State revenue so much of the sinking fund moneys so applied as does not exceed the aggregate amount of the discounts allowed to subscribers to the loan raised to effect the conversion or partial conversion.

Inserted by
Agreement of
15th November,
1944, Clause 5.
Effective from
1st July, 1937.—
Agreement of
15th November,
1944, Clause 6
(6.).

(b) Repayment by the State shall, unless otherwise approved by the National Debt Commission, be by equal annual instalments extending over the period of the loan raised to effect the conversion or partial conversion. For the purpose of calculating the amount of the annual instalments any broken portion of a year shall be disregarded.

(c) Where, by the terms of the loan raised to effect the conversion or partial conversion, the borrower has an option as to the date upon which the borrower shall be entitled to redeem the loan, the period of the loan shall, for the purposes of this sub-clause, be deemed to be the period terminating upon the earliest date of redemption provided for by the terms of the loan.

(d) All repayment instalments payable to the National Debt Commission in pursuance of this sub-clause shall be payable at such times as shall be fixed by the National Debt Commission, and shall be applied as if they were sinking fund contributions made by the State under this clause, provided that the State shall not be required to make any further sinking fund contribution under sub-clause (18.) of this clause upon the cancellation of any security to the repurchase or redemption of which any repayment instalment has been applied.

(21.) All sinking fund contributions payable under this Agreement in respect of overseas debt, and all further sinking fund contributions so payable upon the cancellation of securities in respect of overseas debt, shall be calculated at the mint par of exchange prevailing on 1st July, 1927.

Inserted by
Agreement of
15th November,
1944, Clause 5.
Effective from
1st July, 1927.—
Agreement of
15th November,
1944, Clause 6
(7.).

TRANSFERRED PROPERTIES.

13. It is agreed that all questions between the Commonwealth and the States relating to State properties transferred to the Commonwealth or acquired by the Commonwealth under section 85 of the Constitution shall be settled as follows:—

(a) The States will as from 1st July, 1929, and as between the Commonwealth and the States be completely free and discharged from all liability whether in respect of principal, interest or sinking fund, or otherwise, which liability shall be assumed by the Commonwealth in respect of so much of the public debts of the States bearing interest at the rate of 5 per centum per annum, taken over by the Commonwealth as aforesaid as amounts to the agreed value of transferred properties, namely, £10,924,323, apportioned to the several States as follows:—

New South Wales	..	..	..	..	..	£4,788,005
Victoria ..	..	..	..	..	..	2,302,862
Queensland ..	..	..	..	..	..	1,560,639
South Australia ..	..	..	..	..	..	1,035,631
Western Australia	..	..	..	..	..	736,432
Tasmania ..	..	..	..	..	..	500,754
Total ..	..	..	..	..	..	£10,924,323

(b) The particular portion of the public debt of each State in respect of which the States shall become free and discharged from liability shall be determined by the Commonwealth.

(c) Each State will issue to the Commonwealth freehold titles (or, if the laws of any State do not permit of the issue of freehold titles, then titles as near to freehold as the laws of that State will permit) for transferred properties

THE SCHEDULE—*continued.*

consisting of land or interests in land in that State, and all liability of the Commonwealth to the State in respect of transferred properties shall as from the 1st July, 1929, be extinguished.

(d) The provisions of Clauses 11 and 12 of this Agreement shall not apply to the said amount of £10,924,323.

PART IV.—MISCELLANEOUS.

EXPENSES OF LOAN FLOTATION.

14.—(1.) Each State shall repay to the Commonwealth all expenses incurred or payments made by the Commonwealth in the performance of this Agreement in relation to the State, including the following expenses and payments:—

- (a) Loan flotation charges;
- (b) Management charges;
- (c) Stamp duties on transfer of securities;
- (d) Commission on payment of interest;
- (e) Expenses incurred in the conversion renewal redemption or consolidation of loans;
- (f) Exchange on transference of moneys.

(2.) Unless it is otherwise agreed between the Commonwealth and a State, the Commonwealth will not do anything in connexion with a loan of that State existing on the 30th June, 1927, or raised thereafter pursuant to this Agreement, which, if done by that State, would be a breach of any now existing agreement by that State with any Bank.

(3.) A certificate by the Auditor-General of the Commonwealth stating the amount to be repaid by a State to the Commonwealth and the matter in respect of which the repayment is to be made shall, in the event of a dispute, be conclusive as to the amount and matter stated.

ALTERATION OF THE CONSTITUTION.*

15. The Commonwealth will take the necessary action to submit to the Parliament of the Commonwealth and to the electors proposals for the alteration of the Constitution of the Commonwealth in the following form:—

“105A.—(1.) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

- (a) the taking over of such debts by the Commonwealth;
- (b) the management of such debts;
- (c) the payment of interest and the provision and management of sinking funds in respect of such debts;
- (d) the consolidation, renewal, conversion, and redemption of such debts;
- (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and
- (f) the borrowing of money by the States or by the Commonwealth or by the Commonwealth for the States.

(2.) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(3.) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

(4.) Any such agreement may be varied or rescinded by the parties thereto.

(5.) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto, notwithstanding anything contained in this Constitution or the constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.

* The proposals contained in Clause 15 were submitted to the Parliament of the Commonwealth and to the electors and were approved in accordance with the Constitution of the Commonwealth. The law embodying the proposals became operative on 13th February, 1929. (Constitution Alteration (State Debts), No. 1 of 1929).

THE SCHEDULE—*continued.*

(6.) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section 105 of this Constitution.”

INDEMNITY.

16. Each State agrees with the Commonwealth that it will by the faithful performance of its obligations under this Agreement indemnify the Commonwealth against all liabilities whatsoever in respect of the public debt of that State taken over by the Commonwealth as aforesaid (other than the liabilities of the Commonwealth under this Agreement to pay interest and to make sinking fund contributions and under Clause 13 of this Agreement), and in respect of all loans of that State in respect of which this Agreement provides that sinking fund contributions shall be made.

ACCOUNTS.

17. Separate accounts shall be kept by the Commonwealth for each State in respect of Debt, Interest, and Sinking Funds.

FINANCIAL AGREEMENTS (COMMONWEALTH LIABILITY)
ACT 1932.^{(a)(b)}

An Act to resolve doubts which have arisen as to the liability of the Commonwealth to bondholders in certain debts of the States taken over by the Commonwealth, and for other purposes.

Preamble.

WHEREAS by clause 1 of Part III. of the Agreement set forth in the Schedule to the *Financial Agreement Validation Act* 1929 it was agreed that, subject to the provisions of that Part of the Agreement, the Commonwealth would take over on the first day of July One thousand nine hundred and twenty-nine—

(a) the balance then unpaid of the gross public debt of each State existing on the thirtieth day of June One thousand nine hundred and twenty-seven; and

(b) all other debts of each State existing on the first day of July One thousand nine hundred and twenty-nine for moneys borrowed by that State which by that Agreement were deemed to be moneys borrowed by the Commonwealth for and on behalf of that State,

and would in respect of debts so taken over assume as between the Commonwealth and the States the liabilities of the States to bondholders:

AND WHEREAS doubts have arisen as to the direct liability of the Commonwealth to bondholders in certain debts of the States so taken over by the Commonwealth:

AND WHEREAS it is desirable that those doubts should be resolved and that the Commonwealth should accept direct liability to those bondholders and should have the right to sue the State concerned for the amount of payments made in satisfaction of such liability:

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

Short title.

1. This Act may be cited as the *Financial Agreements (Commonwealth Liability) Act 1932.*^(a)

Commencement.

2. This Act shall be deemed to have commenced on the first day of January, One thousand nine hundred and thirty-one.

(a) No. 2, 1932; assented to on 12th March, 1932; commenced on 1st January, 1931. See s. 2.

(b) In *New South Wales v. Commonwealth* (No. 1), (1932) 46 C.L.R. 155; 38 A.L.R. 245; 5 A.L.J. 433; 6 A.L.J. 38 a declaration was sought that this Act is *ultra vires* the Parliament. The High Court decided the case without having to consider the validity of this Act.

3. In this Act, unless the contrary intention appears—

Definitions.

“Bondholder” means an owner of any—

- (i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock;
- (ii) Instalment Stock;
- (iii) Registered Stock;
- (iv) Funded Stock;
- (v) Stock payable to bearer;
- (vi) Bonds, including registered bonds;
- (vii) Debentures, including registered debentures and instalment debentures;
- (viii) Treasury Bills not repayable within twelve months from the date of issue; or
- (ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes,

issued or created by a State or by or on behalf of a Colony the predecessor of the State in respect of borrowed moneys, but does not include the Commonwealth;

“The Financial Agreements” means one or more or all of the Agreements contained in the Schedules to the *Financial Agreement Validation Act 1929*, the *Debt Conversion Agreement Act 1931* and the *Debt Conversion Agreement Act (No. 2) 1931*.

4.—(1.) The Commonwealth will pay to bondholders from time to time interest payable on the Public Debts taken over by the Commonwealth from the States in pursuance of clause 1 of Part III. of the Agreement contained in the Schedule to the *Financial Agreement Validation Act 1929*,^(a) other than debts due by the States to the Commonwealth, and, upon the maturity of any securities issued in respect of any such Public Debts, will pay to bondholders the principal moneys secured by those securities.

Assumption of liability by Commonwealth to bondholders.

(2.) Any such bondholder may bring a suit against the Commonwealth in the High Court for payment of interest due to him at any time on any portion of any such Public Debts of a State, and, upon the maturity of any securities issued in respect of any such public debts, for payment of the principal moneys secured by those securities.

(3.) The Consolidated Revenue Fund is hereby appropriated accordingly for the purpose of payments of principal moneys and interest for which in pursuance of the foregoing provisions of this section the Commonwealth is liable.

(4.) In addition to and without prejudice to any other remedy or relief, the Commonwealth shall be entitled to recover from a State by suit in the High Court, any moneys (due and payable and unpaid by the State by virtue of the Financial Agreements or this Act) for which the Commonwealth has become liable by virtue of the Financial Agreements or this Act, or which the Commonwealth has paid in pursuance of those Agreements or this Act.

Regulations.

5. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular—

- (a) for conferring on the Treasurer and officers of the Commonwealth, powers of requiring returns and production of documents; and
 - (b) for prescribing penalties, not exceeding in any case One hundred pounds or imprisonment for six months, for any contravention of the regulations.
-

FINANCIAL AGREEMENT VALIDATION ACT 1929.^(a)

An Act to validate an Agreement made the twelfth day of December One thousand nine hundred and twenty-seven between the Commonwealth of Australia of the first part and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania of the second, third, fourth, fifth, sixth and seventh parts respectively.

WHEREAS an agreement (a copy of which is set forth in the Schedule to this Act) was made on the twelfth day of December One thousand nine hundred and twenty-seven between the Commonwealth of Australia of the first part and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania of the second, third, fourth, fifth, sixth and seventh parts respectively: Preamble.

AND WHEREAS the Agreement has been approved by the Parliaments of the Commonwealth and of the States:

AND WHEREAS the Agreement provides among other things that the Commonwealth will take the necessary action to submit to the Parliament of the Commonwealth and to the electors proposals for the alteration of the Constitution of the Commonwealth in the following form:—

- 105A. (1) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—
- (a) the taking over of such debts by the Commonwealth;
 - (b) the management of such debts;
 - (c) the payment of interest and the provision and management of sinking funds in respect of such debts;
 - (d) the consolidation, renewal, conversion, and redemption of such debts;
 - (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and
 - (f) the borrowing of money by the States or by the Commonwealth or by the Commonwealth for the States.

(a) No. 4, 1929; assented to, and commenced, on 18th March, 1929.

(2) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(3) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

(4) Any such agreement may be varied or rescinded by the parties thereto.

(5) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto, notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.

(6) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section 105 of this Constitution.

AND WHEREAS a proposed law embodying the said proposals was, on the fourteenth day of September, One thousand nine hundred and twenty-eight, passed by both Houses of the Parliament of the Commonwealth by an absolute majority, and, having been submitted to the electors in accordance with the Constitution, was on the seventeenth day of November, One thousand nine hundred and twenty-eight, approved in a majority of the States by a majority of the electors voting, and approved by a majority of all the electors voting, and was presented to the Governor-General for the King's assent:

AND WHEREAS the law embodying the said proposals was assented to by the Governor-General in the King's name on the thirteenth day of February One thousand nine hundred and twenty-nine:

AND WHEREAS it is desirable to validate the agreement:

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

Short title.

1. This Act may be cited as the *Financial Agreement Validation Act 1929.*^(a)

Validation of Agreement.

2. The Agreement made the twelfth day of December One thousand nine hundred and twenty-seven between the Commonwealth of Australia of the first part and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania of the second, third, fourth, fifth, sixth and seventh parts respectively with respect to the public debts of the States, including—

(a) See footnote to the title of the Act, *supra*.

- (a) the taking over of such debts by the Commonwealth;
 - (b) the management of such debts;
 - (c) the payment of interest and the provision and management of sinking funds in respect of such debts;
 - (d) the consolidation, renewal, conversion and redemption of such debts;
 - (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and
 - (f) the borrowing of moneys by the States and by the Commonwealth and by the Commonwealth for the States,
- (a copy of which Agreement is set forth in the Schedule to this Act), is hereby validated.

THE SCHEDULE.^(a)

* * * * *

^(a) The agreement contained in the Schedule to this Act is identical with the agreement contained in the First Schedule to the *Financial Agreement Act 1928, supra*.

FLAX AND LINSEED BOUNTIES ACT 1930-1934. ^(a)An Act to provide for the payment of Bounties on the
Production of Flax and Linseed.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows:—

Short title.

Short title
amended,
No. 32, 1918,
s. 2.

Definitions.

1. This Act may be cited as the *Flax and Linseed Bounties Act 1930-1934*. ^(a)

2. In this Act, unless the contrary intention appears—

“appointed place” means a place appointed by the Minister, by writing under his hand, to be a place where flax may be manufactured or linseed may be extracted from the flax plant, and such flax or linseed may be weighed, examined and otherwise dealt with for the purposes of this Act;

Amended by
No. 43, 1931,
s. 3.

“flax” means the cleaned, scutched fibre of the flax plant prepared by retting, or by mechanical or other processes;

“flax plant” means a flax plant of the genus *Linum Usitatissimum*;

“Linseed” means the seed of the flax plant;

“production,” in relation to flax, means the manufacture of flax from flax plants and, in relation to linseed, means the extraction of linseed from such plants, but does not include the growing of such plants.

Appropriation.

3. There shall be payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, the bounties specified in this Act.

Specification of bounties.

4. The bounties under this Act shall be payable on the production of either flax or linseed which—

(a) The *Flax and Linseed Bounties Act 1930-1934* comprises the *Flax and Linseed Bounties Act 1930* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Flax and Linseed Bounties Act 1930</i>	1930, No. 45 . .	18th August, 1930 . .	18th August, 1930
<i>Flax and Linseed Bounties Act 1931</i>	1931, No. 43 . .	23rd October, 1931 . .	18th August, 1930*
<i>Statute Law Revision Act 1934</i>	1934, No. 45 . .	6th August, 1934 . .	6th August, 1934

*Deemed to have commenced on this date. Act No 43, 1931, s. 2.

- (a) has been produced from flax plants grown in Australia from seed of varieties approved by the Minister; and
- (b) has been delivered from an appointed place, on or after the first day of March, One thousand nine hundred and thirty and on or before the twenty-eighth day of February, One thousand nine hundred and thirty-five.

5.—(1.) The total amount of bounties authorized to be paid under this Act in any one financial year shall not exceed the sum of Limit of annual amount of bounties. Twenty thousand pounds.

(2.) When the maximum amount of bounty which may be paid in any financial year has not been paid in that financial year, the unpaid balance, or any part thereof, may be paid in any subsequent financial year at the rate applicable to that year, in addition to the maximum amount for that year.

6.—(1.) The bounties payable under this Act shall be— Rates of bounty.

- (a) on flax and linseed produced on or after the first day of March, One thousand nine hundred and thirty, and on or before the twenty-ninth day of February, One thousand nine hundred and thirty-two—fifteen per centum of the market value of the flax or linseed;
- (b) on flax and linseed produced on or after the first day of March, One thousand nine hundred and thirty-two, and on or before the twenty-eighth day of February, One thousand nine hundred and thirty-four—ten per centum of the market value of the flax or linseed; and
- (c) on flax and linseed produced on or after the first day of March, One thousand nine hundred and thirty-four, and on or before the twenty-eighth day of February, One thousand nine hundred and thirty-five—seven and one-half per centum of the market value of the flax or linseed.

(2.) For the purposes of this Act, the market value of flax or linseed shall be the net cash selling value, exclusive of the value of casing and packing, of the flax or linseed at the time and place of delivery from an appointed place, and shall be ascertained and determined in the prescribed manner.

7. The bounties shall, subject to this Act, be payable to the producer of flax or linseed. To whom bounties payable.

8.—(1.) Every claimant of bounties under this Act shall supply with his claim a certificate stating the quantity of flax plants purchased by him from each grower thereof during the twelve months immediately preceding the date of such claim, and the name and address of each grower of, and the amount per ton paid to each grower for, such flax plants. Conditions of payment of bounties.

(2.) Before any claim for bounty is paid, the Minister may require the claimant to furnish, and the claimant shall thereupon furnish, such information as to the correctness or otherwise of the certificates supplied in accordance with the last preceding subsection as the Minister deems necessary.

Prices of flax plants used in production.

9. No bounties shall be payable unless the Minister is satisfied that the grower of any flax plants used in the production of the flax or linseed in respect of which bounties are claimed has received or will receive a price or an amount for such flax plants which in the opinion of the Minister is a reasonable price or amount.

Flax or linseed to be of good quality.

10. No bounty shall be paid on any flax or linseed unless it is of good and merchantable quality.

Bounties not payable unless Act complied with.

11. No bounties shall be authorized to be paid unless the producer furnishes proof to the satisfaction of the Minister that the requirements of this Act and the regulations have been complied with.

Reasonable selling prices.

12. If, after inquiry and report by the Tariff Board, the Minister is of opinion that flax or linseed on the production of which bounty has been paid to any person, is not being sold at a reasonable price having regard to the costs of production and sale, and to the fact that bounty on the production of flax or linseed is provided by this Act, the Minister may withhold payment of any further bounty claimed by that person or as much thereof as he thinks fit or may require that person to refund the amount of bounty so paid which shall thereupon become a debt due and payable by that person to the Commonwealth.

Reduction of bounties where profits exceed ten per centum.

13.—(1.) Where bounty has been paid under this Act to any person on the production of flax or linseed, and the net profits derived by that person from the production and sale of that flax or linseed, together with the bounty so paid exceed, in the year in respect of which the bounty was paid, ten per centum of the capital employed in such production and sale, the Minister may, after inquiry and report by the Tariff Board—

(a) withhold such further bounty claimed by that person as is equivalent to the amount of the bounty paid in respect of the year in which the profits were derived, or where those profits, without taking into account the bounty so paid, are less than ten per centum of such capital, such further bounty as is equivalent to the amount by which those profits together with the bounty so paid exceed ten per centum of such capital; or

(b) require that person to refund an amount equivalent to the amount which may be withheld under the last preceding paragraph, and that amount shall thereupon become a

debt due and payable by that person to the Commonwealth.

(2.) For the purposes of this section, the Minister may determine what amount of capital is or has been employed by any person in the production of flax or linseed and what amount of net profits is or has been derived by that person from such production.

14.—(1.) The Minister may make application to the Chief Judge or a Judge of the Commonwealth Court of Conciliation and Arbitration, or to any Commonwealth authority established for the purpose of determining conditions of employment and rates of wages, for a declaration as to what conditions of employment and rates of wages are fair and reasonable for labour employed in the production of flax or linseed, or in growing flax plants from which such flax and linseed are produced.

Conditions of employment and rates of wages.

* * * * *

Sub-sections (2.) and (3.) omitted by No. 45, 1934, s. 2 (3.) and Fourth Schedule.

(4.) Every person who claims the bounties payable on flax or linseed under this Act shall certify to the Minister the conditions of employment observed and the rates of wages paid in respect of any labour employed by him.

(5.) Every person who claims the bounties payable on flax or linseed under this Act shall in making such claims furnish to the Minister such evidence as the Minister requires as to the conditions of employment observed, and the rates of wages paid, in respect of any labour employed in growing flax plants from which such flax and linseed are produced.

(6.) If the Minister finds that the conditions of employment or rates of wages, or any of them, observed or paid in respect of any labour employed in the production of any flax or linseed upon which bounty is claimed, or in growing flax plants from which such flax and linseed are produced—

- (a) are below the conditions and rates declared, as in the first sub-section of this section mentioned, to be fair and reasonable; or
- (b) are below the standard conditions and rates prescribed by the Commonwealth Court of Conciliation and Arbitration, or by any other industrial authority of the Commonwealth or a State,

the Minister may withhold the whole or any part of the bounty payable.

(7.) If—

- (a) the Chief Judge or a Judge of the Commonwealth Court of Conciliation and Arbitration has not declared, in accordance with sub-section (1.) of this section, what conditions of employment and rates of wages are fair

and reasonable for labour employed in the production of flax or linseed, or for labour employed in growing flax plants from which such flax and linseed are produced; and

- (b) there are not in force in the locality where the flax or linseed is produced, or the flax plants are grown, any standard conditions and rates relating to the labour employed in the production of flax or linseed, or in growing flax plants, prescribed by the Commonwealth Court of Conciliation and Arbitration or by an industrial authority of a State, or contained in an industrial agreement registered under any law of the Commonwealth or a State,

the Minister may appoint an authority or authorities for determining, for the purposes of this section, conditions of employment and rates of wages which are fair and reasonable for labour employed in the production of flax or linseed or in growing flax plants, and any authority so appointed shall be deemed to be a Commonwealth authority within the meaning of sub-section (1.) of this section.

(8.) An authority appointed by the Minister under the last preceding sub-section shall consist of a representative of employers engaged in the production of flax or linseed, or in growing flax plants, a representative of employees engaged in such production or growing, and a person, who shall act as Chairman, and who shall be appointed by the Minister on the joint nomination of the representatives of employers and employees;

Provided that, if the representatives of employers and employees fail to make a joint nomination of a Chairman within twenty days after being called upon by the Minister so to do, the Governor-General may appoint a person to act as Chairman.

Audit of
accounts, &c.

15. The accounts, books and documents of any person, firm or company claiming bounties under this Act shall be subject to examination and audit by an auditor appointed or authorized by the Minister.

Offences.

16. No person shall—

- (a) obtain any bounty which is not payable;
- (b) obtain payment of any bounty by means of any false or misleading statement; or
- (c) present to any officer or other person doing duty in relation to this Act or the regulations any document, or make to any such officer or person any statement, which is false in any particular.

Penalty: One hundred pounds or imprisonment for twelve months.

17.—(1.) A return shall be prepared in each financial year not later than the thirty-first day of August, and shall be laid before both Houses of Parliament within thirty days after its preparation if the Parliament is then sitting, and, if not, then within thirty days after the next meeting thereof.

Return to be
laid before
Parliament.

(2.) The return shall set forth—

- (a) the names and addresses of all person to whom bounties were paid under this Act during the preceding financial year;
- (b) the total amount of bounties paid to each such person during the preceding financial year;
- (c) the number of persons employed in each place where flax or linseed is produced, the rates of wages paid and the hours observed in the production of the flax or linseed; and
- (d) such other particulars as are prescribed.

18. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing penalties not exceeding Fifty pounds for any breach of the Regulations, and the proportion in which bounty shall be payable to claimants who have complied with the prescribed conditions, in cases where there is not sufficient money available to pay the full bounty in respect of all the claims.

Regulations.

FLAX CANVAS BOUNTY ACT 1950.^(a)

An Act to provide for the Payment of a Bounty on the Production of Flax Canvas.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows:—

- | | |
|--------------------------|---|
| Short title. | 1. This Act may be cited as the <i>Flax Canvas Bounty Act 1950</i> . ^(a) |
| Definitions. | <p>2. In this Act, unless the contrary intention appears—</p> <p>“authorized person” means a person appointed by the Minister in pursuance of section twelve of this Act;</p> <p>“bounty” means bounty under this Act;</p> <p>“Collector” means Collector of Customs for a State;</p> <p>“Customs Tariff” means the <i>Customs Tariff 1933–1950</i>, and includes that Act as amended from time to time and any Act in substitution for that Act or for that Act as so amended, and any Act referred to in this definition as proposed to be amended by any Tariff Proposal introduced into the House of Representatives;</p> <p>“duty of Customs” means the rate of duty specified in the column headed “British Preferential Tariff” in the Schedule to the Customs Tariff;</p> <p>“factory” means any premises registered by the Minister as a factory for the purposes of this Act;</p> <p>“flax canvas” means woven flax canvas piece goods and woven flax canvas fire hose manufactured in Australia from scutched flax fibre produced from flax grown and processed in Australia;</p> <p>“the Comptroller-General” means the Comptroller-General of Customs.</p> |
| Appropriation. | 3. The bounty specified in this Act is payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly. |
| Specification of bounty. | <p>4.—(1.) The bounty is payable in respect of flax canvas manufactured during the period of two years which commenced on the seventeenth day of July, One thousand nine hundred and fifty, for sale for use in the Commonwealth.</p> <p>(2.) Bounty shall not be payable in respect of flax canvas unless it has been manufactured in a factory, or in premises which have become a factory, and in accordance with the prescribed conditions, if any, applicable at the time of manufacture.</p> |

^(a) No. 54, 1950; assented to on 14th December, 1950; commenced on 11th January, 1951.

5. The bounty is, subject to this Act, payable to the manufacturer of the flax canvas. To whom
bounty
payable.

6.—(1.) The rate of the bounty is, subject to this Act, the amount per ton of flax canvas which is equivalent to an amount of Sixty pounds per ton of the weight (calculated in accordance with the prescribed formula) of the scutched flax fibre used in the manufacture of the flax canvas. Rate of bounty.

(2.) The prescribed formula may make allowance for losses which occur in hackling, spinning, preparing, boiling or weaving operations directly connected with the manufacture of flax canvas.

(3.) During any period during which the duty of Customs on flax canvas is higher than the duty of Customs on flax canvas at the date of commencement of this Act, the rate of bounty shall be the amount per ton of flax canvas specified in sub-section (1.) of this section, reduced by the amount per ton by which the first-mentioned duty of Customs exceeds the second-mentioned duty of Customs.

(4.) The rate of bounty payable in respect of flax canvas of which the manufacture is completed after the date of commencement of this Act is the rate of bounty in force at the date on which the manufacture of the flax canvas is completed.

7.—(1.) Subject to this section, the total amount available for payment of bounty in respect of flax canvas manufactured in each year of the period of two years specified in section four of this Act is Thirty thousand pounds. Limit of
annual
bounty.

(2.) If the amount available for the purpose of payment of bounty in respect of flax canvas manufactured in the first year of the period of two years specified in section four of this Act is not used for that purpose, the amount not so used shall be added to the amount available for the purpose of payment of bounty in respect of flax canvas manufactured in the second year of that period.

(3.) Where the total amount available in pursuance of this Act for the payment of valid claims for bounty on the manufacture of flax canvas in a year is insufficient for the payment in full of all such claims, the bounty otherwise payable in respect of each of those claims shall be reduced to an amount which bears the same proportion to the amount of the claim as the total amount so available bears to the total amount of all such claims.

(4.) If the Minister is of the opinion that the total amount of bounty available in pursuance of this Act for the payment of valid claims for bounty on the manufacture of flax canvas in a year will be insufficient for the payment in full of all such claims, he may withhold payment of the whole or any part of the bounty otherwise payable upon any such claims until he has ascertained the total amount of all such claims.

Reduction of
bounty where
profits exceed
ten per centum
per annum.

8.—(1.) Where the net profit of a manufacturer from the manufacture and sale of flax canvas during either of the years in the period of two years specified in section four of this Act, after taking into account bounty paid or payable in respect of that flax canvas, exceeds or would exceed one-tenth of the capital used by the manufacturer in that manufacture and sale, the Minister may—

- (a) if the whole or part of that bounty has been paid to the manufacturer, by notice in writing require the manufacturer to refund to the Commonwealth, within the time specified in the notice, so much of the bounty so paid as does not exceed the amount by which the net profit, after taking the bounty so paid into account, is greater than one-tenth of that capital; and
- (b) withhold from the manufacturer payment of any amount of bounty where, if the payment were made, the net profit, after taking bounty paid into account, would exceed one-tenth of that capital.

(2.) For the purposes of the application of the last preceding sub-section in relation to the manufacture of flax canvas during the second year of the period of two years specified in section four of this Act, where the Minister is satisfied that the manufacture and sale of flax canvas by a manufacturer during the first year of that period resulted (after taking bounty into account) in a profit of less than one-tenth of the capital used in that manufacture and sale, or in a loss, he may make such allowance by reason of that fact as he, in his absolute discretion, thinks fit.

(3.) For the purposes of this section, the Minister may—

- (a) determine the amount of any capital or net profit required to be taken into account for those purposes;
- (b) in making a determination under the last preceding paragraph, treat as capital and net profit of a manufacturer of flax canvas the amount, as determined by him, of any capital used, and net profit derived, by another person (whether or not subsidiary to, or affiliated with, the manufacturer) in or from the distribution or sale of the flax canvas; and
- (c) where a manufacturer of flax canvas uses the flax canvas for the production of other goods, treat the flax canvas so used as having been sold by the manufacturer, at such prices as the Minister determines.

(4.) In making a determination under the last preceding sub-section of an amount of net profit, the Minister shall not regard any tax upon income as a deduction.

(5.) Where a manufacturer fails to refund an amount as required under sub-section (1.) of this section, that amount may be recovered as a debt due to Commonwealth by action in any court of competent jurisdiction.

(6.) For the purposes of any proceedings under the last preceding sub-section, the Minister may, by writing under his hand, certify the determinations or allowances made by him under this section and any such certificate shall be *prima facie* evidence of those determinations.

9. Bounty shall not be paid on the production of any flax canvas unless the Comptroller-General is satisfied that it is of good and merchantable quality. Good quality essential.

10.—(1.) A person may apply to the Minister for the registration as a factory of premises at which he carries on, or proposes to carry on, the business of the manufacture of flax canvas. Registration of factories.

(2.) The Minister may require a person who makes an application under this section to furnish information relating to the nature of the business or the proposed business, the marketing prospects of the flax canvas and such other matters as the Minister considers necessary for the purposes of this Act, and may refuse to register the premises until the information is furnished to his satisfaction.

(3.) Subject to the last preceding sub-section, if, in the opinion of the Minister, flax canvas is, or is proposed to be, manufactured in accordance with the prescribed conditions at the premises in respect of which the application is made, he shall register those premises as a factory.

(4.) Where the Minister is satisfied that flax canvas is not being manufactured at a factory in accordance with the prescribed conditions, he may, by notice in writing to the occupier of the factory, cancel the registration of the factory.

11.—(1.) A person who manufactures flax canvas at a factory shall keep, to the satisfaction of the Minister, accounts, books and documents showing, from time to time, the capital used in, and the costs of, the manufacture and sale of flax canvas, the selling prices and receipts from sales of flax canvas, and the profits derived from the manufacture and sale of flax canvas. Accounts.

(2.) A person who manufactures flax canvas at a factory shall, in respect of each year of the period of two years specified in section four of this Act, furnish to the Comptroller-General a balance-sheet, profit and loss account, manufacturing account and trading account, and such other information in relation to the manufacture and sale of flax canvas as is prescribed or as the Minister requires.

(3.) The manufacturer shall furnish with the documents referred to in the last preceding sub-section a certificate signed by him that they are true and correct in every particular and a certificate, signed by an auditor, that they are true and correct to the best of the auditor's knowledge and belief.

12. The Minister may, by writing under his hand, appoint a person to be an authorized person for the purpose of this Act. Appointment of authorized persons.

Stocktaking
and inspection
of manufacture
and accounts.

13.—(1.) An authorized person may, at all reasonable times, enter a factory or premises where flax canvas, in respect of which bounty has been paid or claimed, is manufactured or stored, and may—

- (a) inspect or take stock of the flax canvas;
- (b) inspect the processes of manufacture of the flax canvas;
- (c) take samples of the flax canvas; and
- (d) inspect the accounts, books and documents relating to the manufacture and sale of the flax canvas.

(2.) The manufacturer and the owner or occupier of the factory or premises shall provide the authorized person with all reasonable facilities and assistance for the effective exercise of his powers under this section.

Penalty: Fifty pounds.

Power to
require persons
to answer
questions and
produce
documents.

14.—(1.) The Comptroller-General, a Collector or an authorized person may, by notice in writing, require a person whom he believes to be capable of giving information, relevant to the operation of this Act, in relation to the manufacture or sale of flax canvas to attend before him at the time and place specified in the notice and then and there to answer questions and to produce to him such accounts, books and documents in relation to the manufacture or sale of flax canvas as are referred to in the notice.

(2.) The Comptroller-General, the Collector or the authorized person to whom any accounts, books or documents are produced in pursuance of this section may make and retain copies of, or extracts from, those accounts, books or documents.

(3.) A person shall not be excused from answering a question or producing any accounts, books or documents when required so to do under this section, on the ground that the answer to the question or the production of the accounts, books or documents might tend to incriminate him or make him liable to a penalty, but his answer to any such question shall not be admissible in evidence against him in any proceedings other than proceedings for an offence against this Act.

(4.) Where a manufacturer has failed to attend or to answer any question, or to produce any accounts, books or documents, when required so to do under this section, the Minister may, if he thinks fit, withhold payment of any bounty payable to the manufacturer until he has attended, answered the question or furnished the required accounts, books or documents, as the case may be.

Power to
examine on
oath.

15.—(1.) The Comptroller-General, a Collector or an authorized person may administer an oath to a person required to attend before him in pursuance of the last preceding section and may examine that person upon oath.

(2.) Where any such person conscientiously objects to take an oath, he may make an affirmation that he conscientiously objects to

take an oath and that he will state the truth, the whole truth and nothing but the truth to all questions asked him.

(3.) An affirmation so made shall be of the same force and effect, and shall entail the same penalties, as an oath.

16. A person shall not refuse or fail—

- (a) to attend before the Comptroller-General, a Collector or an authorized person;
- (b) to be sworn or to make an affirmation; or
- (c) to answer questions or produce accounts, books or documents, when so required in pursuance of this Act.

Penalty for refusing to answer questions, &c.

Penalty: Fifty pounds.

17. The Minister may require a manufacturer to give security by bond, guarantee or cash deposit, or by all or any of those methods, for compliance by him with the provisions of this Act and the regulations or for the performance of any undertaking given by him for the purposes of this Act or the regulations.

Security for compliance with Act.

18. Bounty is not payable to a manufacturer unless he satisfies the Minister that the requirements of this Act and the regulations have been substantially complied with.

Bounty not payable unless Act complied with.

19.—(1.) A person shall not—

- (a) obtain bounty which is not payable;
- (b) obtain payment of bounty by means of a false or misleading statement; or
- (c) present to an officer or other person doing duty in relation to this Act or the regulations an account, book or document, or make to such an officer or person a statement, which is false or misleading in any particular.

Offences.

Penalty: Five hundred pounds or imprisonment for twelve months.

(2.) Where a person is convicted under the last preceding sub-section, the court may, in addition to imposing a penalty under that sub-section, order the person to refund to the Commonwealth the amount of any bounty wrongfully obtained.

(3.) Where a court has made an order under the last preceding sub-section, a certificate under the hand of the clerk or other appropriate officer of the court, specifying the amount ordered to be refunded and the person by whom the amount is payable, may be filed in a court having civil jurisdiction to the extent of that amount, and shall thereupon be enforceable in all respects as a final judgment of that court.

20.—(1.) The Comptroller-General shall, as soon as practicable after the end of each year of the period of two years specified in section four of this Act, prepare a return setting forth, in respect of that year—

Return for Parliament.

- (a) the name and address of each manufacturer to whom bounty was paid;
- (b) the amount of bounty paid to each manufacturer and the quantity of the flax canvas on which bounty was paid; and
- (c) such other particulars (if any) as are prescribed.

(2.) The Comptroller-General shall cause a copy of the return to be tabled in each House of the Parliament within fifteen sitting days of that House after the thirty-first day of August next following the end of the year to which the return relates.

Regulations.

21. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing—

- (a) the form and manner in which, and the time within which, applications for bounty shall be made;
 - (b) the notice to be given by manufacturers of their intention to claim bounty;
 - (c) the conditions of manufacture of flax canvas at factories; and
 - (d) penalties not exceeding Fifty pounds for any breach of the regulations.
-

FORESTRY AND TIMBER BUREAU ACT 1930-1946.^(a)

An Act to provide for the Establishment of a Forestry and Timber Bureau.

Title amended
No. 46, 1946,
s. 2.

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

1. This Act may be cited as the *Forestry and Timber Bureau Act* 1930-1946.^(a)

Short title.

Short title
amended,
No. 32, 1918,
s. 2.

2.—(1.) In this Act, unless the contrary intention appears—

Definitions.

“the Board” means the Board of Higher Forestry Education constituted in pursuance of this Act;

Amended by
No. 27, 1932,
s. 2; No. 13,

“the Bureau” means the Forestry and Timber Bureau;

1944, s. 2; and
by No. 46, 1946,
ss. 2, 3.

“the Director-General” means the Director-General, Forestry and Timber Bureau;

“the Fund” means the Forestry Fund established by this Act;

“the Territories” means the Territory for the Seat of Government, the Northern Territory, Papua, Norfolk Island and New Guinea;

“the trustees” means the trustees appointed by this Act;

“timber” means all wood, whether in growing, dead, felled or fallen trees or sawn, peeled, sliced or otherwise treated.

(2.) Anything which may, by this Act, be done by a University may be done only by an authority or person authorized, either specially or by virtue of its or his general powers or functions, to act in the matter on behalf of that University.

3.—(1.) For the purposes of this Act there shall be a Forestry and Timber Bureau.

Establishment
of Forestry
and Timber
Bureau and
appointment
of officers.

(2.) The Forestry and Timber Bureau shall be under the charge of the Director-General who shall, subject to the direction of the Minister, be charged with the administration of this Act.

Amended by
No. 46, 1946,
ss. 2, 4.

(3.) The Director-General and all permanent officers required for the purpose of this Act shall be appointed under, and be subject

(a) The *Forestry and Timber Bureau Act* 1930-1946 comprises the Acts set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Forestry Bureau Act</i> 1930	1930, No. 16 ..	18th July, 1930 ..	18th July, 1930
<i>Forestry Bureau Act</i> 1932	1932, No. 27 ..	30th May, 1932 ..	30th May, 1932
<i>Forestry Bureau Act</i> 1944	1944, No. 13 ..	5th April, 1944 ..	3rd May, 1944
<i>Forestry and Timber Bureau Act</i> 1946	1946, No. 46 ..	15th August, 1946 ..	12th September, 1946

to, the provisions of the *Commonwealth Public Service Act* 1922-1928.^(a)

Powers and
functions of
Bureau.

Amended by
No. 46, 1946,
s. 5.

4. The powers and functions of the Bureau shall, subject to the regulations and the directions of the Minister, be—

- (a) advising the Administrations of the Territories on all matters pertaining to the management of forests;
- (b) the management of forests placed under its control by the Governor-General;
- (c) the establishment of experimental stations for the study of silviculture, forest management and forest protection;
- (d) the provision of educational facilities for the training of professional foresters;
- (e) the establishment and awarding of forestry scholarships;
- (f) the collection and distribution of forestry information;
- (g) the publication of reports and bulletins dealing with forestry;
- (ga) collecting statistics and information regarding timber supplies and requirements in Australia, and formulating programmes in respect of the supply, production and distribution of timber in Australia, and the importation into, and exportation from, Australia of timber;
- (gb) advising the Government of the Commonwealth or any instrumentality of that Government, or, when so requested, the Government of any State, or any instrumentality of the Government of any State, or any body or person, on matters relating to the supply, production and distribution of timber in Australia, and the importation into, and exportation from, Australia of timber;
- (gc) carrying out investigations and research relating to the supply, production, distribution and use of timber; and
- (h) such other functions as are prescribed.

Establishment
of Fund.

5. For the purposes of this Act there shall be a fund which shall be known as "The Forestry Fund".

Control of
Fund.

6. The Fund shall be vested in and placed under the control of the trustees.

Trustees.

Amended by
No. 27, 1932,
s. 3; and by
No. 46, 1946,
s. 6.

7. The Director-General, the Secretary to the Department of the Treasury and the Secretary to the Department of the Interior shall be the trustees of the Fund.

Constitution
of Fund.

8. The Fund shall consist of—

- (a) donations contributed for the furtherance of forestry; and
- (b) any other money or property received by the trustees for the purposes of the Fund.

(a) Now the *Public Service Act* 1922-1950, *infra*.

9. The trustees may—

- (a) invest any moneys standing to the credit of the Fund in securities of the Commonwealth or on deposit in the Commonwealth Bank or in the Commonwealth Savings Bank; and
- (b) convert into money any securities forming part of the Fund.

Investment
of Fund.

10. Moneys standing to the credit of the Fund may be applied for the furtherance of forestry in such manner as the Minister, on the recommendation of the trustees, approves.

Application
of Fund.

11.—(1.) The Director-General may receive any donations contributed for the furtherance of forestry.

Receipt of
donations.

(2.) Any donations so received by the Director-General shall be paid by him into the Fund.

Amended by
No. 46, 1946,
s. 6.

12. All books and accounts kept by the trustees shall be audited from time to time by the Auditor-General for the Commonwealth who shall make a report of each audit to the Minister.

Audit.

12A.—(1.) For the purposes of this Act, there shall be a Board of Higher Forestry Education.

Establishment
of Board of
Higher
Forestry
Education.

(2.) The Board shall consist of not more than thirteen members.

(3.) The Director-General shall be a member of the Board.

Inserted by
No. 13, 1944,
s. 3; amended
by No. 46, 1946,
s. 6.

(4.) Each of the remaining members of the Board shall be appointed by the Minister as the representative of a State Government or of the University in a State, and shall hold office during his pleasure:

Provided that the Minister may appoint a member as representative of more than one of the State Governments and Universities, and any member so appointed shall, in all proceedings of the Board, be entitled to a separate vote in respect of each Government and University which he represents.

(5.) The Minister responsible for forestry administration in each State, and the University in each State, may each, as occasion requires, recommend a person for appointment as a member of the Board to represent respectively the Government of that State and that University.

12B.—(1.) In the event of a member of the Board being unable at any time, through illness or absence from Australia, to perform his functions as a member, the Minister may appoint a person to act as deputy of the member while the member is so unable to perform his functions and the deputy may, while the member is so unable to perform his functions, exercise all the powers and functions of a member of the Board.

Deputies.

Inserted by
No. 13, 1944,
s. 3.

(2.) The Minister responsible for forestry administration in each State Government, and each University, represented by any member

so unable to perform his functions may recommend a person for appointment as deputy of the member of the Board representing that Government or University.

Powers and
functions of
Board.

Inserted by
No. 13, 1944,
s. 3.

12c.—(1.) Notwithstanding anything contained in this Act, the Board shall have such powers and functions in relation to any educational facilities provided by the Bureau as are prescribed.

(2.) The Board may appoint committees of its members, and may delegate to such committees, subject to the Board, any of its powers and functions.

(3.) The Board may include as members of any such committee persons who are not members of the Board, and may authorize any committee to co-opt such persons as members of the committee.

Regulations.

Amended by
No. 13, 1944,
s. 4.

13. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing such additional powers and functions of the Bureau as he deems desirable and for providing for the procedure (including the manner of voting) to be observed by the Board and for matters relating to the carrying out of the powers and functions of the Board.

FUNDING ARRANGEMENTS ACT 1921.^(a)

An Act to approve the Agreement made between the Government of the United Kingdom and the Commonwealth of Australia in relation to the repayment of the War indebtedness of the Commonwealth and for other purposes.

WHEREAS an agreement was made between the Government of the United Kingdom and the Commonwealth of Australia as to the manner and time of repayment of the war indebtedness of the Commonwealth of Australia to the Government of the United Kingdom and the rate and time of payment of interest on such indebtedness:

And whereas an agreement was made between an officer of the Imperial Treasury and an officer of the Commonwealth Treasury, covering certain matters outstanding under the first-named agreement:

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

1. This Act may be cited as the *Funding Arrangements Act 1921*.^(a) Short title.
2. The agreement made between the Government of the United Kingdom and the Commonwealth of Australia (a copy of which agreement is set forth in the First Schedule to this Act) and the agreement made between the Deputy Controller of Finance in the Imperial Treasury and the Secretary to the Commonwealth Treasury (a copy of which agreement is set forth in the Second Schedule to this Act) are approved. Approval of agreements.
3. Interest and payments in reduction of the principal, payable under the agreements referred to in the last preceding section, shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly. Appropriation for payment of interest and principal.
4. Notwithstanding the provisions of the *Loans Sinking Fund Act 1918*,^(b) the Treasurer shall not be required to pay into the Loans Sinking Fund^(b) any amount in respect of the moneys which are included in Schedule II. to the agreement set forth in the Second Schedule to this Act. Loans Sinking Fund Act 1918 not to apply.

(a) No. 15, 1921; assented to, and commenced, on 15th December, 1921.

(b) The *Loans Sinking Fund Act 1918* was repealed by section 2 of the *National Debt Sinking Fund Act 1923-1950*; Section 14 (2) of that Act reads, "References in any Act to the Loans Sinking Fund shall be construed as references to the National Debt Sinking Fund." See *infra*.

THE SCHEDULES.

THE FIRST SCHEDULE.

MEMORANDUM OF AGREEMENT made this second day of February One thousand nine hundred and twenty-one BETWEEN the Right Honorable Austen Chamberlain, Member of Parliament, Chancellor of the Exchequer, acting for and on behalf of the Government of the United Kingdom (in this Agreement referred to as "The Imperial Government"), but not so as to incur any personal liability, of the one part, AND SENATOR THE HONORABLE EDWARD DAVIS MILLEN, Minister of State of the Commonwealth of Australia for Repatriation, acting for and on behalf of the Commonwealth of Australia (hereinafter referred to as "The Commonwealth"), but not so as to incur any personal liability, of the other part:

WHEREAS the Commonwealth is indebted to the Imperial Government in respect of certain moneys lent, payments made, services rendered, and goods supplied, by the Imperial Government, to or on behalf of the Commonwealth during the war.

AND WHEREAS it is expedient that an Agreement be made between the Imperial Government and the Commonwealth as to the manner and time of repayment of the said indebtedness to the extent set out in the First Schedule hereto, and the rate and time of payment of interest thereon:

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:—

1. The amount of the said indebtedness shall be determined by agreement between the Imperial Government and the Commonwealth as at the thirty-first day of March One thousand nine hundred and twenty-one and the amount so determined shall, for the purposes of, but subject to this agreement, be deemed to be the principal,

2. In respect of the principal, or so much thereof as from time to time remains unpaid, the Commonwealth shall pay to the Imperial Government interest as follows:—

(a) Upon the sum of One million two hundred and sixty-three thousand one hundred and fifty-eight pounds (being portion of the capital Book Debt due by the Commonwealth to the Imperial Government at the date of this agreement), or upon so much of the said sum as is from time to time due by the Commonwealth to the Imperial Government, interest at the rate of three pounds ten shillings per centum per annum.

(b) Upon sum of Eleven million five hundred thousand pounds (being the amount of Australian Bonds held by the Imperial Treasury at the date of this agreement), or upon so much thereof as is from time to time held by the said Treasury, interest at the rate of Four pounds ten shillings per centum per annum, and

(c) Upon the remainder of the principal from time to time owing by the Commonwealth to the Imperial Government, interest at the rate of Five pounds per centum per annum.

3. Interest due by the Commonwealth to the Imperial Government in pursuance of the last preceding paragraph shall be payable half-yearly on the thirty-first day of March and the thirtieth day of September, the first of such payments to be made on the thirtieth day of September One thousand nine hundred and twenty-one.

4. In addition to the interest payable by the Commonwealth in pursuance of the last two preceding paragraphs it is further agreed that the Commonwealth shall pay to the Imperial Government half-yearly on the said thirty-first day of March and thirtieth day of September, in reduction of the principal, such sum as will, when added to the interest so paid, make a total annual payment of £5,218,923 9s. 7d. which is equivalent to the sum of six pounds per centum per annum upon the principal as determined in pursuance of the first paragraph of this agreement. The total annual payment provided in this paragraph shall continue to be made until the principal is wholly repaid.

5. The additional sum paid in pursuance of the last preceding paragraph shall be taken in reduction of the several sums comprising the principal, and bearing interest at three pounds ten shillings, four pounds ten shillings, and

THE FIRST SCHEDULE—*continued*.

five pounds per centum per annum respectively in the proportion which those sums respectively bear to the principal, and the amount of subsequent payments of interest shall be calculated accordingly.

6. While interest is paid by the Commonwealth in respect of the aforesaid sum of eleven million five hundred thousand pounds (£11,500,000), the Imperial Treasury shall not be entitled to payment of the coupons attached to the Bonds for that amount and they shall, as and when the coupons fall due, cancel the same and return them to the Treasurer of the Commonwealth. Likewise, when the principal sum of eleven million five hundred thousand pounds (£11,500,000) has been repaid, the Imperial Treasury shall cancel the Bonds representing the principal and shall return them to the Treasurer of the Commonwealth.

7. The Imperial Treasury shall further be entitled to receive interest, as follows:—

- (a) On Bonds and Book Debt as set out in the Second Schedule (2.).
- (b) Where payments (other than moneys represented by Bonds and Book Debt) were made, or services were rendered, or goods were supplied to the Commonwealth of Australia by the United Kingdom, during an accounting period, and the sum which those payments, or services, or goods, represent was not paid to the United Kingdom at the end of the accounting period, at the rate of five per centum per annum, calculated as from the first day of the next accounting period, up to thirty-first day of March, One thousand nine hundred and twenty-one, less the credit in respect of the portion of the interest which has already been paid.

8. For the purposes of the preceding paragraph, an accounting period means the period for which accounts were ordinarily made up.

9. (i) The Commonwealth shall, within 60 days from the date of this agreement, issue and deliver to the Imperial Treasury Commonwealth Treasury-bills for the amount of the interest due in accordance with the two last preceding paragraphs, and shown in the Second Schedule hereto.

(ii) The Treasury-bills issued and delivered in pursuance of this paragraph shall mature on the thirtieth day of September, One thousand nine hundred and twenty-one; but half of the total of the Bills shall be renewable for a further period of six months at the option of the Commonwealth:

Provided that, if the Imperial Treasury, within one month before the date of maturity of any such Treasury-bills, has made, or announced their intention of making, any special call on the London loan market of such a nature as to hinder the floating of other issues, the time of maturity of the Treasury-bills maturing at the expiration of that month shall be extended, if so desired by the Commonwealth, for a period of six months.

(iii) Treasury-bills issued in pursuance of this paragraph shall bear interest, at the rate of Five pounds per centum per annum, from the thirty-first day of March, One thousand nine hundred and twenty-one, to the date of maturity of the Bills, and the interest shall be payable upon such maturity.

10. It is further agreed that the claims indicated in the Third Schedule hereto shall be the subject of investigation by an officer representing the Imperial Treasury, and an officer representing the Commonwealth; also that those officers shall have power to determine what is due to or by each Government in respect of those sums. Where the officers agreed that a sum is to be added to the principal, the terms of this agreement shall be construed as applying to that sum; and where the officers agree to add to the interest, supplementary Treasury-bills shall be handed to the Imperial Treasury, and be subject to the provisions of this agreement:

Provided that, where the principal is so altered, the alteration shall take effect from the thirty-first day of March, One thousand nine hundred and twenty-one.

(Signed) E. D. MILLEN.

Witness—(Signed) Jas. R. Collins.

(Signed) AUSTEN CHAMBERLAIN,
Chancellor of the Exchequer.

Witness—(Signed) O. E. Niemeyer.

*Funding Arrangements Act 1921.*THE FIRST SCHEDULE—*continued.*

SCHEDULE I.

Amount of the indebtedness of the Commonwealth Government to the Imperial Government as at 31st March, 1921, deemed to be the principal under clause 1.

(1) $4\frac{1}{2}$ per cent. Bonds, due 1925–1945	£11,500,000
(2) $3\frac{1}{2}$ per cent. Book Debt	1,263,158
(3) 5 per cent. Book Debt	36,318,900
(4) War Office Capitation Account	34,500,000
(5) Admiralty Account	2,000,000
(6) Ministry of Shipping Account	1,250,000
(7) Ministry of Munitions Account	150,000
Total	<u>£86,982,058</u>

SCHEDULE II.

Interest due by the Commonwealth Government to the Imperial Government at 31st March, 1921, which is not included in the principal, and for which the Commonwealth Government is to deposit Commonwealth Treasury-bills dated 31st March, 1921 (see clause 9).

	£	s.	d.
(1) Interest on $4\frac{1}{2}$ per cent. Bonds from 2nd December, 1920, to 31st March, 1921, inclusive	171,554	15	11
(2) Interest on $3\frac{1}{2}$ per cent. Book Debt from 1st October, 1920, to 31st March, 1921, inclusive	22,105	5	3
(3) Interest on 5 per cent. Book Debt from 1st October, 1920, to 31st March, 1921, inclusive	907,972	10	5
(4) Interest at 5 per cent. on £2,500,000 Book Debt repaid as to £2,000,000 on 19th October, 1920, and as to £500,000 on 26th October, 1920, from 1st October, 1920, to dates of repayment	6,986	6	0
(5) Interest at 5 per cent. on the Departmental Accounts from the due dates to the 31st March, 1921, calculated in accordance with the provisions of clauses 7 and 8 of the agreement.			

SCHEDULE III.

Amounts of the claims, or anticipated claims, on the Commonwealth Government by Departments of the Imperial Government (so far as at present known) which remain to be settled and may hereafter be added (in so far as agreed) to the principal set forth in Schedule I.

	£
(1) War Office Contingent Account	435,000
(2) Admiralty	1,700,000
(3) Ministry of Shipping, anticipated claim	2,750,000
(4) Ministry of Munitions	170,000
(5) Railway Warrants, 50 per cent. increase from 1st April, 1919	61,000
(6) Bread Subsidy on bread and flour supplied to Commonwealth Troops by Army	60,000
Total	<u>5,176,000</u>

The Commonwealth Government has certain counterclaims (in particular, £550,000 in connexion with Egyptian riots, and £200,000 in respect of Molonglo Camp). The Imperial Treasury will take cognizance of these claims, but it is agreed that the settlement of any one item on either side is not dependent on the settlement of any other item.

THE SCHEDULE—continued.

THE SECOND SCHEDULE.

MEMORANDUM OF AGREEMENT made this 18th day of May, 1921, BETWEEN O. E. NIEMEYER, Esq., C.B., Deputy Controller of Finance in the Imperial Treasury, and JAMES R. COLLINS, Esq., C.M.G., Secretary to the Treasury, Australia, being the officers appointed by the Imperial Treasury and the Commonwealth Government respectively under Clause 10 of the Agreement of the 2nd February, 1921, to determine outstanding matters under that Agreement.

IT IS MUTUALLY AGREED AS FOLLOWS:—

1. The sums set forth in respect of principal and interest in the first schedule of this Agreement shall be added to the sums set forth in the first and second schedules of the main Agreement respectively, and the total sums set forth in the second schedule to this Agreement shall be deemed to be the principal of the indebtedness of the Commonwealth Government to the Imperial Government and of the interest thereon due to 31st March, 1921, for the purposes of the main Agreement and the provisions of the main Agreement shall apply to such sums accordingly.

2. As regards the following items, the present settlement is final, and no further sums shall be added to these on either side:—

	£	s.	d.
(1) 4½ per cent. Bonds	11,500,000	0	0
(2) 3½ per cent. Book Debt	1,263,158	0	0
(3) 5 per cent. Book Debt	36,318,900	0	0
(4) Railway Warrants	60,000	0	0
(5) Bread Subsidy	60,000	0	0
(6) Molonglo Camp	132,000	0	0
(7) War Office Capitation Account	36,036,694	9	1

3. As regards other War Office claims, neither party is debarred from raising further claims in respect of items not included in the present settlement. The settlement includes a final agreed sum in respect of the retention of Australian Troops in Egypt in 1919.

4. As regards Admiralty claims (principal £3,635,000, and interest £286,060 8s. 3d.), this settlement is final for all claims in respect of goods supplied or services rendered (including supplies and work done at Imperial Dockyards and Establishments), up to 31st December, 1920, with the following exceptions:—

(i) Claims in respect of —

(a) Allotments to dependants of officers and men serving in the Royal Australian Navy for periods subsequent to 1st January, 1920.

(b) Pension liability for officers lent for service with the Royal Australian Navy in respect of periods since 1st October, 1920, and a similar liability for men in respect of periods from 1st January, 1920.

(c) Salvage expenses of s.s. *Boorara*.

In these cases final accounts are not yet available, and claims will be made by the Admiralty in the ordinary way.

(ii) The settlement includes the principal sum of £52,000 in respect of the estimated cost of pay and victualling of Royal Australian Navy officers serving in His Majesty's ships for the period from 1st January, 1919, to 31st December, 1920, and of the cost of pay and victualling of Royal Australian Navy ratings serving in His Majesty's ships for the period from 1st October, 1917, to 31st December, 1920. Any adjustment required in favour of either party in respect of this item when final accounts are available, will be made both as respects principal and interest.

5. As regards the Ministry of Shipping, the settlement at £3,620,000 principal and £469,000 interest covers all claims for services or supplies to the 31st December, 1920, except that—

THE SECOND SCHEDULE—*continued*.

- (i) (a) Claims for fitting (or refitting) free ships (except life-saving appliances) engaged on Commonwealth Repatriation service will be paid to contractors direct by the Commonwealth Government as hitherto, the Ministry of Shipping continuing to certify the claims if desired.
- (b) Provision having been made in this settlement to cover balances due to contractors in respect of fitting (or refitting), the amount of such balances will accordingly be paid by the Ministry of Shipping without further recovery from the Commonwealth Government.
- (ii) Claims arising from the diversion or demurrage of free ships engaged on Commonwealth Repatriation service are excluded from the settlement.

Amounts recoverable from third parties (owners or contractors) will be recovered and retained by the Government initiating the charge.

This settlement (at £3,620,000 principal and £469,000 interest) excludes shipping transactions in respect of which the Commonwealth Government may be accountable to Departments of the Imperial Government other than the Ministry of Shipping.

6. As regards the Ministry of Munitions claim, the settlement is final at £203,928 12s. principal and £16,507 15s. 10d. interest for all payments made by the Ministry up to and including 30th April, 1921.

The settlement does not include indebtedness to the Surplus Government Property Disposal Board.

7. Nothing in this Agreement affects either (i) any claim by the Commonwealth Government in respect of payments made by Germany in respect of the British Army of Occupation; or (ii) any claim by the Imperial Government in respect of hire of Prize Ships.

(Signed) O. E. NIEMEYER,

Deputy Controller of Finance, H.M. Treasury.

(Signed) JAS. R. COLLINS,

Secretary to the Treasury, Australia.

Witness—(Signed) S. D. Waley,
Treasury Chambers.

Witness—(Signed) W. H. Cook.

SCHEDULE I.

(Sums to be added to Main Agreement.)

	Capital.			Interest.		
	£	s.	d.	£	s.	d.
(1) War Office Capitation Account ..	1,536,694	9	1	2,054,004	10	0
(2) Admiralty Account	1,635,000	0	0	286,060	8	3
(3) Ministry of Shipping	2,370,000	0	0	469,000	0	0
(4) Ministry of Munitions	53,928	12	0	16,507	15	10
(5) Railway Warrants	60,000	0	0			
(6) Bread Subsidy	60,000	0	0			
Gross Total ..	5,715,623	1	1			
Less—						
(1) Due by War Office on Contingent Account and High Commissioner's Account (net) ..	85,524	5	3			
(2) Due by Foreign Office on Molonglo Camp	132,000	0	0			
Total Set-off ..	217,524	5	3			
Net Total ..	5,498,098	15	10	2,825,572	14	1

THE SECOND SCHEDULE—*continued*.

SCHEDULE II.

(Agreed total indebtedness.)

			<i>Capital,</i>			<i>Interest due to</i> <i>31st March, 1921.</i>		
			£	s.	d.	£	s.	d.
(1)	4½ per cent. Bonds	.. ..	11,500,000	0	0	171,554	15	11
(2)	3½ per cent. Book Debt	.. ..	1,263,158	0	0	22,105	5	3
(3)	5 per cent. Book Debt	.. ..	36,318,900	0	0	914,958	16	5
(4)	War Office Capitation	.. ..	36,036,694	9	1	2,054,004	10	0
(5)	Admiralty Account	.. ..	3,635,000	0	0	286,060	8	3
(6)	Ministry of Shipping	.. ..	3,620,000	0	0	469,000	0	0
(7)	Ministry of Munitions	.. ..	203,928	12	0	16,507	15	10
(8)	Railway Warrants	.. ..	60,000	0	0			
(9)	Bread Subsidy	.. ..	60,000	0	0			
Gross Total			92,697,681	1	1			
<i>Deduct—</i>								
(1)	Due by War Office on Contingent A/c...	£	111,178	15	2			
	Less due to War Office on High Commissioner's A/c ..		25,654	9	11			
				85,524	5	3		
(2)	Due by Foreign Office, Molonglo Camp ..	.. ..	132,000	0	0			
	Total Set-off	.. ..	217,524	5	3			
	Net Total	.. ..	92,480,156	15	10	3,934,191	11	8

GENEVA CONVENTION ACT 1938.^(a)

An Act to enable effect to be given to Article Twenty-eight of the International Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, signed at Geneva on the twenty-seventh day of July, One thousand nine hundred and twenty-nine, and for purposes connected therewith.^(b)

Preamble.

WHEREAS His Majesty has ratified, in respect of the Commonwealth of Australia, an International Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field which was signed at Geneva on the twenty-seventh day of July, One thousand nine hundred and twenty-nine :

AND WHEREAS it is desirable to make provision for giving effect to Article twenty-eight of the Convention, and for purposes connected therewith :

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

1. This Act may be cited as the *Geneva Convention Act 1938*.^(a)

Short title.

2. The application of this Act shall extend to the Territories of Papua, Norfolk Island and New Guinea.^(b)

Application of Act to the Territories.

3. The Imperial Act known as the Geneva Convention Act, 1911 shall cease to extend to the Commonwealth and to the Territories of Papua and Norfolk Island.^(b)

Termination of extension to Australia of Geneva Convention Act, 1911 (Imp.).

Prohibition of use of certain designs and words.

4.—(1.) A person shall not, without the authority of the Minister or an officer thereto authorized in writing by the Minister, use for the purposes of his trade or business, or for any other purpose whatsoever—

- (a) any design consisting of the Federal colours of Switzerland (being a white or silver cross on a red ground) or any design being a colourable imitation thereof ;
- (b) the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours of Switzerland or any design being a colourable imitation thereof ; or
- (c) the words " Red Cross " or " Geneva Cross " or any words so nearly resembling those words as to be capable

(a) No. 14, 1938 ; assented to on 4th July, 1938 ; commenced on 1st August, 1938.

(b) As to the power of the Parliament to enact this Act, see footnote (a) to the heading " Part V.—Powers of the Parliament " in the Constitution at p. 15, *supra*.

of being understood as referring to the emblem mentioned in paragraph (b) of this sub-section.

Penalty : Ten pounds.

(2.) Any goods upon or in connexion with which any design, emblem or words are used in contravention of this section shall be forfeited to the King.

(3.) Nothing in this section shall apply to a trade mark registered before the twenty-third day of December, One thousand nine hundred and thirty-one, and consisting of or containing any such design as is mentioned in paragraph (a) of sub-section (1.) of this section, and where a person is charged with using such a design for any purpose and it is proved that he used it otherwise than as or as part of a trade mark so registered, it shall be a good defence for him to prove—

(a) that he lawfully used the design for that purpose before that date ; or

(b) in a case where he is charged with using the design upon goods, that the design had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade, and that that other person lawfully used the design upon similar goods before that date.

(4.) Where an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5.) Proceedings under this Act shall not be instituted without the consent in writing of the Attorney-General.

GENOCIDE CONVENTION ACT 1949.^(a)

An Act to approve of Ratification by Australia of the Convention on the Prevention and Punishment of the Crime of Genocide, and for other purposes.

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. | 1. This Act may be cited as the <i>Genocide Convention Act 1949</i> . ^(a) |
| Commence-
ment. | 2. This Act shall come into operation on the day on which it receives the Royal Assent. |
| Definition. | 3. In this Act—
<div style="padding-left: 20px;">“the Genocide Convention” means the Convention on the Prevention and Punishment of the Crime of Genocide approved by the General Assembly of the United Nations at Paris on the ninth day of December, One thousand nine hundred and forty-eight, the text of which convention in the English language is set out in the Schedule to this Act.</div> |
| Approval of
ratification. | 4. Approval is hereby given to the depositing with the Secretary-General of the United Nations of an instrument of ratification of the Genocide Convention by Australia. |
| Approval of
extension to
Territories. | 5. Approval is hereby given to the depositing with the Secretary-General of the United Nations of a notification by Australia, in accordance with Article twelve of the Genocide Convention, extending the application of the Genocide Convention to all the territories for the conduct of whose foreign relations Australia is responsible. |

THE SCHEDULE.

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

THE CONTRACTING PARTIES.

HAVING CONSIDERED the declaration made by the General Assembly of the United Nations in its resolution 96 (1) dated 11 December 1946 that genocide is

^(a) No. 27, 1949 ; assented to, and commenced, on 12th July, 1949. See s. 2.

THE SCHEDULE—*continued.*

- * a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world ;

RECOGNIZING that at all periods of history genocide has inflicted great losses on humanity ; and

BEING CONVINCED that, in order to liberate mankind from such an odious scourge, international co-operation is required ;

HEREBY AGREE AS HEREINAFTER PROVIDED :

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such :

- (a) Killing members of the group ;
- (b) Causing serious bodily or mental harm to members of the group ;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ;
- (d) Imposing measures intended to prevent births within the group ;
- (e) Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable :

- (a) Genocide ;
- (b) Conspiracy to commit genocide ;
- (c) Direct and public incitement to commit genocide ;
- (d) Attempt to commit genocide ;
- (e) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

THE SCHEDULE—*continued.*

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article XI of the following :

- (a) Signatures, ratifications and accessions received in accordance with Article XI ;
- (b) Notifications received in accordance with Article XII ;
- (c) The date upon which the present Convention comes into force in accordance with Article XIII ;
- (d) Denunciations received in accordance with Article XIV ;
- (e) The abrogation of the Convention in accordance with Article XV ;
- (f) Notifications received in accordance with Article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in Article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

GIFT DUTY ACT 1941-1947.^(a)

An Act to impose a Duty upon Gifts.

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

1. This Act may be cited as the *Gift Duty Act 1941-1947*.^(a) Short title.
Short title
amended,
No. 32, 1918,
s. 2.
2. This Act shall be deemed to have come into operation on the twenty-ninth day of October, One thousand nine hundred and forty-one. Commence-
ment.
3. The *Gift Duty Assessment Act 1941* shall be incorporated and read as one with this Act. Incorporation.
- 4.—(1.) Gift duty, at the rates set forth in the Schedule to this Act, shall be levied and paid in respect of every gift made on or after the date of the commencement of this Act— Imposition of
gift duty.
 - (a) by a person (not being a body corporate) who is domiciled in Australia, or by a body corporate which is incorporated under the law of any State or Territory which is part of the Commonwealth—of any property wherever situated ; or
 - (b) by any other person—of any property which is situated in Australia at the time when the gift is made.
- (2.) Notwithstanding anything contained in the last preceding sub-section, the gift duty payable in respect of any gift (not being a gift to which the next succeeding sub-section applies) made after the commencement of this sub-section shall not exceed one-half of the amount by which the value of that gift exceeds Two thousand pounds. Added by
No. 15, 1947,
s. 3.

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Gift Duty Act 1941</i> ..	1941, No. 53	3rd December, 1941	29th October, 1941
<i>Gift Duty Act 1947</i> ..	1947, No. 15	3rd June, 1947	3rd June, 1947*

(a) The *Gift Duty Act 1941-1947* comprises the Acts set out in the following table :—

* Section 5 of the *Gift Duty Act 1947* reads as follows :—

" 5.—(1.) Subject to this section, the amendments made by this Act shall not in any way affect gift duty in respect of any gift made before the commencement of this Act.

(2.) In ascertaining the rate of gift duty in respect of a gift made before the commencement of this Act, the value of any gift or gifts made after that commencement shall not be taken into account unless the "value of all gifts", as defined in the Schedule to the Principal Act, exceeds Two thousand pounds."

Added by
No. 15, 1947,
s. 3.

(3.) Where, apart from this sub-section, the rate of gift duty in respect of any gift made after the commencement of this sub-section is to be ascertained by reference to the value of that gift combined with the value of any other gift or gifts, the gift duty in respect of that gift shall not exceed an amount which bears the same proportion to one-half of the amount by which the value of all those gifts exceeds Two thousand pounds as the value of that gift bears to the total value of such of those gifts as are made after the commencement of this sub-section.

THE SCHEDULE.

Amended by
No. 15, 1947,
s. 4.

RATES OF GIFT DUTY.

For the purposes of this Schedule, "value of all gifts" means the sum of the value of the gift in question and the value of all other gifts made, whether at the same time or within eighteen months previously (whether wholly or partly before the commencement of this Act or not) or eighteen months subsequently, by the same donor to the same or any other donee.

- (a) Where the value of all gifts does not exceed Two thousand pounds—nil.
 - (b) Where the value of all gifts exceeds Two thousand pounds but does not exceed Ten thousand pounds—Three pounds per centum of the value of the gift.
 - (c) Where the value of all gifts exceeds Ten thousand pounds but does not exceed Twenty thousand pounds—Three pounds per centum of the value of the gift increasing by Three one-hundredths of One pound per centum for every complete One hundred pounds by which the value of all gifts exceeds Ten thousand pounds.
 - (d) Where the value of all gifts exceeds Twenty thousand pounds but does not exceed One hundred and twenty thousand pounds—Six pounds per centum of the value of the gift increasing by Two one-hundredths of One pound per centum for every complete One hundred pounds by which the value of all gifts exceeds Twenty thousand pounds.
 - (e) Where the value of all gifts exceeds One hundred and twenty thousand pounds but is less than Five hundred thousand pounds—Twenty-six pounds per centum of the value of the gift increasing by One two-hundredths of One pound per centum for every complete One thousand pounds by which the value of all gifts exceeds One hundred and twenty thousand pounds.
 - (f) Where the value of all gifts is Five hundred thousand pounds or more—Twenty-seven pounds eighteen shillings per centum of the value of the gift.
-

GIFT DUTY ASSESSMENT ACT 1941-1950.^(a)

An Act to provide for the Imposition, Assessment and Collection of a Duty on Gifts.

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Gift Duty Assessment Act* 1941-1950.^(a)

Short title.
Short title
amended,
No. 32, 1918,
s. 2.

2. This Act shall be deemed to have come into operation on the twenty-ninth day of October, One thousand nine hundred and forty-one.

Commence-
ment.

3. This Act is divided into Parts as follows :—

Parts.

Part I.—Preliminary.

Part II.—Administration.

Part III.—Liability to Gift Duty.

Part IV.—Returns and Assessments.

Part V.—Collection and Recovery of Gift Duty.

Part VI.—Objections and Appeals.

Part VII.—Miscellaneous.

(a) The *Gift Duty Assessment Act* 1941-1950 comprises the *Gift Duty Assessment Act* 1941 as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table :—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Gift Duty Assessment Act</i> 1941	1941, No. 52	3rd December, 1941	29th October, 1941
<i>Gift Duty Assessment Act</i> 1942	1942, No. 17	3rd June, 1942	29th October, 1941
<i>Gift Duty Assessment Act</i> 1947*	1947, No. 14	3rd June, 1947	3rd June, 1947
<i>Statute Law Revision Act</i> 1950	1950, No. 80	16th December, 1950	31st December, 1950

* Section 6 of the *Gift Duty Assessment Act* 1947 reads as follows :—

“ 6.—(1.) Notwithstanding the repeal of section fifteen of the Principal Act, a rebate in accordance with the provisions of that section may be granted in relation to any gift made by a donor in respect to whose estate the assessment under the *Estate Duty Assessment Act* 1914-1942 was issued before the commencement of this Act, but not in any other case.

(2.) Notwithstanding the repeal of section sixteen of the Principal Act, the provisions of that section shall continue to apply in relation to dispositions of property made before the commencement of this Act.

(3.) The amendment made to section nineteen of the Principal Act by this Act shall apply only where the gift first-mentioned in that section is made after the commencement of this Act.”

Definitions.

4. In this Act, unless the contrary intention appears—

“ Board of Review ” means a Board of Review constituted under the *Income Tax Assessment Act 1936-1940* ;

“ Deputy Commissioner ” means any person who is a Deputy Commissioner for the purposes of either the *Estate Duty Assessment Act 1914-1940* or the *Income Tax Assessment Act 1936-1940* ;

“ disposition of property ”^(a) means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(a) the allotment of shares in a company ;

(b) the creation of a trust in property ;

(c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property ;

(d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property ;

(e) the exercise of a general power of appointment of property in favour of any person other than the donee of the power ; and

(f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own property and to increase the value of the property of any other person ;

“ donee ” means any person who acquires any interest in property under a gift, and, where a gift is made to a trustee for the benefit of another person, includes both the trustee and beneficiary ;

“ donor ” means any person who makes a gift ;

“ gift ”^(b) means any disposition of property which is made otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the disponent to the disponent, or with such consideration so passing if the

Amended by
No. 17, 1942,
s. 3.

(a) G. formed an investment company the assets of which consisted of shares in companies which G. transferred to the company in consideration of shares issued as fully paid to him and by his direction to his sons. G. held nearly all the A shares which during his life carried all voting and dividend rights. G. had complete managerial and directive control and on a winding up during his life holders of B shares were entitled only to 2½% of the capital paid or deemed to be paid up on their shares, A shareholders being entitled to the balance. Unanimous resolutions of shareholders including G. returned capital of 17s. 6d. per share on all shares. Held by the High Court (Latham C.J., Rich and Webb JJ., affirming the decision of Williams J. on this point) that there had been no “ disposition of property ” by G. within the meaning of paragraph (d) of this definition and (reversing the decision of Williams J. on this point) that there had been no “ transaction ” entered into by G. within the meaning of paragraph (f). *Grimwade and Others v. Federal Commissioner of Taxation*, (1949) 78 C.L.R. 199; [1949] A.L.R. 403 and 609; 23 A.L.J. 93 and 247; 8 A.T.D. 441.

(b) Held by the High Court (in relation to the definition of “ gift ”) that a promise to pay, if genuine, is adequate consideration, and no distinction can be drawn between such promises by reference to the financial position of the parties. *Fadden v. Federal Commissioner of Taxation*, (1945) 70 C.L.R. 555; 51 A.L.R. 225; 19 A.L.J. 128; 7 A.T.D. 533.

consideration is not, or, in the opinion of the Commissioner, is not, fully adequate ;

“ gift duty ” means the gift duty assessed under this Act ;

“ interest in property ” means any estate, interest, right or power whatsoever, whether at law or in equity, in or over any property ;

“ person ” includes all bodies or associations, whether corporate or unincorporate ;

“ property ” includes real property and personal property and every interest in real property or personal property ;

“ the Commissioner ” means the person for the time being holding office as Commissioner of Taxation under the *Estate Duty Assessment Act 1914-1940* ;

“ the Second Commissioner ” means the person for the time being holding office as the Second Commissioner of Taxation under the *Estate Duty Assessment Act 1914-1940* ;

“ Valuation Board ” means a Valuation Board constituted under the *Land Tax Assessment Act 1910-1940*.

(2.) For the purposes of paragraph (d) of the definition of “ disposition of property ”, a debt or interest in property shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action or other process through lapse of time, but if the amount of any such debt or interest so released or surrendered is subsequently liquidated in whole or in part by the debtor to the creditor, the amount of such liquidation payment shall not for any purposes of this Act be deemed to be a disposition of property or a gift.

PART II.—ADMINISTRATION.

5. The Commissioner shall have the general administration of Administration, this Act.

6.—(1.) Subject to this section, the Second Commissioner shall have and may exercise all the powers and functions of the Com-
Powers of
Second
Commissioner.
 missioner under this Act.

(2.) Where in this Act the exercise of any power or function by the Commissioner or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised by the Second Commissioner or that provision may operate (as the case may be) upon the opinion, belief or state of mind of the Second Commissioner in relation to that matter.

(3.) Nothing in this section shall be deemed to confer upon the Second Commissioner any power or function of the Commissioner under section five, seven or nine of this Act, or to prevent the exercise of any power or function by the Commissioner under this

Act, and the Commissioner shall have, in relation to any act of the Second Commissioner, the same power as if that act were done by himself.

Delegation
by the
Commissioner.

7.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power or function by the Commissioner.

(3.) Any delegation under this section may be made subject to a power of review and alteration, within the period specified in the instrument of delegation, by the Commissioner of any act done in pursuance of the delegation, and the decision given upon any such review or alteration shall be deemed to be that of the Commissioner.

Reference to
Commissioner.

8. Any reference in this Act to the Commissioner shall be deemed to include—

- (a) in respect of matters as to which the Second Commissioner has exercised any power or function conferred upon him by this Act—a reference to the Second Commissioner ; and
- (b) in respect of matters as to which a Deputy Commissioner has exercised any power or function conferred upon him by delegation under this Act—a reference to that Deputy Commissioner.

Report by the
Commissioner.

9.—(1.) The Commissioner shall furnish to the Treasurer annually, for presentation to the Parliament, a report on the working of this Act.

(2.) In the report the Commissioner shall draw attention to any breaches or evasions of this Act which have come under his notice.

Officers to
observe
secrecy.

10.—(1.) For the purposes of this section, “ officer ” means a person who is or has been appointed or employed by the Commonwealth, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person, disclosed or obtained under the provisions of this Act.

(2.) Subject to this section, an officer shall not either directly or indirectly, except in the performance of any duty as an officer, and either while he is, or after he ceases to be an officer, make a record of, or divulge or communicate to any person, any such information so acquired by him.

(3.) An officer shall not be required to produce in Court any return, assessment or notice of assessment, or to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duties as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(4.) Nothing in this section shall prevent the Commissioner, the Second Commissioner or a Deputy Commissioner, or any person thereto authorized in writing by the Commissioner, the Second Commissioner or a Deputy Commissioner, from communicating any information to—

- (a) any person performing, in pursuance of any appointment or employment by the Commonwealth or by a State, any duty arising under any Act administered by the Commissioner, for the purpose of enabling that person to carry out any such duty ;
- (b) a Valuation Board or a Board of Review ;
- (c) the Commissioner of Income Tax for any State, or the Authority administering any State Act relating to Stamp Duties or Succession Duties, if that Authority is authorized by law to afford similar information to the Commissioner ;
- (ca) the Authority administering any State Act, or law of any country outside Australia, relating to Gift Duty, if that Authority is authorized by law to afford similar information to the Commissioner ; and
- (d) the Commissioner of Pensions or the Repatriation Commission for the purpose of the administration of any law of the Commonwealth relating to pensions.

Amended by
No. 17, 1942,
s. 4.

Inserted by
No. 17, 1942,
s. 4.

(5.) Any person to whom information is communicated under the last preceding sub-section, and any person or employee under his control, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities, under sub-sections (2.) and (3.) of this section as if he were an officer.

(6.) Any officer shall, if and when required by the Commissioner, Second Commissioner or a Deputy Commissioner so to do, make an oath or declaration in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

Penalty : Two hundred and fifty pounds or imprisonment for twelve months.

PART III.—LIABILITY TO GIFT DUTY.

Liability to
pay gift duty.

11. Subject to this Act, gift duty at rates declared by the Parliament, shall be levied and paid in respect of every gift made on or after the date of the commencement of this Act—

(a) by a person (not being a body corporate) who is domiciled in Australia, or by a body corporate which is incorporated under the law of any State or Territory which is part of the Commonwealth—of any property wherever situated ; or

(b) by any other person—of any property which is situated in Australia at the time when the gift is made.

When gift
deemed to be
made.

12.—(1.) A disposition of property made or taking effect in pursuance of or in performance or satisfaction, whether wholly or in part, of a contract or agreement entered into (whether before or after the commencement of this Act and whether with or without an instrument in writing) without adequate consideration in money or money's worth, shall, for the purposes of this Act, be deemed to be a gift so soon and so far as the disposition has affected the property or any of the property to which the contract or agreement relates.

(2.) For the purposes of this Act, a gift shall be deemed to be made after the commencement of this Act when the disposition of property comprised in the gift is made or takes effect after the commencement of this Act, notwithstanding that a contract or agreement or instrument of title which relates to the property or any part thereof was made or executed before the commencement of this Act.

(3.) When any gift is made in respect of property comprised in any instrument of gift requiring registration under any law (whether in Australia or elsewhere) and the instrument is not lodged for registration until after the commencement of this Act, the gift shall, for the purposes of this Act, be deemed to have been made after the commencement of this Act notwithstanding that the instrument may have been stamped in accordance with any law relating to stamp duties prior to the commencement of this Act :

Added by
No. 17, 1942,
s. 5.

Provided that this sub-section shall not operate to make subject to gift duty any gift of property where the Commissioner is satisfied that the donor had, prior to the commencement of this Act, done everything which it was necessary and possible for him to do to divest himself of the property.

(4.) Nothing in the foregoing provisions of this section shall be construed as limiting the meaning of the expression "gift which is made after the commencement of this Act", or any other like expression, in any case where the gift is in fact made after the commencement of this Act.

13. For the purposes of this Act—

- (a) property at sea in the course of transit to Australia, ^{Where property deemed to be situated.} whether directly or indirectly, shall be deemed to be situated in Australia ;
- (b) the local situation of a debt payable under a bond, debenture or other deed shall in no case be determined by reference to the local situation of the bond, debenture or deed ;
- (c) a debt owing by a corporation, wherever incorporated, shall be deemed to be property situated in Australia if the debt was incurred or is payable in Australia, and the corporation has any office or place of business in Australia ;
- (d) a debt owing by any person or persons other than a corporation shall be deemed to be property situated in Australia if the debtor or any of the debtors is resident in Australia ;
- (e) a debt owing by the Commonwealth or any State (including any debentures, Treasury bills or any other form of Government stock or securities) shall be deemed to be property situated in Australia if it is incurred or payable in Australia ;
- (f) notwithstanding anything contained in the foregoing provisions of this section—
- (i) a debt represented by an instrument which is negotiable in Australia shall be deemed to be property situated in the country in which the instrument is situated ; and
 - (ii) a debt which is secured by mortgage, charge, lien or otherwise on any property situated or deemed to be situated in Australia shall itself be deemed to be property situated in Australia :
- Provided that if the value of the security is less than the value of the debt, the debt shall not, by reason of the existence of that security, be deemed to be situated in Australia except to the extent of the value of the security ;
- (g) shares in a company incorporated under the law of any State or of any Territory which is part of the Commonwealth shall be deemed to be property situated in Australia whether such shares are recorded in a register kept in Australia or elsewhere ; and
- (h) shares in a company incorporated under the law of any country outside Australia shall be deemed to be property situated outside Australia except in the case of shares registered in a branch register of the company in Australia.

Exemptions.

14. Notwithstanding anything contained in this Act, gift duty shall not be payable in respect of—

Amended by
No. 17, 1942,
s. 6.

(a) contributions by an employer as or to a fund for the purpose of providing retiring allowances, pensions or other personal benefits for his employees, or any class or classes of his employees, or their dependants ;

Amended by
No. 17, 1942,
s. 6.

(b) payments made by an employer (or by the trustee of a fund established by an employer for the purpose of making payments of the nature referred to in this paragraph) to an employee, or the dependants of an employee, in consequence of the retirement of that employee from the service of the employer or in consequence of his death, or any gratuity or bonus paid by an employer to an employee during the continuance of the employment if the Commissioner is satisfied that the gratuity or bonus is paid in recognition of special or faithful services rendered, or any salary, wages or allowances which the employer continues to pay during any period of illness or invalidity of the employee ;

(c) any moneys paid by an employer to an employee who is a member of the Defence Force or of the naval, military or air force of any other part of His Majesty's dominions, for the purpose of augmenting the employee's pay as a member of any of those forces ;

Amended by
No. 17, 1942,
s. 6.

(d) any gift to, or wholly for the benefit of, an institution, organization or body of persons, whether corporate or unincorporate, not formed or carried on for the profit of any individuals ;

(e) any gift to the Commonwealth or a State ;

(f) any gift which is made in the course of carrying on a business, for the purpose of obtaining any commercial benefit or by way of the writing off of a debt which is irrecoverable, by—

(i) an incorporated company the shares or stock of which are or is quoted in the official list of any Stock Exchange ;

(ii) an incorporated company the shares or stock of which are not or is not quoted in the official list of any Stock Exchange, if the Commissioner is satisfied that the donee is not a director of the company or is not connected by ties of blood or marriage with any director of the company ; or

(iii) a firm or individual if the Commissioner is satisfied that the donee is not connected by ties of blood or marriage with any member of the firm or with the individual, as the case may be ;

- (g) any premiums, not exceeding One hundred pounds per annum, paid by a person on a policy effected by him on his own life and expressed to be for the benefit of his wife or any of his children ;
- (h) any gift made in accordance with the terms of an agreement whereby a person carrying on a business, trade or calling has undertaken to pay part of the proceeds of his business, trade or calling to the trustees of a fund out of which payments may be made by the trustees to persons carrying on a similar business, trade or calling who are on war service ; or
- (i) any gift concerning which the Commissioner is satisfied—
 - (i) that the gift, together with all other gifts made by the same donor to the same donee, whether at the same time or within eighteen months previously (whether wholly or partly made before the commencement of this Act or not) or eighteen months subsequently does not exceed in the aggregate Fifty pounds in value and that the gift is made in good faith as part of the normal expenditure of the donor ; or
 - (ii) that the gift is made for or towards the maintenance, education or apprenticeship of any person, and is not excessive in amount, having regard to the legal and moral obligations of the donor to afford the maintenance, education or apprenticeship.^(a)

* * * * *

Sections
15 and
16 repealed by
No. 14, 1947,
s. 3.

17. Where any disposition of property is made and consideration in money or money's worth passes from the disponent to the donee but the disposition constitutes a gift for the purposes of this Act by reason of the consideration not being, or, in the opinion of the Commissioner, not being, fully adequate, the value of the gift shall, for the purposes of this Act, be the extent of that inadequacy.

Value of gift
where
consideration
inadequate.

Amended by
No. 14, 1947,
s. 4.

18.—(1.) For the purpose of computing the value of a gift—

Value of gift.

- (a) no allowance shall be made in respect of any contingency affecting the interests of the donees or any of them ;

Amended by
No. 17, 1942,
s. 8.

(a) Held by the High Court that a general rule applied by the Commissioner of Taxation to the effect that a gift of capital, as distinct from a gift of income, could not fall within the exemption contained in this sub-paragraph, was not warranted by the Act. *MacCormick v. Federal Commissioner of Taxation*, (1945) 71 C.L.R. 283 ; 51 A.L.R. 237 ; 19 A.L.J. 78 ; 8 A.T.D. 11.

Held further that on an appeal from the Commissioner refusing exemption under this sub-paragraph the Court does not substitute its opinion for that of the Commissioner but considers only whether he has proceeded according to law and has exercised his judgment or discretion unaffected by extraneous or irrelevant considerations or any misconception or misapplication of the law. *Ibid.*

- (b) subject to this Act, the value of a gift shall be taken to be the value thereof at the time of the making of the gift ; and
- (c) no deduction shall be allowed in respect of any mortgage, charge, encumbrance or liability affecting or incident to the property comprised in the gift existing at the time of the making of the gift, if and so far as the donee is entitled as against the donor or any other person or as against any other property to any right of indemnity or contribution in respect of that mortgage, charge, encumbrance or liability ;

Para. (d)
omitted by
No. 17, 1942,
s. 8.

* * * * *

Added by
No. 17, 1942,
s. 8.

(2.) Where the Commissioner is of the opinion that it is necessary that the following provisions should apply for the purpose of computing the value of a gift for the purposes of this Act, the following provisions shall apply :—

- (a) The value of shares or stock in any company, whether incorporated in Australia or elsewhere, shall be determined upon the assumption that, on the date when the gift was made, the memorandum and articles of association or rules of the company satisfied the requirements prescribed by the Committee or governing authority of the Stock Exchange at the place where the share or stock register is situate, for the purpose of enabling that company to be placed on the current official list of that Stock Exchange ;
- (b) No regard shall, in determining the value of any such shares or stock, be had to any provision in the memorandum or articles of association or rules of the company whereby or whereunder the value of the shares or stock of a deceased or other member is to be determined ; and
- (c) Where a gift includes any shares or stock in any company the shares or stock of which are not or is not quoted in the official list of any Stock Exchange, the Commissioner may, in his discretion, notwithstanding anything contained in the last two preceding paragraphs, adopt as the value of any such shares or stock such sum as the holder thereof would receive in the event of the company being voluntarily wound up on the date when the gift was made.

Added by
No. 17, 1942,
s. 8.

(3.) Any Board or Court having jurisdiction to determine, for the purposes of this Act, the value of any shares or stock to which the last preceding sub-section applies, may substitute its own opinion for, or use its own discretion in lieu of, any opinion or discretion of the Commissioner under that sub-section.

PART IV.—RETURNS AND ASSESSMENTS.

19.—(1.) Any person who makes, and any person who receives, any gift the value of which, together with the value of all other gifts made by the same donor to the same or any other donee whether at the same time or within the immediately preceding eighteen months (whether wholly or partly made before the commencement of this Act or not) exceeds One thousand five hundred pounds shall—

Returns
by donor.
Amended by
No. 14, 1947,
s. 5.

(a) in the case of a gift made in Australia—within one month after making the gift ; or

(b) in the case of a gift made out of Australia—within three months after making the gift,

or, where the gift is made on or after the twenty-ninth day of October, One thousand nine hundred and forty-one but prior to the date upon which this Act receives the Royal Assent, within one month or three months, as the case may be, after the date upon which this Act receives the Royal Assent, furnish to the Commissioner, in the prescribed form and in the prescribed manner, a return containing all such particulars with respect to the gift and—

(i) in the case of the donor—all other such gifts made by him ; or

(ii) in the case of the donee—all other such gifts made to him by the donor,

as are necessary to enable the Commissioner to determine whether the gift is liable to gift duty and to assess the gift duty (if any) thereon.

(2.) If any gift the particulars of which are contained in the return has been created, or is evidenced, by any written instrument, the person making the return shall furnish with the return a copy of that instrument.

(3.) Compliance by the donor with the provisions of this section shall release the donee from compliance therewith, but, in any proceeding against the donee, the onus of proving compliance by the donor shall be on the donee.

(4.) For the purposes of this section, “ gift ” shall not include any gift in respect of which gift duty is declared by section fourteen of this Act not to be payable.

20. Any person, whether a donor or donee or not, shall, if required by the Commissioner, furnish such returns or fuller or other returns for the purposes of this Act as the Commissioner requires.

Further
returns.

21. From the returns, and from any other information in his possession, or from any one or more of these sources, the Commissioner shall make an assessment of the amount of the gift duty payable in respect of any gift.

Assessments.

Amendment of
assessments.

22.—(1.) The Commissioner may at any time amend any assessment by making such alterations therein or additions thereto as he thinks necessary, and any such amended assessment shall be an assessment for the purposes of this Act.

(2.) Where by reason of any amendment of any assessment a person's liability is reduced, the Commissioner shall refund any gift duty overpaid.

Default
assessments.

23. If any donor or donee makes default in furnishing any return, document or information, or the Commissioner is not satisfied with any return, document or information furnished, he may cause an assessment to be made of the amount on which, in his judgment, gift duty ought to be levied, and the donor and donee shall be liable to pay gift duty thereon, except so far as the amount is, on appeal, shown to be excessive.

Notice of
assessment.

24. As soon as conveniently may be after any assessment is made the Commissioner shall serve notice thereof in writing, by post or otherwise, upon the donor.

PART V.—COLLECTION AND RECOVERY OF GIFT DUTY.

Liability for
gift duty.

25.—(1.) Gift duty shall be due and payable on the making of the gift, or, where the gift duty becomes payable, or further gift duty becomes payable, by reason of the making of a subsequent gift, the gift duty or further gift duty, as the case may be, shall be due and payable upon the making of that subsequent gift.

(2.) Gift duty shall constitute a debt jointly and severally due by the donor and donee to the King on behalf of the Commonwealth.

(3.) Gift duty shall also constitute a first charge on all property (other than money or negotiable instruments) comprised in the gift, but any such charge shall not affect the title of a *bona fide* purchaser for value without notice of the charge.

(4.) Where there is more than one donee under the same gift, each of them shall be liable only for the same proportion of the gift duty as the value of his interest bears to the total value of the gift.

(5.) Where the interest of a donee is a future interest, he shall not become personally liable until it becomes an interest in possession.

(6.) A trustee may raise such moneys as are necessary to pay gift duty by mortgage with or without power of sale of any property comprised in the gift held by him upon trust.

(7.) Where the donee is a trustee he shall not be personally liable for the payment of any gift duty in respect of any trust property unless the Commissioner, by notice in writing, advises

him that gift duty is due and payable in respect of that trust property, and then only to the extent of the value of so much of that trust property as is held by him on the date upon which the notice is served upon him.

26. The Commissioner may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time as he considers the circumstances warrant. Extension of time to pay and payment by instalments.

27. If any gift duty remains unpaid longer than thirty days after the service of notice of assessment, additional gift duty shall thereupon become due and payable at the rate of Ten per centum per annum on the amount unpaid computed from the expiration of that time, or, where an extension of time has been granted under the last preceding section, from such date as the Commissioner determines, not being a date prior to the thirtieth day after the service of notice of assessment : Penalty for unpaid duty.

Provided that the Commissioner may, in any case, for reasons which he thinks sufficient, remit the additional duty or any part thereof.

28. Any gift duty unpaid, including any additional duty, may be sued for and recovered in any Court of competent jurisdiction by the Commissioner, the Second Commissioner or a Deputy Commissioner suing in his official name. Duty may be sued for.

29. The Commissioner may register so much of any gift duty assessed under this Act as is attributable to any real property comprised in a gift as a charge on that real property, after having certified in writing that there are arrears of duty payable, and the Registrar-General or Registrar of Titles or other appropriate officer of a State or part of the Commonwealth shall register the charge accordingly, and give effect to it as if the certificate were an instrument of charge or encumbrance duly executed under the laws in force in that State or part of the Commonwealth. Registration of duty as a charge.

30. No statute of limitation now or hereafter in force shall bar or affect any action, proceeding or remedy for recovery of gift duty. No limitation of action.

PART VI.—OBJECTIONS AND APPEALS.

31.—(1.) Any person required to pay gift duty who is dissatisfied with the assessment of the Commissioner may, within thirty days after the service of notice of assessment, post or lodge with the Commissioner an objection in writing against the assessment, stating fully and in detail the grounds on which he relies : Objections and appeals.

Provided that where the assessment is an amended assessment, the objector shall have no further right of objection than he would Proviso added by No. 17, 1942, s. 9.

have had if the amendment had not been made, except to the extent to which by reason of the amendment a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

(2.) The Commissioner shall, with all reasonable despatch, consider the objection and may either disallow it or allow it either wholly or in part.

(3.) The Commissioner shall give to the objector written notice of his decision on the objection.

(4.) If the objector is dissatisfied with the decision of the Commissioner he may, within thirty days after the service by post of notice of that decision—

(a) in writing, request the Commissioner—

(i) to refer so much of the decision as relates to the value assigned to any property included in the gift to a Valuation Board for review of that value; or

(ii) to refer so much of the decision as does not relate to the value assigned to any property included in the gift to a Board of Review for a review of that decision; or

(b) in writing, request the Commissioner to treat his objection as an appeal and to forward it to the High Court, or to the Supreme Court of a State or Territory of the Commonwealth.

Reference to
Board.

32.—(1.) Where the objector has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Valuation Board, the Commissioner shall, if the objector's request is accompanied by a deposit of One pound, refer the decision to the Valuation Board not later than sixty days after the receipt of the request.

(2.) The objector shall be limited on the review to the grounds which he has stated in his objection as being those upon which he objects to the value assigned to the property.

(3.) If the value assigned to the property included in the assessment has been reduced by the Commissioner after considering the objection, the reduced value shall be the value dealt with by the Valuation Board under the next succeeding sub-section.

(4.) Subject to the next succeeding sub-section, the Valuation Board shall give a decision and may either confirm the value assigned to the property in the assessment or reduce or increase that value.

(5.) In default of the appearance of the objector before the Valuation Board for the purpose of the review, the Valuation Board shall confirm the value assigned to the property in the assessment :

Provided that upon good cause shown, the Valuation Board may, within the prescribed time, re-open the matter and review the value assigned to the property in the assessment.

(6.) The objector may, within thirty days after the Valuation Board's decision, request the Commissioner, in writing, to refer his objection, so far as it relates to grounds not dealt with by the Valuation Board, to a Board of Review or to the High Court or the Supreme Court of a State or Territory of the Commonwealth.

(7.) The Commissioner or the objector may, within thirty days after the date of the Valuation Board's decision, appeal to the High Court from any decision of the Valuation Board under this section, which, in the opinion of the High Court, involves a question of law, and the Valuation Board shall, upon the request of the Commissioner or the objector, refer to the High Court any question of law arising before the Valuation Board, and the decision of the High Court thereon shall be final and conclusive.

Amended by
No. 80, 1950,
s. 3, and First
Schedule.

33.—(1.) Where the objector has, in accordance with section thirty-one of this Act, requested the Commissioner to refer a decision to a Board of Review, the Commissioner shall, if the objector's request is accompanied by a deposit of One pound, refer the decision to a Board of Review not later than sixty days after the receipt of the request.

Reference to
Board of
Review.

(2.) The objector shall be limited on the review to the grounds which he has stated in his objection.

(3.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment dealt with by the Board of Review under the next succeeding sub-section.

(4.) Subject to the next succeeding sub-section, the Board of Review shall give a decision and may either confirm, reduce, increase or vary the assessment.

(5.) In default of the appearance of the objector before the Board of Review, for the purpose of review, the Board of Review shall confirm the assessment :

Provided that upon good cause shown, the Board of Review may, within the prescribed time, re-open the matter and review the assessment.

(6.) For the purposes of reviewing the assessment, a Board of Review shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of a Board of Review and its decisions upon review, shall for all purposes (except for the purpose of objections thereto and review thereof and appeals therefrom) be deemed to be assessments, determinations or decisions of the Commissioner :

Provided that a Board of Review shall not reduce or increase any value assigned in the assessment to any property, but shall accept as final the value assigned to the property by the Commissioner, or, where the value has been reduced or increased by a Valuation Board, by the Valuation Board.

(7.) The objector may, within thirty days after the decision of the Board of Review, request the Commissioner, in writing, to refer his objection, so far as it relates to the value assigned to any property in the assessment, to a Valuation Board.

(8.) Where a Board of Review has reviewed any assessment and given any decision thereon and the value assigned to any property in that assessment is subsequently reduced or increased by a Valuation Board, the Commissioner shall vary the assessment to give effect to the decision of the Valuation Board.

Amended by
No. 80, 1950,
s. 3 and First
Schedule.

(9.) The Commissioner or the objector may, within thirty days after the decision of a Board of Review, appeal to the High Court from any decision of the Board of Review under this section which, in the opinion of the High Court, involves a question of law, and the Board shall, upon the request of the Commissioner or the objector, refer to the High Court any question of law arising before the Board of Review, and the decision of the High Court thereon shall be final and conclusive.

Appeals to
Court.

34.—(1.) Where an objector has, in accordance with the provisions of this Part, requested the Commissioner to treat his objection as an appeal and to forward it to the High Court or a Supreme Court, the Commissioner shall forward it accordingly.

(2.) The appeal shall be heard by a single Justice or Judge of the Court.

(3.) The objector shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

(4.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with on the appeal.

(5.) On the hearing of the appeal, the Court may make such order as it thinks fit, and may by such order confirm, reduce, increase or vary the assessment.

(6.) The order of the Court shall be final and conclusive except as hereinafter provided.

(7.) The costs of the appeal shall be in the discretion of the Court.

Case stated
to High Court.

35.—(1.) The Court may, if it thinks fit, state a case in writing for the opinion of the Full Court of the High Court upon any question of law arising on the appeal.

(2.) The High Court shall hear and determine the question, and remit the case, with its opinion, to the Court below and may make such order as to the costs of the case stated as it thinks fit.

36. The Commissioner or the objector may appeal to the High Court in its appellate jurisdiction from any order made under sub-section (5.) of section thirty-four of this Act. Appeal to High Court.

37. The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the assessment the subject of the appeal or reference, and gift duty may be recovered on the assessment as if no appeal or reference were pending. Pending appeal or reference not to affect assessment.

38. If the assessment is altered on the appeal or reference a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears. Adjustment of duty after appeal.

PART VII.—MISCELLANEOUS.

39.—(1.) The Commissioner may, by notice in writing, require any person, whether a donor or donee or not, including any officer employed in or in connexion with any Department of a Government or by any public authority— Department to obtain information and evidence.

(a) to furnish him with such information as he requires ;

(b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning any matter on which the Commissioner requires information for the purposes of this Act, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

(2.) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing, and for that purpose he or the officer so authorized by him may administer an oath.

(3.) The Regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

40. The provisions of section fifty-two A of the *Commonwealth Inscribed Stock Act 1911-1940* shall not apply to exempt from gift duty assessed under this Act the disposition of any property to which that section applies. S. 52A of Commonwealth Inscribed Stock Act not to apply.

41. Where any disposition of property is subject to gift duty under this Act and also under the law of any country outside Australia, and the Commissioner is satisfied that the law of that country makes provision for the rebate of gift duty similar to the provision contained in this section, the Commissioner may allow a rebate of the gift duty payable under this Act of an amount equal to one-half of the gift duty payable under this Act or under the law of that country, whichever is the lesser amount. Rebate in case of double gift duty.

Additional
duty in
certain cases.

42.—(1.) Any person who fails duly to furnish as and when required by this Act or the Regulations, or by the Commissioner, any return or other information in relation to any matter affecting either his liability to pay gift duty, or the amount of the gift duty, shall be liable to pay as additional gift duty an amount equal to the gift duty assessable to him or the amount of One pound, whichever is the greater.

(2.) Any person who—

(a) fails or neglects to include in any return any particulars relating to a gift ; or

(b) includes in any return or information a misstatement concerning any particulars relating to a gift,

which affects his liability to pay gift duty, or which would reduce the amount of gift duty payable by him if the return were accepted as correct, shall be liable to pay as additional gift duty an amount equal to double the difference between the gift duty properly payable by him and the gift duty that would be payable if it were assessed upon the basis of the return furnished by him, or the amount of One pound, whichever is the greater.

(3.) The Commissioner may in any case, for reasons which he thinks sufficient, and either before or after making any assessment, remit the additional gift duty or any part thereof.

(4.) If in any case in which a person is liable to pay additional gift duty under this section, a prosecution is instituted in respect of the same matter, the additional gift duty shall not be payable unless and until the prosecution is withdrawn.

Failure to
furnish
returns and
information,
&c.

43.—(1.) Any person who fails duly to furnish any return or information or comply with any requirement of the Commissioner as and when required by this Act or the regulations or by the Commissioner shall be guilty of an offence.

Penalty : Not less than Two pounds or more than One hundred pounds.

(2.) A prosecution for an offence against this section may be commenced at any time.

Refusal to
give evidence.

44. Any person who refuses or neglects duly to attend and give evidence when required by the Commissioner or any officer duly authorized by him, or truly and fully to answer any questions put to him by, or to produce any book or paper required of him by the Commissioner or any such officer, shall, unless just cause or excuse for the refusal is shown by him, be guilty of an offence.

Penalty : Not less than Two pounds or more than One hundred pounds.

Order to
comply with
requirement.

45.—(1.) Upon the conviction of any person for an offence against either of the last two preceding sections, the Court may order him within a time specified in the order to do the act which

he has failed or refused or neglected to do, and any person who does not duly comply with such order shall be guilty of an offence.

Penalty : Not less than Ten pounds or more than Five hundred pounds.

(2.) An order under this section may be made orally by the Court to the defendant, or may be served in the manner prescribed.

46.—(1.) Any person who makes or delivers a return which is false in any particular, or makes a false answer whether orally or in writing to any question duly put to him by the Commissioner or any officer duly authorized by him, shall be guilty of an offence. Offences.

Penalty : Not less than Two pounds or more than One hundred pounds and, in addition, the Court may order the person to pay to the Commissioner a sum not exceeding double the amount of gift duty that would have been avoided if the return or answer had been accepted as correct.

(2.) A prosecution for an offence against this section may be commenced at any time.

47. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act, and for prescribing penalties not less than One pound or more than Twenty pounds for any breach of the regulations. Regulations.

GRAFTON TO SOUTH BRISBANE RAILWAY ACT 1924-1930.^(a)

An Act to approve and provide for the carrying out of an Agreement entered into between the Commonwealth of Australia and the States of New South Wales and Queensland respecting the Construction of a Railway of Standard Gauge between Kyogle and South Brisbane and the Re-grading and Re-laying of the Railway between Grafton and Kyogle and to authorize the Raising and Expending of Moneys for the purposes of the Agreement.^(b)

Preamble.

WHEREAS at a meeting of Commonwealth and State Ministers held in Melbourne in the State of Victoria in the month of July One thousand nine hundred and twenty it was resolved that a Railway Commission of experts be appointed to consider and report upon the unification of the railway gauges of Australia, the question as to what gauge it is desirable to adopt, and the question of the cost of conversion :

And whereas it was further resolved that the Commonwealth and the States agree to abide by the decision of the Railway Commission so appointed, and that one-fifth of the total cost of unification of the gauges should be borne by the Commonwealth, and the remaining four-fifths by the States of the Commonwealth, other than Tasmania (in this Act collectively referred to as "the five States"), on a population basis :

And whereas the Railway Commission so appointed made certain recommendations with regard to the matters referred to it :

(a) The *Grafton to South Brisbane Railway Act 1924-1930* comprises the *Grafton to South Brisbane Railway Act 1924* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table :—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Grafton to South Brisbane Railway Act 1924</i>	1924, No. 54..	20th October, 1924 ..	20th October, 1924
<i>Grafton to South Brisbane Railway Act 1926</i>	1926, No. 34..	29th July, 1926 ..	29th July, 1926
<i>Grafton to South Brisbane Railway Act 1929</i>	1929, No. 24..	13th December, 1929	13th December, 1929
<i>Grafton—South Brisbane Railway Act 1930</i>	1930, No. 49..	18th August, 1930 ..	18th August, 1930
<i>Statute Law Revision Act 1934</i>	1934, No. 45..	6th August, 1934 ..	6th August, 1934

(b) The title to the *Grafton to South Brisbane Railway Act 1926* reads :—

"An Act to ratify the Agreement made between the Commonwealth of Australia, Norris Garrett Bell, James Fraser, James Walker Davidson, and the State of New South Wales, to ratify the Agreement made between the Commonwealth of Australia, Norris Garrett Bell, James Fraser, James Walker Davidson, and the State of Queensland, and to amend the *Grafton to South Brisbane Railway Act 1924*." See the Second Schedule, *infra*.

And whereas, pending agreement being arrived at between the Commonwealth and the five States for the carrying out of the recommendations of the Railway Commission, and with a view to giving partial effect to the recommendations of the Railway Commission, the Commonwealth and the States of New South Wales and Queensland have entered into the Agreement, a copy of which is set out in the First Schedule to this Act :

Amended by
No. 34, 1926,
s. 3.

And whereas it is desirable to approve the Agreement :

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

1. This Act may be cited as the *Grafton to South Brisbane Railway Act 1924-1930.*^(a)

Short title.
Short title amended.
No. 32, 1918,
s. 2.
Definitions.
Amended by
No. 34, 1926,
s. 3.
2. In this Act, unless the contrary intention appears—

“ the Agreement ” means the Agreement, a copy of which is set out in the First Schedule to this Act ;

“ the Council ” means the Council established under the Agreement.
3. The Agreement is hereby approved and shall be valid and effectual for all purposes.^(b)

Approval of Agreement.
4. The Treasurer may, from time to time, under the provisions of the *Commonwealth Inscribed Stock Act 1911-1918* or under the provisions of any Act authorizing the issue of Treasury Bills, borrow moneys not exceeding in the whole the sum of Four million four hundred and fifty thousand pounds together with such further sum as is necessary to meet discount and the expenses of borrowing.

Authority to borrow.
Amended by
No. 34, 1926,
s. 4 ; by
No. 24, 1929,
s. 2 ; and by
No. 49, 1930,
s. 2.
5. Moneys borrowed under this Act shall be issued and applied only for the expenses of borrowing and for the purposes of the Agreement.

Application of moneys.
- 6.—(1.) Pending the borrowing of the moneys authorized to be borrowed under section four of this Act, the Treasurer may advance to the Council, out of any moneys in the Commonwealth Public Account, sums not exceeding in the whole the sum of Four million four hundred and fifty thousand pounds.

Authority to make advances.
Amended by
No. 34, 1926,
s. 5 ; by
No. 24, 1929
s. 3 ; and by
No. 49, 1930,
s. 3.
- (2.) The Treasurer shall, out of the moneys borrowed under section four of this Act, immediately repay the sums advanced to the Council under this section.

(a) See footnote (a) on the previous page.

(b) The subsequent Agreements of 22nd and 23rd March, 1926 (which are the Second and Third Schedules to this Act) were ratified by section 2 of the *Grafton to South Brisbane Railway Act 1926*. See the footnotes to the Second and Third Schedules, *infra*.

Sinking Fund
contributions.

7. The Treasurer shall pay into the Trust Fund under the head of the National Debt Sinking Fund (which is established under the *National Debt Sinking Fund Act 1923-1924*) all moneys received from the States of New South Wales and Queensland under sub-clause (6) of clause twelve of the Agreement.

Regulations.

8. The Governor-General may, on the recommendation of the Council, make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

Amended by
No. 34, 1926,
s. 3.

THE FIRST SCHEDULE.

AGREEMENT made the sixteenth day of September One thousand nine hundred and twenty-four BETWEEN THE COMMONWEALTH OF AUSTRALIA (hereinafter called the "Commonwealth") of the first part THE STATE OF NEW SOUTH WALES (hereinafter called "New South Wales") of the second part and THE STATE OF QUEENSLAND (hereinafter called "Queensland") of the third part

WHEREAS there are differences between the gauges of the railway lines on the mainland of Australia

AND WHEREAS in order to facilitate interstate trade and commerce and to assist in the defence and the development of Australia it is desirable to secure a uniform gauge of railway line throughout Australia

AND WHEREAS at a Conference of Ministers of the Crown which was held in Melbourne in July 1920, and at which the Commonwealth and the States of New South Wales, Victoria, Queensland, South Australia and Western Australia (hereinafter collectively called "the five States") were represented, it was resolved as follows:—

"That this Conference is of the opinion that two experts from outside this country should be appointed, along with one Australian outside the railway services of the Commonwealth and the States, to consider and report upon the unification of the gauges, the question as to what gauge it is desirable to adopt, and the question of the cost of conversion.

"The Commonwealth and the Premiers of the States agree to appoint a Railway Commission and affirm that the Ministers for Railways of New South Wales, Victoria, and the Commonwealth shall select the two members of the Commission who are to be appointed from outside.

"The Commonwealth and the States agree to abide by the decision of this tribunal.

"The Commonwealth to bear one-fifth of the total cost, and four-fifths to be borne by the five States concerned on a *per capita* basis."

AND WHEREAS His Excellency the Governor-General in Council by Letters Patent dated 8th February 1921 appointed Commissioners to inquire into and report upon matters appertaining to the unification of the gauges of the railway systems of Australia notice of which appointment appears in the *Commonwealth of Australia Gazette* No. 14 dated 11th February, 1921.

AND WHEREAS the said Commissioners inquired into the subject and presented a report dated 22nd September, 1921 (printed in Commonwealth Parliamentary Paper No. 141 of 1921) in which they (*inter alia*) made recommendations to the following effect:—

- (a) That action be taken to secure a gauge of 4 ft. 8½ in. (hereinafter called the "standard gauge") on a railway line from Brisbane to Fremantle; and

THE FIRST SCHEDULE—*continued.*

(b) That all railway lines of 5-ft. 3-in. gauge now owned by the said five States be converted to the standard gauge ;
the cost of carrying the said recommendations into effect being estimated by the said Commissioners at £21,600,000.

AND WHEREAS the said Commissioners further estimated that it would cost £57,200,000—

- (a) to convert to the standard gauge all the railway lines of 5-ft. 3-in. gauge and 3-ft. 6-in. gauge now owned by the said five States ; and
- (b) to make re-alignments and deviations for the purpose of providing a better main line between Brisbane and Fremantle.

AND WHEREAS an agreement has not yet been arrived at between the Commonwealth and the said five States for the carrying out of the recommendations of the said Commissioners

AND WHEREAS pending such agreement being arrived at and with a view to giving partial effect to the recommendations of the said Commissioners, the Commonwealth and New South Wales and Queensland have agreed to enter into this agreement

NOW IT IS HEREBY AGREED as follows :—

I. APPROVAL AND ENFORCEMENT.

1. None of the works contemplated by this Agreement shall be commenced until this Agreement has been approved by the Parliaments of the Commonwealth and of New South Wales and Queensland but action in preparation for such works may be commenced upon the execution of this Agreement.

2. Each party hereto agrees to take every practicable step to have this Agreement approved (without any restrictions or amendments) by its Parliament as soon as possible.

3. Each party hereto, so far as its jurisdiction extends and so far as may be necessary, agrees to provide for or secure the execution and enforcement of the provisions of this Agreement and of any legislation by which it is approved.

II. THE RAILWAY COUNCIL.

4. (1) There shall be a Railway Council (hereinafter called " the Council ") for the purpose of this Agreement.

(2) The Council shall consist of three members namely the Commonwealth Railways Commissioner, the Chief Railway Commissioner for New South Wales and the Commissioner for Railways, Queensland.

(3) The Council shall elect a Chairman from amongst its members.

(4) A member of the Council may at any time appoint in writing a deputy to act in his absence.

(5) Upon the appointment of a Deputy being filed with the Council, the deputy may in the absence of the member by whom he is appointed exercise all the powers of that member.

(6) Each meeting of the Council shall be convened by the Chairman and be held at a time and place fixed by the Chairman.

(7) No matter shall be decided by the Council unless each member of the Council is present (either personally or by his duly appointed deputy) at a duly convened meeting, and on any matter the decision of the majority present at the meeting shall prevail.

(8) The Council shall keep proper minutes or records of the proceedings of each of its meetings.

(9) The Council shall furnish to each party hereto—

- (a) quarterly reports giving in reasonable detail the progress made with the works contemplated by this Agreement ;
- (b) annual reports giving in reasonable detail particulars of—
 - (i) the progress made with the works contemplated by this Agreement ;
 - (ii) the expenditure actually incurred ; and
 - (iii) the works proposed to be carried out during the next ensuing year ;

THE FIRST SCHEDULE—*continued.*

- (c) such other reports as may from time to time be required by any party hereto.
- (10) The Council shall—
 - (a) have the entire control of—
 - (i) all the works contemplated by this Agreement; and
 - (ii) the expenditure thereon;
 - (b) determine the order in which and the terms and conditions under which the works shall be carried out and the times at which each portion of the works shall be commenced and completed;
 - (c) determine the portion of the works to be carried out by any party hereto;
 - (d) authorize in manner prescribed by it any party hereto to carry out any portion of the works;
 - (e) where works for the purposes of this Agreement are carried out concurrently with other works, determine the amount or amounts to be regarded as expenditure for the purposes of this Agreement;
 - (f) take all practicable steps to secure standardized methods and types of construction, and in particular to prescribe—
 - (i) standards of permanent way, bridges, and other structures, standard structure gauge, grades, and curvature of lines and axle loads;
 - (ii) standards and types of rolling-stock for use on lines of the standard gauge; and
 - (iii) any other standards which in the opinion of the Council should be prescribed;
 - (g) have power to employ the staff and labour necessary for the completion of the works contemplated by this Agreement and fix the terms and conditions of their employment;
 - (h) have power, to the extent to which it may deem necessary for the purpose of this Agreement to supervise and direct the operations on the railways in New South Wales and Queensland in process of construction, re-laying and re-grading under this Agreement;
 - (i) determine what amounts (if any) shall be allowed to any party hereto for railway lines, equipment, plant and material rendered idle or useless or depreciated because of works under this Agreement;
 - (j) have power, for the purposes of this Agreement, to buy, sell, or hire such material, plant and equipment, as it thinks fit;
 - (k) keep accurate and complete accounts of all money provided by the Commonwealth and all money expended for the purpose of carrying out the works contemplated by this Agreement under such headings as it may determine.

5. All accounts of the Council shall be subject to audit by the Auditor-General of the Commonwealth and (if any other party hereto shall so desire) also by the Auditor-General of that party.

6. An officer in the service of a party hereto who becomes a member of the staff of the Council—

- (a) shall retain all his existing and accruing rights as such officer;
- (b) shall not be required to resign from the service of the party, but shall be granted leave of absence from such service for the period of his employment as a member of such staff, and the period of leave so granted shall for all purposes be included as part of the officer's period of service with the party.

III. PARTICULARS AND COST OF WORK.

- 7. (1) The works contemplated by this Agreement are the following works:—
 - (a) the construction of a railway of standard gauge between Kyogle in New South Wales and South Brisbane in Queensland along the route delineated on the plan annexed hereto so as to connect Sydney in New South Wales and South Brisbane in Queensland by means of a railway of standard gauge; and
 - (b) the re-grading and re-laying of the existing railway between Grafton and Kyogle in New South Wales so as to bring that railway up to a standard approved by the Council.

8. When this Agreement is approved as provided in clause 1 hereof the said works shall be proceeded with and completed.

THE FIRST SCHEDULE—*continued.*

9. (1) The cost of the said works shall in the first instance be from time to time provided by the Commonwealth out of moneys legally available for that purpose.

(2) Of the money provided by the Commonwealth as aforesaid—

(a) four-fifths (hereinafter called the quota of the States) shall be deemed to be provided on behalf of the said five States collectively; and

(b) one-fifth shall be deemed to be provided on behalf of the Commonwealth.

(3.) New South Wales and Queensland shall in amounts and at times and in manner hereinafter set forth reimburse to the Commonwealth the amounts respectively attributable to them of the said quota of the States.

(4.) For the purpose of determining each amount payable to the Commonwealth by New South Wales or by Queensland by way of reimbursement or as interest or as sinking fund, the amount attributable to New South Wales or Queensland of the said quota of the States shall be a proportionate amount of the said quota of the States equal to the proportion which the population of New South Wales or of Queensland (as determined by the Commonwealth Statistician) at the end of the calendar year next preceding the date upon which the payment is due bears to the total population (as determined by the Commonwealth Statistician) of the said five States.

10. (1) New South Wales and Queensland shall on or before a date or dates in each year fixed for that purpose by the Treasurer of the Commonwealth pay to the Commonwealth interest on the amounts respectively attributable to them of the said quota of the States.

(2) The rate of interest payable to the Commonwealth on any money provided by the Commonwealth under this Agreement otherwise than from a loan shall be the nominal rate of interest payable by the Commonwealth in respect of the then last preceding loan raised by the Commonwealth.

(3) The rate of interest payable to the Commonwealth on any money provided by the Commonwealth under this Agreement from a loan shall be the rate of interest payable by the Commonwealth in respect of such loan and the date from which interest shall be payable under this Agreement on such money shall be the date from which interest is payable by the Commonwealth in respect of such loan.

(4) A certificate by the Secretary to the Commonwealth Treasury stating the rate of interest payable by the Commonwealth and the date from which interest is payable by the Commonwealth in respect of a loan and the place where the loan was raised shall be conclusive as to the matter stated.

11. Where any money is provided by the Commonwealth under this Agreement from a loan all amounts payable by New South Wales and Queensland to the Commonwealth in respect of such money by way of reimbursement or as interest shall be paid as follows:—

(a) if the loan was raised in London—payment to the Commonwealth shall be made in London; and

(b) if the loan was raised in Australia—payment to the Commonwealth shall be made in Australia.

12. (1) Each amount payable by New South Wales or Queensland by way of reimbursement of money provided by the Commonwealth under this Agreement shall be paid to the Commonwealth as follows:—

(a) if the money is provided otherwise than from a loan—on the date fixed by the Treasurers of the Commonwealth and the States of New South Wales and Queensland; or

(b) if the money is provided from a loan not repayable by the Commonwealth within ten years after the date upon which the money is provided—at the opening hour of business on the date on which that loan is repayable by the Commonwealth; or

(c) if the money is provided from a loan repayable by the Commonwealth within ten years after the date upon which the money is provided—at the opening hour of business on the date on which the new loan is repayable by the Commonwealth.

(2) In this clause the expression "new loan" means a loan raised by the Commonwealth to convert or renew the loan from which money is provided, or if no such conversion or renewal loan is raised, then the public loan raised by the Commonwealth next after the date upon which the loan from which the money is provided is repayable.

THE FIRST SCHEDULE—continued.

(3) In each case in which money is provided from a loan repayable within ten years after the date upon which the money is provided the rate of interest payable by New South Wales and Queensland to the Commonwealth on the money so provided shall—

- (a) until the date from which interest is payable by the Commonwealth in respect of the new loan be the rate of interest determined under clause 10 hereof; and
- (b) as from the date from which interest is payable by the Commonwealth in respect of the new loan be the average annual effective rate of interest payable by the Commonwealth in respect of the new loan after making allowance for all costs and charges (including exchange) incurred by the Commonwealth in raising the new loan and all discounts on the flotation of the new loan.

(4) A certificate by the Secretary of the Treasury stating the average annual effective rate of interest payable by the Commonwealth in respect of a new loan and the date from which such interest is payable and the place where the new loan was raised, shall be conclusive as to the matter stated.

(5) Amounts payable to the Commonwealth by New South Wales and Queensland by way of reimbursement or as interest in respect of moneys provided as mentioned in sub-clause (3) of this clause shall be paid as follows :—

- (a) until the date from which interest is payable by the Commonwealth in respect of the new loan, payments of interest to the Commonwealth shall be made in London or in Australia (as the case may be) where the loan from which the money is provided was raised; and
- (b) as from the date from which interest is payable by the Commonwealth in respect of the new loan, payments to the Commonwealth by way of reimbursement or as interest shall be made in London or in Australia (as the case may be) where the new loan was raised.

(6) In addition to the interest payable under this Agreement New South Wales and Queensland shall in each year during which interest is payable, and on the same dates upon which interest is payable pay to the Commonwealth in Australia a sinking fund at the rate of Ten shillings per annum for each One Hundred Pounds or portion of One Hundred Pounds of the amounts respectively attributable to them of the aforesaid quota of the States of the money provided by the Commonwealth until such amounts are reimbursed to the Commonwealth.

(7) Each amount of sinking fund received by the Commonwealth under this clause shall be paid into the National Debt Sinking Fund established under the *National Debt Sinking Fund Act 1923* or any amendment thereof or to any sinking fund established by the Commonwealth in lieu thereof, and will be deemed to accumulate each year at the average effective rate of interest earned during that year by sinking fund moneys.

(8) A certificate by the body or person for the time being controlling the said sinking fund moneys, stating the average effective rate of interest earned during any year by sinking fund moneys shall be conclusive as to the matter stated.

(9) Upon the date upon which any amount is payable by New South Wales or Queensland to the Commonwealth by way of reimbursement of money provided by the Commonwealth under this Agreement the amounts respectively paid to the Commonwealth as sinking fund by New South Wales and Queensland, and all accumulations thereof in respect of the money so provided, shall be applied by the Commonwealth in part payment by way of reimbursement of the amount attributable to New South Wales and Queensland respectively of the aforesaid quota of the States of the money so provided.

13. (1) For the purposes of this clause the revenue from and the working expenses of the whole or any portion of the said railway between Grafton and South Brisbane which is opened for traffic shall be calculated on the basis and in the manner determined by the Railway Commissioners of Australia for calculating the revenue and working expenses of separate sections of the railways of the said Commissioners, and in force for the time being. If at any time no such determination is in force the basis on and manner in which the revenue and working expenses of the said railway or portion thereof shall be calculated shall be determined by the Commonwealth Railways Commissioner, the Chief Railway Commissioner of New South Wales, and the Commissioner for Railways, Queensland, or a majority thereof.

THE FIRST SCHEDULE—*continued*.

(2) If in any financial year the revenue from the said railway between Grafton and South Brisbane or from any portion thereof which is opened for traffic exceeds the working expenses of such railway or portion, the excess shall be applied (so far as the same will in each particular instance suffice) in paying to the Commonwealth the interest falling due at or next after the end of that financial year on the money provided by the Commonwealth under this Agreement in manner following—

- (a) In paying to the Commonwealth interest at the rates provided for in this Agreement on the amount of the said quota of the States after deducting therefrom the amounts attributable to New South Wales and Queensland of the said quota of the States as determined in the manner specified in clause 9 (4) of this Agreement;
- (b) (If any portion of such excess remains after payment of the interest mentioned in paragraph (a) of this sub-clause) in paying to the Commonwealth the interest payable by New South Wales and Queensland under this Agreement;
- (c) (If any portion of such excess remains after payment of the interest mentioned in paragraphs (a) and (b) of this sub-clause) in paying to the Commonwealth interest on the balance of the money provided by the Commonwealth under this Agreement;
- (d) In paying to New South Wales and Queensland in proportions mutually determined by them the balance if any then remaining of such excess.

(3) If the amount remaining of any such excess in any financial year is not sufficient (after payment of the interest mentioned in paragraph (a) of sub-clause (2) of this clause) to pay the whole of the interest mentioned in paragraph (b) of the said sub-clause such amount remaining shall be applied in part payment of the interest mentioned in the said paragraph (b) *pro rata* to the amounts of interest payable by New South Wales and Queensland respectively and the balance of interest not so paid shall be paid by New South Wales and Queensland in manner provided by clause 10 of this Agreement.

(4) For the purposes of this clause New South Wales and Queensland shall as early as practicable after the end of each financial year furnish to the Treasurer of the Commonwealth a statement certified by the Auditor-General of each party hereto showing in detail the revenue and working expenses of such railway or of any portion thereof which is opened for traffic as the case may be.

(5) New South Wales and Queensland shall each afford to the Auditor-General of the Commonwealth every facility for examining and checking the accounts kept in relation to the said railway or of any portion thereof which is opened for traffic as the case may be.

14. If any amount payable by New South Wales or Queensland to the Commonwealth (whether by way of reimbursement or as interest) is not paid to the Commonwealth on or before the date fixed for payment—

- (a) the Commonwealth may deduct that amount or any part thereof from any moneys due by the Commonwealth to the party which has failed to make payment or may recover the same or any part thereof by action in any Court of competent jurisdiction; and
- (b) the party which has failed to make payment shall, until that amount is paid deducted or recovered as aforesaid, pay to the Commonwealth interest on the sum unpaid at the same rate as that payable on the money in respect of which the amount is payable.

15. The total cost of the works contemplated by this Agreement—

- (a) shall include all expenses of the Council;
- (b) shall include all amounts paid as compensation or damages or costs to any person or corporation in respect of or in connexion with the carrying out of such works;
- (c) shall include expenditure incurred by any party hereto in keeping any accounts necessary for the purposes of this Agreement;
- (d) shall include all costs and charges (including exchange) incurred by the Commonwealth in borrowing and providing moneys and all discounts on flotation of loans, but shall not include interest thereon.

16. (1) The Council shall on or before the thirty-first day of December in each financial year give to the Treasurer of the Commonwealth notice of the estimated total amount of money required for the works proposed to be carried out during the next financial year, and also the approximate amount of such money which will be required during each quarter of the said next financial year, and the Treasurer of the Commonwealth shall not later than three months before the commencement

THE FIRST SCHEDULE—*continued.*

of the said next financial year advise the Council as to the money that will be made available during the said next financial year.

(2) Forthwith after the said advice has been given by the Treasurer of the Commonwealth the Council shall inform the said Treasurer in writing of the approximate amount required during each quarter of the said next financial year of the money that will be made available as aforesaid.

(3) At the end of each quarter of the said next financial year the Council shall inform the said Treasurer in writing of the estimated amount required during each remaining month of the said next financial year of the money that will be made available as aforesaid.

(4) The Council shall not, without the consent in writing of the Treasurer of the Commonwealth, enter into any contract or incur any obligation whereby it or the parties hereto are committed to the payment of moneys greater than the amount which the Treasurer of the Commonwealth has notified to the Council as being legally available for the purposes of the Agreement in pursuance of sub-clause (1) of this clause.

IV.—GENERAL.

17. Each party hereto agrees that it and each authority under it which constructs or administers railways or in which railways are vested shall—

- (a) act as agent of the Council for the purposes of this Agreement;
- (b) carry out the works contemplated by this Agreement in the order and under the terms and conditions and at or during the times specified by the Council;
- (c) accept the decision of the Council in all matters committed to it under this Agreement;
- (d) give all necessary consents and do all things within its powers to enable the works contemplated by this Agreement to be carried out expeditiously and satisfactorily;
- (e) permit and facilitate whenever necessary for the purposes of this Agreement entry upon lands within its possession or control;
- (f) acquire any lands or the right to occupy temporarily or permanently any lands in the opinion of the Council necessary for the purposes of this Agreement;
- (g) keep the Council at all times fully informed of all works proposed by it in connexion with the construction or alteration or maintenance or repair of railways which works are not rendered necessary by but could be carried out concurrently with the works contemplated by this Agreement;
- (h) indemnify the Council in respect of all acts done, or losses, costs, or damages incurred by it in the bona fide execution of the powers vested in it by or under this Agreement.

18. None of the works contemplated by this Agreement shall be commenced by any party hereto unless and until—

- (a) the estimated cost thereof has been furnished to or obtained by the Council; and
- (b) the Council has authorized that party to carry out the work.

19. As and when the railway between Grafton and South Brisbane either as a whole or in separate sections is completed and ready to be opened for traffic the Council shall certify that fact and hand over the completed railway or section to the party concerned.

IN WITNESS whereof the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales and Queensland have hereunto set their hands the day and year first above mentioned.

SIGNED by the Prime Minister of
the Commonwealth of Australia }
in the presence of—

EDWD. SIMMS.

S. M. BRUCE.

SIGNED by the Premier of the
State of New South Wales in }
the presence of—

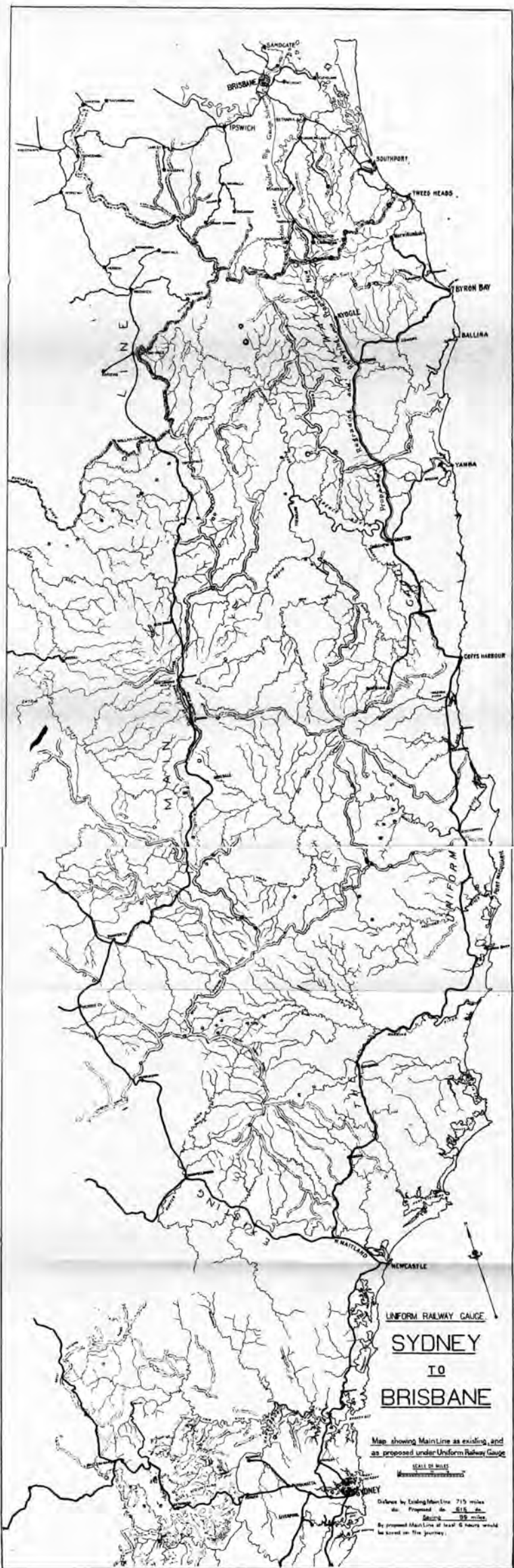
R. T. BALL.

GEORGE W. FULLER.

SIGNED by the Premier of the
State of Queensland in the }
presence of—

J. LARCOMBE.

EDWARD G. THEODORE.



THE SECOND SCHEDULE.^(a)

Added by
No. 34, 1926,
s. 6. (a)

AGREEMENT made the twenty-second day of March One thousand nine hundred and twenty-six BETWEEN—THE COMMONWEALTH OF AUSTRALIA (hereinafter called the "Commonwealth") of the First Part NORRIS GARRETT BELL of Melbourne Commonwealth Railways Commissioner JAMES FRASER of Sydney the Chief Commissioner for Railways of New South Wales and JAMES WALKER DAVIDSON of Brisbane Commissioner for Railways of Queensland being the Railway Council constituted by the Agreement contained in the Schedule to the *Grafton to South Brisbane Railway Act 1924* of the Commonwealth and the *Grafton-Kyogle to South Brisbane Railway Agreement Ratification Act 1924* of the State of New South Wales (hereinafter called the "Council" which expression shall unless the context otherwise requires include the members of such Council for the time being and the deputies of such members) of the second part and THE STATE OF NEW SOUTH WALES (hereinafter called the "Contractor") of the third part WHEREAS for the purposes of the said Agreement tenders were called for the performance of the work required in the construction of Section Number 1 of the railway from Kyogle to South Brisbane referred to in the said Agreement namely from 85 miles 9 chains 2 links from Grafton to 111 miles 54 chains 86 links at Richmond Gap AND WHEREAS the Chief Engineer of the Construction Branch of the New South Wales Government Railways and Tramways at the request of the Council submitted to it a sealed estimate showing the rates for which he considered the estimated quantities of the various works included in the said Section Number 1 of the said railway could be constructed AND WHEREAS the Council decided not to accept any tender received by it for the construction of the said Section No. 1 but decided to have the same carried out by or on behalf of the State of New South Wales AND WHEREAS the Commonwealth has requested that the said Section Number 1 should be constructed by or for the State of New South Wales as an independent Contractor with the Council at the rates mentioned in the said sealed estimate adding thereto the sum of Twenty-five thousand five hundred pounds (£25,500) for engineering supervision NOW THEREFORE IT IS HEREBY AGREED by and between the parties hereto as follows:—

1. THE Contractor shall undertake and carry out the work required in the construction of the said Section Number 1 of the said railway in accordance with the Specification of Works hereto annexed and marked with the letter "A" with the General Conditions hereto annexed and marked with the letter "B" with the Schedule of Quantities and Prices hereto annexed and marked with the letter "C" with the Conditions of Tendering hereto annexed and marked with the letter "D" and with the sealed Estimate and the letter from F. E. Wickham to E. Simms dated the twenty-eighth day of August one thousand nine hundred and twenty-five copies of which are hereto annexed and marked with the letter "E" and with the provisions of this Contract so far as the same are respectively to be performed observed fulfilled obeyed and abided by on the part of the Contractor and at and for the prices contained in the said Schedule of Quantities and Prices marked "C" according to the Quantities of work as determined by measurement or as otherwise provided herein or hereunder with such additions and deductions as are provided for in this Contract and the annexures hereto to which shall be added the sum of Twenty-five thousand five hundred pounds (£25,500) for engineering supervision.

2. THE Council agrees that it shall and will perform observe fulfil obey and abide by the several articles clauses conditions and stipulations contained in this contract and the said annexures hereto so far as the same respectively are to be performed observed fulfilled obeyed and abided by on the part of the Council.

3. THE Council agrees that it will pay to the Contractor for the performance of the said work according to the quantities of work as determined by measurement or as otherwise provided herein or hereunder at the rates shown in the said Schedule of Quantities and Prices marked "C" with such additions and deductions as

(a) Sub-section (1.) of section 2 of the *Grafton to South Brisbane Railway Act 1926* reads—

"The Agreement made, on the twenty-second day of March in the year One thousand nine hundred and twenty-six, between the Commonwealth of Australia, Norris Garrett Bell, James Fraser, James Walker Davidson, and the State of New South Wales, a copy of which was laid before each House of the Parliament on the twenty-eighth day of May in the year One thousand nine hundred and twenty-six, and a copy of which (excluding the annexures thereto) is set out in the Second Schedule contained in section six of this Act, is hereby ratified."

THE SECOND SCHEDULE—*continued*.

are provided for in this Contract and the annexures hereto also in addition thereto the said sum of Twenty-five thousand five hundred pounds (£25,500) for engineering supervision.

4. THE prices set out in the said Schedule of Prices and Quantities marked "C" are to be taken to have been based upon the rates of wages prescribed by Awards or Orders of the Court of Industrial Arbitration of New South Wales in force on the twenty-eighth day of August one thousand nine hundred and twenty-five and where the rates of wages were at such date not so prescribed upon the rates of wages ruling in New South Wales at the said date and are to be taken to have been based upon forty-four hours per week being the working hours per week at the said date. Such prices shall be subject to adjustments from time to time as follows that is to say:—

- (a) If the rates of wages paid by the Contractor to its employees engaged in New South Wales in the execution of the said work shall by reason of any Award or Order of any Court or other competent authority of the Commonwealth or the State or any Industrial Agreement duly recorded with any such Court or Authority and approved by the Council be greater or less than the rates of wages prescribed by the said Awards or Orders in force on the said day or in case of rates not being so prescribed then the rates of wages ruling in New South Wales at such date, the amount of the increase or reduction thereby occasioned in the prices stated in the said Schedule marked "C" shall be added thereto or deducted therefrom as the case may be.
- (b) In the event of the working hours per week being increased or reduced from forty-four hours per week by reason of any award or order of any State or Commonwealth Court or Authority or of any Statute or of any Industrial Agreement duly recorded with such Court or Authority and approved by the Council affecting the employees of the Contractor engaged in New South Wales in the execution of the said work the amount of decrease occasioned in the prices otherwise payable to the Contractor under the Contract by the increase of the working hours or the amount of the increase occasioned in such prices by the decrease of such hours shall be added to or deducted therefrom as the case may be.
- (c) As often as any increase or decrease shall be made as aforesaid in any of the rates of wages or working hours upon which the prices set out in the said Schedule of Prices marked "C" are taken to have been based the Contractor will thereupon notify the same to the Council.
- (d) The amount of all additions and deductions to be made or allowed to or by the Contractor under Sub-Clause (a) or (b) shall be determined by agreement between a person appointed by the Contractor and a person appointed by the Council and in default of such agreement by the Council.
- (e) So much of piece work rates as consists of wages shall be deemed to have increased or decreased in proportion to the increases or decreases in wages for the class of work in question.

5. In reading and construing the said General Conditions marked "B" the said Specification marked "A" and the said Conditions of Tendering marked "D" the following alterations shall be made—

In the General Conditions—

Interpretation Clause 1 (a)—

The term "Council"—"The Railway Council constituted by the Grafton-Kyogle to South Brisbane Railway Agreement"

is altered to read—

"Council"—"The Railway Council constituted by the Grafton-Kyogle to South Brisbane Railway Agreement or (except in clauses 44 and 45 hereof) any person duly authorized by the unanimous decision of the Council on its behalf"

The term "Superintending Officer"—"The Officer from time to time acting under the Engineer in the supervision of works"; and

The term "Engineer"—"The Chief Engineer for railway construction for the time being, or his duly appointed representative"

are deleted, and the word "Council" is substituted in place of the words "Superintending Officer" and "Engineer" wherever

THE SECOND SCHEDULE—*continued.*

appearing in the said General Conditions and Specification of Works.

Clause 5 of the said Conditions of Tendering is deleted.

Clause 7 of the said Conditions of Tendering is deleted.

Clause 6 of the said Conditions of Tendering—The word "Council" is substituted for the word "Engineer".

Clause 30 (a), (b), (c) and (d) General Conditions is deleted, and the following clause is substituted—

Clause 30. "The payments to be made to the Contractor by the Council in respect of work done shall be made each four weeks and the amount of such payments shall depend upon and be determined by the progress certificate to be given as provided in Clause 27 (b)".

6. NOTWITHSTANDING any other provision contained in this Contract or any annexure hereto, in the event of the Contractor being dissatisfied with any determination notice certificate or order by a nominee of the Council under this contract or any annexure hereto the Contractor may within eight weeks of the date on which such determination notice certificate or order is given appeal therefrom to the Council whose decision shall be final.

7. THE Commonwealth agrees as a separate agreement with the said State and the Council that it will do all things on its part necessary to be done in order to enable the Council to carry out the provisions of this contract and the annexures hereto which on its part are to be observed and performed.

8. THE Commonwealth agrees that it will take all steps necessary to have this contract ratified by the Parliament of the Commonwealth as early as possible, and the said State agrees that it will take all steps necessary to have this contract ratified by the Parliament of the said State as early as possible.

IN WITNESS whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED by STANLEY
MELBOURNE BRUCE the Prime Minister of the
Commonwealth of Australia for and on behalf
of the said Commonwealth (but so as not to
incur any personal liability) in the presence
of—
W. C. HILL.

} S. M. BRUCE. (SEAL)

SIGNED SEALED AND DELIVERED by the said
NORRIS GARRETT BELL (but so as not to incur
any personal liability) in the presence of—
EDWD. SIMMS.

} NORRIS G. BELL. (SEAL)

SIGNED SEALED AND DELIVERED by the said
JAMES FRASER (but so as not to incur any
personal liability) in the presence of—
EDWD. SIMMS.

} JAMES FRASER by his duly
authorized Deputy
F. E. WICKHAM. (SEAL)

SIGNED SEALED AND DELIVERED by the said
JAMES WALKER DAVIDSON (but so as not to
incur any personal liability) in the presence
of—
EDWD. SIMMS.

} J. W. DAVIDSON. (SEAL)

SIGNED SEALED AND DELIVERED by JOHN
THOMAS LANG the Premier and Colonial
Treasurer of the State of New South Wales
for and on behalf of the said State (but so as
not to incur any personal liability) in the
presence of—
M. M. FLANNERY.

} JOHN T. LANG. (SEAL)

Added by
No. 34, 1926
s. 6.(a)

THE THIRD SCHEDULE.^(a)

AGREEMENT made the twenty-third day of March One thousand nine hundred and twenty-six BETWEEN THE COMMONWEALTH OF AUSTRALIA (hereinafter called the "Commonwealth") of the first part NORRIS GARRETT BELL of Melbourne Commonwealth Railways Commissioner JAMES FRASER of Sydney the Chief Commissioner for Railways of New South Wales and JAMES WALKER DAVIDSON of Brisbane Commissioner for Railways of Queensland being the Railway Council constituted by the Agreement contained in the Schedule to the *Grafton to South Brisbane Railway Act 1924* of the Commonwealth and the *Grafton-Kyogle to South Brisbane Railway Agreement Ratification Act 1924* of the State of New South Wales (hereinafter called the "Council" which expression shall unless the context otherwise requires include the members of such Council for the time being and the deputies of such members) of the second part and THE STATE OF QUEENSLAND (hereinafter called the "Contractor") of the third part WHEREAS for the purposes of the said Agreement tenders were called for the performance of the work required in the construction of Section Number 2 of the Railway from South Brisbane to Richmond Gap referred to in the said Agreement namely from 1 mile 0 chains 0 links near Salisbury to 0 miles 40 chains 50 links (at Richmond Gap) AND WHEREAS the Chief Engineer of the Queensland Government Railways at the request of the Council submitted to it a sealed estimate showing the rates for which he considered the estimated quantities of the various works included in the said Section Number 2 of the said railway could be constructed AND WHEREAS the Council decided not to accept any tender received by it for the construction of the said Section No. 2 but decided to have the same carried out by or on behalf of the State of Queensland AND WHEREAS the Commonwealth has requested that the said Section Number 2 should be constructed by or for the State of Queensland as an independent Contractor with the Council at the rates mentioned in the said sealed estimate NOW THEREFORE IT IS HEREBY AGREED by and between the parties hereto as follows :

1. The Contractor shall undertake and carry out the work required in the construction of the said Section Number 2 of the said railway in accordance with the Specification of Works hereto annexed and marked with the letter "A" with the General Conditions hereto annexed and marked with the letter "B" with the Schedule of Quantities and Prices hereto annexed and marked with the letter "C" with the Conditions of Tendering hereto annexed and marked with the letter "D" and with the sealed Estimate dated the twenty-fifth day of August one thousand nine hundred and twenty-five a copy of which is hereto annexed and marked with the letter "E" and with the provisions of this Contract so far as the same are respectively to be performed observed fulfilled obeyed and abided by on the part of the Contractor and at and for the prices contained in the said Schedule of Quantities and Prices marked "C" according to the quantities of work as determined by measurement or as otherwise provided herein or hereunder with such additions and deductions as are provided for in this Contract and the annexures hereto.

2. The Council agrees that it shall and will perform observe fulfil obey and abide by the several articles clauses conditions and stipulations contained in this contract and the said annexures hereto so far as the same respectively are to be performed observed fulfilled obeyed and abided by on the part of the Council.

3. The Council agrees that it will pay to the Contractor for the performance of the said work according to the quantities of work as determined by measurement or as otherwise provided herein or hereunder at the rates shown in the said Schedule of Quantities and Prices marked "C" with such additions and deductions as are provided for in this Contract and the annexures hereto.

4. The prices set out in the said Schedule of Prices and Quantities marked "C" are to be taken to have been based upon the rates of wages prescribed by Awards or Orders of the Court of Industrial Arbitration of Queensland in force

(a) Sub-section (2.) of section 2 of the *Grafton to South Brisbane Railway Act 1926* reads—

"The Agreement made, on the twenty-third day of March in the year One thousand nine hundred and twenty-six, between the Commonwealth of Australia, Norris Garrett Bell, James Fraser, James Walker Davidson, and the State of Queensland, a copy of which was laid before each House of the Parliament on the twenty-eighth day of May in the year One thousand nine hundred and twenty-six, and a copy of which (excluding the annexures thereto) is set out in the Third Schedule contained in section six of this Act, is hereby ratified."

THE THIRD SCHEDULE—*continued.*

on the 28th August, 1925, and where the rates of wages were at such date not so prescribed upon the rates of wages ruling in Queensland at the said date and are to be taken to have been based upon forty-four hours per week being the working hours per week at the said date. Such prices shall be subject to adjustments from time to time as follows that is to say:—

- (a) If the rates of wages paid by the Contractor to its employees engaged in Queensland in the execution of the said work shall by reason of any Award or Order of any Court or other competent authority of the Commonwealth or the State or any Industrial Agreement duly recorded with any such Court or Authority and approved by the Council be greater or less than the rates of wages prescribed by the said Awards or Orders in force on the said day or in case of rates not being so prescribed then the rates of wages ruling in Queensland at such date, the amount of the increase or reduction thereby occasioned in the prices stated in the said Schedule marked "C" shall be added thereto or deducted therefrom as the case may be.
- (b) In the event of the working hours per week being increased or reduced from forty-four hours per week by reason of any award or order of any State or Commonwealth Court or Authority or of any Statute or of any Industrial Agreement duly recorded with such Court or Authority and approved by the Council affecting the employees of the Contractor engaged in Queensland in the execution of the said work the amount of decrease occasioned in the prices otherwise payable to the Contractor under the Contract by the increase of the working hours or the amount of the increase occasioned in such prices by the decrease of such hours shall be added to or deducted therefrom as the case may be.
- (c) As often as any increase or decrease shall be made as aforesaid in any of the rates of wages or working hours upon which the prices set out in the said Schedule of Prices marked "C" are taken to have been based the Contractor will thereupon notify the same to the Council.
- (d) The amount of all additions and deductions to be made or allowed to or by the Contractor under Sub-clause (a) or (b) of this Clause shall be determined by agreement between a person appointed by the Contractor and a person appointed by the Council and in default of such agreement by the Council.
- (e) So much of piece work rates as consists of wages shall be deemed to have increased or decreased in proportion to the increases or decreases in wages for the class of work in question.

5. In reading and construing the said General Conditions marked "B" the said Specification marked "A" and the said Conditions of Tendering marked "D" the following alterations shall be made—

In the General Conditions—

Interpretation Clause 1 (a)—

The term "Council"—"The Railway Council constituted by the Grafton-Kyogle to South Brisbane Railway Agreement",
is altered to read—

"Council"—"The Railway Council constituted by the Grafton-Kyogle to South Brisbane Railway Agreement or (except in clauses 44 and 45 hereof) any person duly authorized by the unanimous decision of the Council on its behalf."

The term "Superintending Officer"—"The Officer from time to time acting under the Engineer in the supervision of works" and

The term "Engineer"—"The Chief Engineer for railway construction for the time being, or his duly appointed representative" are deleted, and the word "Council" is substituted in place of the words "Superintending Officer" and "Engineer" wherever appearing in the said General Conditions and Specification of Works.

Clause 5 of the said Conditions of Tendering is deleted.

Clause 7 of the said Conditions of Tendering is deleted.

THE THIRD SCHEDULE—*continued.*

Clause 6 of the said Conditions of Tendering—The word "Council" is substituted for the word "Engineer".

Clause 30 (a), (b), (c) and (d) General Conditions is deleted, and the following clause is substituted—

Clause 30. "The payments to be made to the Contractor by the Council in respect of work done shall be made each four weeks and the amount of such payments shall depend upon and be determined by the progress certificate to be given as provided in Clause 27 (b)".

6. Notwithstanding any other provision contained in this Contract or any annexure hereto, in the event of the Contractor being dissatisfied with any determination notice certificate or order by a nominee of the Council under this Contract or any annexure hereto the Contractor may within eight weeks of the date on which such determination notice certificate or order is given appeal therefrom to the Council whose decision shall be final.

7. The Commonwealth agrees as a separate agreement with the said State and the Council that it will do all things on its part necessary to be done in order to enable the Council to carry out the provisions of this contract and the annexures hereto which on its part are to be observed and performed.

8. The Commonwealth agrees that it will take all steps necessary to have this contract ratified by the Parliament of the Commonwealth as early as possible, and the said State agrees that it will take all steps necessary to have this contract ratified by the Parliament of the said State as early as possible.

IN WITNESS whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED BY STANLEY MELBOURNE BRUCE the Prime Minister of the Commonwealth of Australia for and on behalf of the said Commonwealth (but so as not to incur any personal liability) in the presence of—	}	S. M. BRUCE. (SEAL)
W. C. HILL.		

SIGNED SEALED AND DELIVERED by the said NORRIS GARRETT BELL (but so as not to incur any personal liability) in the presence of—	}	NORRIS G. BELL. (SEAL)
EDWD. SIMMS.		

SIGNED SEALED AND DELIVERED by the said JAMES FRASER (but so as not to incur any personal liability) in the presence of—	}	JAMES FRASER by his duly authorized deputy— F. E. WICKHAM. (SEAL)
EDWD. SIMMS.		

SIGNED SEALED AND DELIVERED by the said JAMES WALKER DAVIDSON (but so as not to incur any personal liability) in the presence of—	}	J. W. DAVIDSON. (SEAL)
EDWD. SIMMS.		

SIGNED SEALED AND DELIVERED by WILLIAM McCORMACK the Premier of the State of Queensland for and on behalf of the said State (but so as not to incur any personal liability) in the presence of—	}	W. McCORMACK. (SEAL)
J. LARCOMBE.		

HIDE AND LEATHER INDUSTRIES ACT 1948.^(a)

An Act relating to the Hide and Leather Industries, and for other purposes.

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

1. This Act may be cited as the *Hide and Leather Industries Act 1948.*^(a) Short title.

2.—(1.) Sections one and two of this Act shall come into operation on the day on which this Act receives the Royal Assent. Commencement.

(2.) The remaining provisions of this Act shall commence on such dates as are respectively fixed by Proclamation.^(a)

3. In this Act, unless the contrary intention appears— Definitions.

“Allocation Committee” means an Allocation Committee constituted under a State Act relating to the hide and leather industries;

“Appraisement Committee” means an Appraisement Committee constituted under a State Act relating to the hide and leather industries;

“export sale” means—

(a) a sale of hides by the Board at an auction at which any buyer of hides may bid; and

(b) a sale of hides by the Board, otherwise than by auction, at prices which the Board decides to be equivalent to prices being realized at the type of sale to which paragraph (a) of this definition refers;

“hides” means cattle hides and includes yearling and calf skins;

“home consumption sale” means—

(a) a sale of hides by the Board at an auction at which only buyers who the Board is satisfied will use those hides in Australia may bid; and

(b) a sale of hides by the Board, otherwise than by auction, at prices which the Board decides to be equivalent to prices being realized at the type of sale to which paragraph (a) of this definition refers;

“leather” means the substance produced by the tanning of hides but does not include goods of leather manufacture

^(a) No. 71, 1948; assented to on 17th December, 1948; commenced, except as to ss. 1 and 2, on 1st January, 1949. See s. 2 and *Gazette*, 1948, p. 4259.

unless, in the opinion of the Board, the character and nature of the leather used in the goods has not been materially altered ;

“ licensed dealer ” means a dealer licensed by the Board to buy, sell and otherwise deal in hides ;

“ meatworks ” means an establishment at which stock is slaughtered and treated principally for export ;

“ member ” means a member of the Board and includes the Chairman ;

“ Territory ” means a Territory of the Commonwealth which forms part of the Commonwealth ;

“ the Board ” means the Australian Hide and Leather Industries Board constituted under this Act ;

“ the Chairman ” means the Chairman of the Board.

Australian
Hide and
Leather
Industries
Board.

4.—(1.) For the purposes of this Act there shall be an Australian Hide and Leather Industries Board.

(2.) The Board shall consist of a Chairman and eleven other members, who shall be appointed by the Minister and shall hold office during his pleasure.

(3.) Of the eleven members, other than the Chairman—

- (a) six shall be cattle raisers, or be persons actively engaged or concerned in that pursuit, nominated as provided by the next succeeding sub-section ;
- (b) one shall be a hide broker or be a person actively engaged or concerned in that business ;
- (c) one shall be a hide merchant or exporter or be a person actively engaged or concerned in either of those businesses ;
- (d) one shall be a representative of Australian meatworks ;
- (e) one shall be a master tanner or leather manufacturer or be a person actively engaged or concerned in either of those businesses ; and
- (f) one shall be a representative of the organization of employees registered under the *Commonwealth Conciliation and Arbitration Act 1904-1948*^(a) as the Australian Leather and Allied Trades Employees Federation.

(4.) The appropriate Minister of State of each of the States may nominate for appointment to the Board one person who is a cattle raiser or is actively engaged or concerned in that pursuit in the State.

(5.) Subject to any direction of the Minister, the Chairman may invite a representative of any section of the hide and leather industries to attend any meeting of the Board, and that representative may then attend and take part in the proceedings of that meeting, but shall not be permitted to vote or be counted in any quorum.

(a) Now the *Conciliation and Arbitration Act 1904-1950*, *supra*.

5.—(1.) The Board shall be a body corporate with perpetual ^{Incorporation.} succession and a common seal, and may acquire, hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name.

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

6.—(1.) The Minister may, in respect of each member of the Board (other than the Chairman), appoint a person representative ^{Deputies of members.} of the same interests as the member to be the deputy of that member.

(2.) A person so appointed shall, in the event of the illness or absence of the member of whom he is the deputy, have all the powers of that member during his illness or absence.

7.—(1.) Meetings of the Board shall be held at such times and ^{Meetings of the Board.} places as the Board from time to time determines.

(2.) The Chairman of the Board or any five members thereof may at any time call a special meeting of the Board.

(3.) At all meetings of the Board seven members shall form a quorum.

(4.) The Chairman of the Board shall preside at all meetings of the Board at which he is present, but, in the event of the absence of the Chairman from a meeting of the Board, the members present at that meeting may elect one of their number to preside at that meeting.

(5.) At all meetings of the Board the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a casting vote.

(6.) All questions before the Board shall be decided by a majority of votes.

(7.) The Board shall keep a record of its proceedings.

8.—(1.) The Board may appoint any number of its members ^{Executive Committee.} to be an Executive Committee and may delegate to that Committee such of its powers and functions as the Board, subject to any direction by the Minister, determines.

(2.) Every such delegation shall be revocable at the will of the Board and no delegation shall prevent the exercise of any power or function by the Board.

9. A member of the Board shall not be personally liable for any ^{Indemnity.} act of the Board or of the member acting as such.

10.—(1.) The Board may appoint such officers as are necessary ^{Appointment of officers.} to assist the Board in carrying out its functions under this Act.

(2.) Officers appointed in pursuance of this section shall not be subject to the *Commonwealth Public Service Act 1922-1948*^(a) but

(a) Now the *Public Service Act 1922-1950*, *infra*.

shall be employed on such terms and conditions (including conditions with respect to punishment for breaches of discipline) as, subject to the approval of the Public Service Board, are determined by the Board.

(3.) All persons in the employment of the Australian Hide and Leather Industries Board established by the National Security (Hide and Leather Industries) Regulations immediately prior to the first day of January, One thousand nine hundred and forty-nine shall, on and from that date, by force of this Act, be in the employment of the Board and be deemed to have been employed under this section, but, until the terms and conditions of their employment are determined in pursuance of this Act, they shall be deemed to be employed upon the same terms and conditions as those upon which they were employed by the Australian Hide and Leather Industries Board so established.

(4.) Where an officer appointed or deemed to be appointed in pursuance of this section was, immediately prior to his appointment (or, in the case of an officer deemed to be appointed under this section, immediately prior to his appointment as an officer of the Australian Hide and Leather Industries Board established by the National Security (Hide and Leather Industries) Regulations) an officer of the Public Service of the Commonwealth, his service as an officer of the Board and, in the case of an officer deemed to be appointed under this section, his service as an officer of the Board so established, shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth, and the *Officers' Rights Declaration Act 1928-1940* shall apply as if this Act and this section had been specified in the Schedule to that Act and as if service as an officer of the Australian Hide and Leather Industries Board established by the National Security (Hide and Leather Industries) Regulations had been service under this Act.

Remuneration
of Board and
Committees.

11.—(1.) There shall be payable to a member of the Board and to any person who attends a meeting of the Board at the invitation of the Chairman such salary (if any), fees and expenses as the Governor-General directs.

(2.) The remuneration payable to a member of an Allocation Committee and to a member of an Appraisement Committee shall be as agreed by the Minister and the appropriate Minister of State of the State concerned.

No sale of
hides before
appraisement.

12.—(1.) Subject to the next succeeding sub-section, a person shall not in any Territory sell or offer for sale any hides which have not been appraised in accordance with the next succeeding section.

(2.) The prohibition contained in the last preceding sub-section shall not apply to any sale of hides by a person other than a licensed dealer to a licensed dealer.

13. All hides in a Territory, other than hides salted and treated in a meat works, shall be submitted to a person or place appointed or approved by the Board or by an Appraisement Committee for appraisement—

Hides to be submitted for appraisement.

- (a) in the case of hides which do not come into the possession of a licensed dealer within twenty-eight days after being salted and treated—within twenty-eight days after being so salted and treated ; or
- (b) in the case of hides in the possession of a licensed dealer—within twenty-eight days after coming into the possession of that licensed dealer.

14.—(1.) For the purpose of appraising hides according to description, the Board shall cause to be prepared a table of limits containing lists of appraisement types of hides and the prices of those types.

Table of limits.

(2.) The prices appearing in that table shall be—

- (a) in relation to hides acquired in pursuance of this Act, such prices as are fixed by the Commonwealth Prices Commissioner ; and
- (b) in relation to hides acquired in pursuance of a State Act, such prices as are fixed by the authority empowered under the law of that State to fix those prices.

15.—(1.) The Board may license a person, subject to such conditions as are specified in the licence, to buy, sell and otherwise deal in a Territory in hides on behalf of the Board and to buy, sell and otherwise deal in a Territory in hides on his own behalf to such extent as is specified in the licence and may cancel or suspend any such licence.

Licences to deal in hides.

(2.) In so far as any licence granted under sub-section (1.) of this section licenses any person to buy, sell and otherwise deal in hides on behalf of the Board, there shall be payable by the Board to that person, for his services and for any facilities made available by him for the storage, protection, treatment, handling, transfer and shipping of hides, and for any expenses properly incurred by him, such remuneration as is specified in the licence.

(3.) A person or firm licensed under a State Act relating to the hide and leather industries to buy, sell or otherwise deal in hides shall be deemed to be licensed under this section.

16. All hides in a Territory which, on or after the date of the commencement of this section, are salted and treated in a meatworks or are submitted for appraisement in accordance with section thirteen of this Act shall thereupon, by force of this section, be acquired by and become the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts affecting those hides, and payment in respect of those hides shall be made in accordance with section eighteen of this Act.

Acquisition of hides.

Disposal of
hides acquired
by the Board.

17. Any person in a Territory having hides acquired by the Board in his possession or under his control shall hold those hides on behalf of the Board until the Board, or a person authorized in that behalf by the Board, serves on him a notice in writing instructing him as to the disposal of those hides, and, upon receipt of the notice, he shall act in accordance with the instructions contained in the notice.

Payment by
the Board for
hides acquired.

18.—(1.) Where hides are acquired by the Board in pursuance of this Act, or where, under a State Act relating to the hide and leather industries, the payment to be made by the Board in respect of hides acquired by the Board in pursuance of the State Act is to be fixed in accordance with the provisions of this Act, the Board shall pay for those hides the appropriate price specified in the table of limits or such amount in excess of that price as the Board, subject to any direction by the Minister, determines from time to time.

(2.) The amount payable under this Act in respect of any hides shall be payable to the person who would have been entitled to receive the price of the hides if the hides had been lawfully sold to the Board at the time of their acquisition by the Board.

(3.) The same rights (if any) shall exist against the person receiving an amount paid by the Board in respect of any hides acquired by the Board as would exist if the moneys so paid were the proceeds of a sale or purported sale of the hides by him, and any such rights may be enforced by action in a court of competent jurisdiction.

(4.) Payment in good faith by the Board of any moneys payable under this Act to the person appearing to the Board to be entitled to receive them shall discharge the Board from any further liability in respect of those moneys.

Unauthorized
dealings in
hides.

19.—(1.) Except as provided in this Act, or with the consent of the Board, a person shall not—

(a) part with the possession of, or take into his possession, any hides in a Territory which are the property of the Board ;

(b) purport to sell or offer for sale, or purport to purchase or offer to purchase (otherwise than from the Board), any hides in a Territory which are the property of the Board ;
or

(c) export any hides.

Penalty : Two hundred pounds or imprisonment for one year, or both.

(2.) The prohibition of export contained in the last preceding sub-section shall be in addition to, and not in substitution for, any prohibition contained in any regulations in force (whether made before or after the commencement of this section) under the *Customs Act 1901-1947*.

20.—(1.) The Board may determine which hides acquired by it shall be sold at home consumption sales and which hides acquired by it shall be sold at export sales. Sales of hides.

(2.) A person shall not buy any hides at a home consumption sale in a Territory unless he satisfies the Board that he will use those hides in Australia.

21. Subject to this Act and to any directions of the Minister but otherwise in its absolute discretion, the Board may licence any person to export from Australia, subject to such conditions as are specified in the licence, such hides as have been purchased at an export sale and as are specified in the licence and may cancel or suspend any such licence. Export of hides.

22.—(1.) Subject to this Act and to any directions by the Minister but otherwise in its absolute discretion, the Board may license any person to export from Australia, subject to such conditions as are specified in the licence, such quantity of leather as is specified in the licence and may cancel or suspend any such licence. Export of leather.

(2.) The Board shall so regulate the grant of licences under the last preceding sub-section and the quantity of leather specified in any such licence as to ensure that of the total quantity of leather manufactured by a manufacturer after the commencement of this section no greater portion shall be exported than that which bears the same proportion to that total quantity as the weight of hides purchased by him at export sales bears to the total weight of hides purchased by him after the commencement of this section.

(3.) Except in accordance with a licence granted under this section, a person shall not export any leather from Australia.

(4.) The prohibition of export contained in this section shall be in addition to, and not in substitution for, any prohibition contained in any regulations in force (whether made before or after the commencement of this section) under the *Customs Act 1901-1947*.

23.—(1.) All persons in a Territory who—

- (a) in the case of hides other than hides salted and treated in a meat works—submit those hides for appraisement in accordance with section thirteen of this Act ; or
- (b) in the case of hides in a Territory salted and treated in a meat works—so salt and treat those hides,

shall, within seven days after submitting those hides for appraisement or of salting and treating those hides, as the case may be, furnish to the Board a return in accordance with the prescribed form. Returns.

(2.) The Board may, by notice in writing, require any person, or persons included in any class of persons, in a Territory to furnish, in such manner and within such time as are specified in the notice, such returns relating to hides or leather as the Board considers necessary for the purposes of this Act.

- (3.) A person shall not, without reasonable excuse—
- (a) refuse or fail to comply with a requirement under this section ; or
 - (b) furnish to the Board any information which is false or misleading in any particular.

Contracts for
sale of hides.

24.—(1.) Every contract relating to the sale of any hides acquired by the Board, entered into in a Territory before the acquisition of those hides, shall by force of this section be void and of no effect in so far as that contract has not been completed by delivery.

(2.) Any transaction or contract with respect to any hides which are the subject matter of any contract or part of a contract which is void by force of the last preceding sub-section shall also be void and of no effect, and any money paid in respect of any contract made void by this section or of any such transaction shall be repaid.

(3.) No action shall lie for the enforcement of, or for damages for breach of, any contract of the kind specified in sub-section (1.) or sub-section (2.) of this section, whether the contract was entered into or is to be performed in a Territory or elsewhere, in so far as that contract has not been completed by delivery prior to the acquisition of the hides.

Entry of
premises, &c.

25.—(1.) A member of the police force of a Territory or any person who is authorized by the Board or the Chairman to act under this section may—

- (a) at all reasonable times, enter any premises in a Territory and inspect any stocks of hides or leather and any accounts, books and documents relating to any hides or leather ; and
- (b) take possession of and remove any hides which are the property of the Board or which, in contravention of section thirteen of this Act, have not been submitted for appraisement.

(2.) A person shall not hinder or obstruct any person in the exercise of powers under this section.

(3.) Any hides, other than hides which are the property of the Board, of which possession is taken under sub-section (1.) of this section shall, for the purposes of this Act, but without affecting the liability of any person for any offence, be deemed to be acquired by the Board under this Act.

(4.) For the purposes of this section, “ premises ” includes any vessel, vehicle or aircraft.

Proper care
of Board's
hides to be
taken.

26. Any person having any hides the property of the Board in his possession or under his care shall exercise proper care and take all proper and reasonable precautions and do all things necessary to preserve and safeguard those hides and to keep them free from damage or deterioration.

27.—(1.) The Board may—

Powers of Board.

- (a) purchase in any Territory any hides or leather ;
- (b) use, sell or otherwise dispose of any hides or leather the property of the Board ;
- (c) manage and control all matters connected with the handling, storage, protection, treatment, transfer or shipment of any hides or leather referred to in paragraphs (a) and (b) of this sub-section ; and
- (d) do all matters and things which it is required by this Act to do or which are necessary or convenient for giving effect to this Act.

(2.) The Board shall have and perform all the duties, and shall have and may exercise, in relation to hides and leather acquired before the first day of January, One thousand nine hundred and forty-nine, all the powers, authorities and functions, of the Australian Hide and Leather Industries Board constituted under the National Security (Hides and Leather Industries) Regulations, and for that purpose—

- (a) the Board shall, by force of this Act, be substituted for, and be deemed to be, the Australian Hide and Leather Industries Board so constituted ;
- (b) the assets of the Australian Hide and Leather Industries Board so constituted shall, by force of this Act, be vested in the Board ;
- (c) all rights, obligations and liabilities which, on the thirty-first day of December, One thousand nine hundred and forty-eight, were vested in or imposed on, the Australian Hide and Leather Industries Board so constituted shall, by force of this Act, be vested in or imposed on the Board ; and
- (d) in any contract, agreement or other instrument to which the Australian Hide and Leather Industries Board so constituted was a party any reference to that Board shall be read as a reference to the Board.

28.—(1.) The Board shall open and maintain an account at the Commonwealth Bank of Australia into which it shall pay all moneys received in respect of sales of hides or leather or otherwise, and any moneys appropriated by the Parliament or advanced in pursuance of an arrangement made under the next succeeding section.

Finance.

(2.) Out of the moneys standing to the credit of the account the Board shall defray all costs and expenses of administering this Act, including any payment under section eleven of this Act, and make all such other payments as the Board is required or authorized by law to make.

(3.) The Board may withdraw from the account any moneys not immediately required for any of the costs, expenses and payments

specified in the last preceding sub-section, and may lodge those moneys on fixed deposit in the name of the Board at the Commonwealth Bank of Australia for such period as the Board thinks fit.

(4.) Notwithstanding anything contained in this section, the Board may authorize any licensed dealer to receive any moneys derived from the sale of, or other dealings in, any hides by him on behalf of the Board, and—

(a) to deduct therefrom any amounts payable to the dealer under this Act in connexion with those hides ; and

(b) to pay thereout, on behalf of the Board, any payment due to any person in respect of those hides.

(5.) A licensed dealer authorized under the last preceding sub-section to receive moneys shall—

(a) as soon as practicable, pay to the Board the balance (if any) remaining after making all authorized deductions and payments ; and

(b) present to the Board such returns and accounts as the Board directs.

(6.) The accounts of the Board shall be subject to audit by the Auditor-General.

Arrangement
with
Commonwealth
Bank for
advances.

29. The Minister may arrange with the Commonwealth Bank of Australia for the making by that Bank of advances to the Board for the purposes of this Act, and may guarantee to that Bank the repayment, out of moneys lawfully made available by the Parliament, of any advance (including any interest thereon) made by the Bank in pursuance of the arrangement.

Offences in
connexion with
appraisement.

30. A person who submits any hides for appraisement in pursuance of this Act shall not—

(a) do anything in or in connexion with the cataloguing, grading or display of any of those hides which is intended or likely to deceive the person making the appraisement ;
or

(b) trim any of the hides otherwise than in the manner customary in the preparation of hides for sale.

Offences.

31.—(1.) A person who contravenes or fails to comply with any provision of this Act for which no other penalty is provided shall be guilty of an offence.

Penalty : Two hundred pounds or imprisonment for one year, or both.

(2.) Where a person found guilty of an offence against this Act is a body corporate and the prescribed penalty for the offence is a fine not exceeding Two hundred pounds or imprisonment for a period not exceeding one year, or both, the penalty for the offence in the case of the body corporate shall be a fine not exceeding Four hundred pounds.

(3.) An offence against this Act may be prosecuted summarily.

32.—(1.) It is hereby declared to be the intention of the Parliament that the operation of any provision of a law of a State which confers any power, right or function, or imposes any obligation, liability or duty, which is also conferred or imposed by this Act, or which can operate without prejudice to the operation of this Act, shall not be prevented or limited by reason of the provisions made by this Act. Operation of
State laws.

(2.) The Board shall be subject (without express mention) to any law of a State fixing, or providing for the fixing of, prices for the sale of hides, except in relation to sales of hides for export, and to any other law of a State which is expressly applicable to the Board.

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

HIGH COMMISSIONER ACT 1909-1945.^(a)

An Act to provide for the Office of High Commissioner of the Commonwealth in the United Kingdom.

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.
Short title
amended
No. 32, 1918,
s. 2.

High
Commissioner.
See Can. 49
Vic. c. 16, s. 1.
Vict. No. 1061,
s. 3.

Term of office.
Vict. ib. s. 5.

Duties of
the High
Commissioner.
See Can. ib.
s. 2.

High
Commissioner
if directed by
Governor-
General to act
for States.

1. This Act may be cited as the *High Commissioner Act 1909-1945*.^(a)

2. The Governor-General may appoint some person to be the High Commissioner of the Commonwealth in the United Kingdom.

3.—(1.) The High Commissioner shall be appointed to hold office, subject to this Act, for a period not exceeding five years from the date of appointment, and shall be eligible for re-appointment.

(2.) The High Commissioner may at any time be removed from office by the Governor-General for misbehaviour or incapacity, or upon a joint address of both Houses of the Parliament.

4. The High Commissioner shall—

(a) act as representative and resident agent of the Commonwealth in the United Kingdom, and in that capacity exercise such powers and perform such duties as are conferred upon and assigned to him by the Governor-General;

(b) carry out such instructions as he receives from the Minister respecting the commercial, financial, and general interests of the Commonwealth and the States in the United Kingdom and elsewhere.

5. The High Commissioner, for the purpose of more economically and effectively advancing the material interests and welfare of every part of Australia, shall also, if the Governor-General so directs, perform for the States functions and duties similar to those hereinbefore described and similar to those now discharged by the Agents-General of the States.

(a) The *High Commissioner Act 1909-1945* comprises the Acts set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>High Commissioner Act 1909</i>	1909, No. 22 ..	13th December, 1909	13th December, 1909
<i>High Commissioner Act 1937</i>	1937, No. 26 ..	16th September, 1937	16th September, 1937
<i>High Commissioner Act 1940</i>	1940, No. 52 ..	22nd August, 1940 ..	19th September, 1940
<i>High Commissioner Act 1945</i>	1945, No. 54 ..	11th October, 1945 ..	8th November, 1945

6.—(1.) The salary of the High Commissioner shall be Three thousand pounds a year, and shall be paid to him monthly out of the Consolidated Revenue Fund, which is hereby appropriated for that purpose accordingly.

Salary and allowances of High Commissioner
Vict. No. 1061,
s. 7.

(2.) The High Commissioner shall be paid, out of moneys to be provided by the Parliament, the expenses, not exceeding Two thousand pounds a year, of an official residence, and such sums for travelling expenses as the Minister allows.

Travelling expenses.

7. A person appointed to be the High Commissioner shall not during his tenure of office be or act as director or agent of or hold any office in any company or syndicate whether incorporated or unincorporated or hold any other employment, or engage in any business, whether within or without the Commonwealth.

High Commissioner not to hold office in company.
W.A., 59 Vic. No. 7, s. 6.

* * * * *

S. 8 repealed by No. 26, 1937, s. 2.

9.—(1.) The High Commissioner may appoint officers for the performance of any duties required in the execution of this Act.

High Commissioner may appoint officers.

(2.) Such appointments shall be made in accordance with such instructions in that behalf as he receives from the Minister.

Cf. Vict. ib. ss. 13, 20.

* * * * *

Sub-section (3.) omitted by No. 52, 1940, s. 2.

(4.) The salaries of such officers shall be paid out of moneys to be provided by the Parliament.

(5.) Officers so appointed shall not be subject to the *Commonwealth Public Service Act* 1902,^(a) but shall be engaged for such periods and shall be subject to such conditions as are prescribed.

Amended by No. 26, 1937, s. 3; and by No. 52, 1940, s. 2.

(6.) Where the Minister, on the recommendation of the High Commissioner, directs by notice published in the *Gazette* that an officer appointed under this Act shall be deemed to be an employee within the meaning of section four of the *Superannuation Act* 1922-1934, that officer shall be deemed to be an employee within the meaning of that section as from the date of the publication of the notice.

Substituted by No. 26, 1937, s. 3.

9A. The Governor-General may issue to any Minister or to any member of the Executive Council a Commission authorizing that Minister or that member, during the pleasure of the Governor-General, to exercise the powers and to perform the duties which in pursuance of this Act are or may be conferred upon or assigned to the High Commissioner, and thereupon those powers may be exercised and those duties shall be performed by that Minister or that member, as the case may be, in accordance with the terms of the Commission.

Minister may be authorized to exercise powers of High Commissioner.

Inserted by No. 54, 1945, s. 2.

10. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act.

Regulations.

(a) See now the *Public Service Act* 1922-1950, *infra*.

HIGH COURT PROCEDURE ACT 1903-1950.^(a)An Act to regulate the Practice and Procedure
of the High Court.

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

PART I.—PRELIMINARY.

Short title.

Short title
amended
No. 32, 1918,
s. 2.Amended by
No. 5, 1937,
s. 4 and
Schedule and by
No. 80, 1950,
s. 3 and
First Schedule.

1. This Act may be cited as the *High Court Procedure Act*
1903-1950,^(a) and is divided into parts as follows :—

Part I.—Preliminary, ss. 1, 2.

Part II.—Procedure
of the High Court

{ Seals, &c., ss. 3-5.
District Registries, ss. 6-11.
Trial of Issues, ss. 12-15.
Evidence, ss. 16-22.
Defects and Errors, ss. 23, 24.
Change of Venue, s. 25.
Judgment and Execution, ss. 26-28.
Receivers and Managers, ss. 29, 30.
Actions by and against the Marshal,
s. 31.

Part III.—Appeals
to the High Court

{ Security, ss. 35, 36.
Procedure, ss. 37-39.

(a) The *High Court Procedure Act* 1903-1950 comprises the *High Court Procedure Act*
1903 as amended. Particulars of the Principal Act and of the amending Acts are set out
in the following table :—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>High Court Procedure</i> <i>Act</i> 1903	1903, No. 7 ..	28th August, 1903 ..	28th August, 1903
<i>High Court Procedure</i> <i>Amendment Act</i> 1903	1903, No. 13 ..	21st October, 1903 ..	21st October, 1903
<i>High Court Procedure</i> <i>Act</i> 1915	1915, No. 5 ..	1st May, 1915 ..	1st May, 1915*
<i>High Court Procedure</i> <i>Act</i> 1921	1921, No. 35 ..	22nd December, 1921	22nd December, 1921
<i>High Court Procedure</i> <i>Act</i> 1925	1925, No. 5 ..	13th July, 1925 ..	13th July, 1925
<i>High Court Procedure</i> <i>Act</i> 1933	1933, No. 63 ..	15th December, 1933	15th December, 1933
<i>Judiciary Act</i> 1937 ..	1937, No. 5 ..	3rd July, 1937 ..	3rd July, 1937
<i>Statute Law Revision Act</i> 1950	1950, No. 80 ..	16th December, 1950	31st December, 1950

* Sub-section (3.) of s. 1 of the *High Court Procedure Act* 1915 reads as follows :—

“(3.) This Act shall remain in operation during the present war and for six months
thereafter, and no longer.”

This sub-section was omitted by s. 2 of the *High Court Procedure Act* 1921 which also
provided that the *High Court Procedure Act* 1915 “shall continue in force as if that
subsection had not been enacted”.

2. In this Act, unless the contrary intention appears—

Interpretation.

- “Suit” includes any action or original proceeding between parties ;
- “Cause” includes any suit, and also includes criminal proceedings ;
- “Matter” includes any proceeding in a Court, whether between parties or not, and also any incidental proceeding in a cause or matter ;
- “Plaintiff” includes any person seeking any relief against any other person by any form of proceeding in a Court ;
- “Defendant” includes any person against whom any relief is sought in a matter, or who is required to attend the proceedings in a matter as a party thereto ;
- “Justice” in the expressions “Court or Justice” or “Court or a Justice” means a Justice of the High Court sitting in Chambers ;
- “The Chief Justice” includes any Justice upon whom the powers and duties of the Chief Justice devolve for the time being ;
- “Judgment” includes any judgment decree order or sentence ;
- “Full Court” means two or more Justices of the High Court sitting together ;
- “Appeal” includes an application for a new trial and any proceeding to review or call in question the proceedings decision or jurisdiction of any Court or Judge.

PART II.—PROCEDURE OF THE HIGH COURT.

Seals.

3.—(1.) The High Court shall have and use as occasion requires ^{Seals.} a Seal, having inscribed thereon the words “The Seal of the High Court of Australia.” Such seal shall be kept at the Principal Registry, in such custody as the Chief Justice directs.

(2.) There shall be kept at every District Registry, in such custody as the Chief Justice directs, a duplicate of the Seal having inscribed thereon the additional word “Registry” with the name of the State prefixed, and also if there are more District Registries than one in the State, such other distinctive word as the Chief Justice directs.

(3.) There shall also be kept and used at the Principal Registry and at the several District Registries such other seals as are required for the business of the Court. Such seals shall be in such form and shall be kept in such custody as the Chief Justice directs.

(4.) All documents and all exemplifications and copies thereof purporting to be sealed with any such seal shall in all parts of the Commonwealth be receivable in evidence without further proof of the seal.

Use of seals.
U.S. 911.

4.—(1.) All writs commissions and process issued from the High Court shall be in the name of the King, and shall be under the Seal of the Court or such other seal as is prescribed by Rules of Court, and shall be signed by a Registrar or other proper officer.

(2.) They shall be tested in the name of the Chief Justice, or when the office of Chief Justice is vacant in the name of the senior Justice.

Date of process.
U.S. 912.

5. All writs and process issued from the High Court or any other Court exercising federal jurisdiction shall be dated as of the day on which they are issued.

District Registries.

Proceedings in
District
Registries,
Jud. Act 1873,
s. 64.

6.—(1.) Subject to this Act and to Rules of Court, writs of summons for the commencement of causes in the High Court may be issued in any Registry, and every Registrar shall issue such writs when required, and unless an order to the contrary is made by the High Court or a Justice all such further proceedings as may and ought to be taken by the respective parties to the cause, down to and including final judgment and execution, may be taken and recorded in the District Registry in which the cause is pending.

English Rules.
O. 12, rr. 5-7.

(2.) Provided that if a defendant against whom a writ is issued in a District Registry neither resides nor carries on business in the State in which the Registry is situated, he may appear either at that Registry or at the Principal Registry.

(3.) If any defendant appears at the Principal Registry the cause shall, subject to the power of transfer, proceed in that Registry, and the proceedings in the cause shall be transmitted thereto by the District Registrar in the manner directed by the next following section.

Transfer of
causes from one
Registry to
another.
Id. s. 65.

7.—(1.) Any party to a cause in the High Court may at any time apply to the Court or a Justice for an order that the cause be transferred from the Registry in which it is pending, if that is not the Principal Registry, to the Principal Registry or some other Registry, or from the Principal Registry to a District Registry, and the Court or Justice may in his discretion make an order accordingly.

(2.) Thereupon the proceedings and such original documents (if any) as are filed in the Registry in which the cause is pending shall be transmitted by the Registrar of that Registry to the Registry to which the cause is ordered to be transferred, and the cause shall thenceforth proceed in that Registry in the same manner as if it had been there originally commenced, and may thereafter be again transferred in like manner to any other Registry.

Temporary
transfer.
Sub-section (1.)
substituted by
No. 13, 1903,
s. 2.

8.—(1.) When any party to a cause desires to make an application therein to the Court or a Justice, and no Justice of the High Court is present in the place where the Registry in which the cause is pending is situated, the party may lodge with the Registrar of that Registry a request that the cause be transferred, for the purpose

of the application only, to some other Registry at a place where a Justice is present or is appointed to sit, and the cause shall thereupon without further order be transferred accordingly.

(2.) The Registrar shall thereupon transmit the request to such other Registry together with such documents as are necessary for the purpose of the application. Amended by No. 13, 1903, s. 3.

(3.) The application may then be heard and disposed of at such other Registry, and as soon as it has been disposed of the cause shall without further order be retransferred to the first-mentioned Registry, and all documents relating to it shall be retransmitted to that Registry. Amended by No. 13, 1903, s. 3.

(4.) No fee shall be payable in respect of any such transfer or retransfer.

(5.) In any of the cases mentioned in this section, if the application is to be made upon notice to any person, the notice may be given of the application to be made before the Court or a Justice at the Registry to which the cause is transferred, on a day to be fixed by the Registrar of the first-mentioned Registry. Amended by No. 13, 1903, s. 3.

9.—(1.) In any such case as mentioned in the last preceding section, any party desiring to make an immediate application to the High Court or a Justice may, instead of requesting that the cause be transferred to such other Registry, require the Registrar to transmit by telegraph to such other Registry the contents of all such documents filed in the first-mentioned Registry as are necessary for the purpose of the application, and the Registrar shall, on payment by such party of the expense of transmission, transmit them accordingly. Transmission of documents by telegraph. Qd. Insolvency Act of 1874. Amended by No. 13, 1903, s. 3.

(2.) The copy so received by telegraph shall be filed in such other Registry, and shall be receivable in evidence for the purpose of the application to the same extent as the original documents would be admissible.

(3.) If the application is to be made upon notice to any person, the notice shall state that the documents will be transmitted by telegraph to such other Registry.

(4.) If any person to whom notice is given requires any other documents to be transmitted by telegraph to such other Registry, they shall be transmitted and shall be receivable in evidence in like manner.

(5.) Evidence of service of the notice may also be so transmitted.

10. When in any of the cases mentioned in the two last preceding sections an order has been made by the Court or a Justice at a Registry other than that in which the cause is pending, the Registrar of that Registry shall at the request and expense of either party and without payment of any further fee inform the Registrar of the first-mentioned Registry by telegraph of the effect of the order, and thereupon and without waiting for receipt of the order full effect shall be given to the order. Orders may be sent by telegraph. Amended by No. 13, 1903, s. 3.

Précis of
evidence.
Amended by
No. 13, 1903,
s. 3.

11. In any of the cases aforesaid a Registrar may, by consent of the parties, instead of transmitting by telegraph the full contents of any document transmit a summary thereof certified by him to be complete and correct, and the summary may be received and acted upon by the Court or Justice as if it were a copy of the original document.

Trial of Issues.

Trial without
jury.
U.S. 689.

12. In every suit in the High Court, unless the Court or a Justice otherwise orders,^(a) the trial shall be by a Justice without a jury.

Power of court
to direct trial
of issues.
Qd. S.C. Act,
s. 61.

13. The High Court or a Justice may, in any suit in which the ends of justice appear to render that mode of inquiry expedient, direct the trial with a jury of the suit or any issue of fact, and may for that purpose make all such orders and issue all such writs and cause all such proceedings to be had and taken as the Court or Justice thinks necessary; and upon the finding of the jury the Court or Justice may give such decision and pronounce such judgment as the case requires.^(a)

Issue and new
trials.
Ib. s. 62.

14. In any case in which the High Court or a Justice is authorized to direct the trial of an issue or in which a new trial is granted, the Court or Justice may impose such conditions on the parties respectively and may direct such admissions to be made by them or either of them for the purpose of the trial or new trial as are just; and in the case of a new trial may grant it either generally or on some particular points only as the Court or Justice thinks fit, and may order that the testimony of any witness examined at the former trial may be read from the Justice's notes instead of his being again examined in open court.

Juries.
U.S. 800.

15.—(1.) The laws of each State relating to the qualification of jurors, the preparation of jury lists and jury panels, the summoning, attendance, and impanelling of juries, the number of jurors, the right of challenge, the discharge of juries, the disagreement of jurors, and the remuneration of jurors, for the purposes of the trial of civil matters pending in the Supreme Court of that State, or relating to any other matters concerning jurors after they have been summoned or sworn, shall extend and be applied to civil matters in which a trial is had with a jury in the High Court in that State, so that the lists of jurors shall be deemed to be made as well for the purposes of the High Court as of the Supreme Court of the State.

^(a) Held by the High Court (Isaacs, J.) that the fact that an action is for breach of promise and seduction is not of itself a ground for ordering the action to be tried with a jury. *Huntley v. Alexander*, (1922) 30 C.L.R. 566.

Per the High Court, Rich J.: The onus is upon the party applying for a jury, "the end of justice" supplying the standard by which the question is to be determined. *Henry v. Commonwealth*, (1937) 43 A.L.R. 409; 11 A.L.J. 155.

(2.) But the precept for the jury shall be issued by the Principal Registrar or a District Registrar of the High Court, and jurors shall be summoned by officers of the Commonwealth.

Substituted by
No. 35, 1921,
s. 3.

(3.) Every officer of a State who has the custody of any jury list shall furnish a copy thereof to the proper officer of the Commonwealth on demand and on payment of a reasonable fee.

Trial of Indictable Offences.

15A. The trial by the High Court of indictable offences against the laws of the Commonwealth^(a) shall be by a Justice with a jury.

Heading
inserted by
No. 5, 1915,
s. 2.

Trial of
indictable
offences.

Inserted by
No. 5, 1915,
s. 2.

15B.—(1.) The laws of each State relating to the qualification of jurors, the preparation of jury lists and jury panels, the summoning, attendance, and impannelling of juries, the number of jurors, the right of challenge, the discharge of juries, the disagreement of jurors, and the remuneration of jurors, for the purposes of the trial of criminal matters pending in the Supreme Court of that State, or relating to any other matters concerning jurors after they have been summoned or sworn, shall extend and be applied to the trial of indictable offences in the High Court in that State, so that the lists of jurors shall be deemed to be made as well for the purposes of the High Court as of the Supreme Court of the State.

Juries.

Inserted by
No. 5, 1915,
s. 2.

(2.) But the precept for the jury shall be issued by the Principal Registrar or a District Registrar of the High Court, and jurors shall be summoned by officers of the Commonwealth.

Substituted by
No. 35, 1921,
s. 4.

(3.) Every officer of a State who has the custody of any jury list shall furnish a copy thereof to the proper officer of the Commonwealth on demand and on payment of a reasonable fee.

Evidence.

* * * * *

Section 16
repealed by
No. 5, 1937,
s. 4 and
Schedule.

17. The High Court may in any suit order the parties to produce any books or writings in their possession or power which contain evidence pertinent to any issue in the suit. If a plaintiff fails to comply with the order the Court may dismiss the suit; and if a defendant fails to comply with the order the Court may give judgment against him as by default.

Production of
books.
U.S. 722.

18.—(1.) The High Court may require and administer all necessary oaths.

Oaths.
U.S. 725.

(2.) The forms of oaths shall be the same, as nearly as may be, as those which are used in the Supreme Court of the State or part of the Commonwealth in which the oath is administered.

(3.) Any person who by the law of the State or part of the

^(a) As to the meaning of "the laws of the Commonwealth" see *R. v. Kidman*, (1915) 20 C.L.R. 425; 21 A.L.R. 405.

Commonwealth in which an oath is to be administered is entitled to make an affirmation instead of taking an oath may do so in any cause or matter in the High Court, and shall do so in the form prescribed by that law.

Orders and
commissions for
examination of
witnesses.

19. The High Court or a Justice may, in any suit or civil matter pending in the Court and at any stage of the proceedings, order the examination of any person upon oath orally or on interrogatories before the Court or a Justice or before any officer of the Court or other person, and at any place within the Commonwealth; or may order a commission to be issued to any person either within or beyond the Commonwealth authorizing him to take the testimony on oath of any person orally or on interrogatories; and may by the same or any subsequent order give any necessary directions touching the time place and manner of any such examination; and may empower any party to the suit or civil matter to give in evidence in the suit or matter the testimony so taken on such terms (if any) as the Court or Justice directs.

Evidence by
affidavit.

20.—(1.) On the hearing of any matter, not being the trial of a cause, evidence may be given by affidavit or orally as the Court or Justice directs.

(2.) At the trial of a cause, proof may be given by affidavit of the service of any document incidental to the proceedings in the cause, or of the signature of a party to the cause or his solicitor to any such document.

English rules
of 1888.
O. 37 R. 1.

(3.) The High Court or a Justice may at any time for sufficient reason order that any particular facts in issue in a cause may be proved by affidavit at the trial, or that the affidavit of any person may be read at the trial of a cause, on such conditions in either case as are just. But such an order shall not be made if any party to the cause desires in good faith that the proposed witness shall attend at the trial for cross-examination.

Evidence at
trial to be given
orally in open
court, except
certain cases.

21. Except as hereinbefore provided, or unless in any suit the parties agree to the contrary, testimony at the trial of causes shall be given orally in open court.

Commissions
for taking
oaths.

22. The Chief Justice may issue commissions to persons within or beyond the Commonwealth authorizing them to administer oaths and take affirmations for the purposes of the High Court and proceedings therein.

Defects and Errors.

Amendment.

23. The High Court or a Justice may at any time, and on such terms as are just, amend any defect or error in any proceedings in the Court; and all necessary amendments shall be made for the purpose of determining the real questions in controversy or otherwise depending on the proceedings.

24.—(1.) No proceedings in the High Court shall be invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial injustice has been caused thereby and that the injustice cannot be remedied by an order of the Court.

Formal defects
to be amended.

(2.) The Court or a Justice may make an order declaring that any proceeding is valid notwithstanding any such defect or irregularity.

Change of Venue.

25. The High Court or a Justice may, at any stage of any suit pending in the Court, direct that the trial shall be had or continued at some particular place to be specified in the order, subject to such conditions (if any) as the Court or Justice imposes.

Change
of venue.

Judgment and Execution.

26. Every person in whose favour a judgment of the High Court is given shall be entitled to the same remedies for enforcing it by execution or otherwise—

Enforcement
of judgments
of the
High Court.

(a) Against the property of the person against whom it is given; and

U.S. 916.
Amended by
No. 80, 1950,
s. 3 and
First Schedule.

(b) Subject to limitations which may be prescribed by any Rules of Court, against the person against whom it is given,

as are allowed, by the laws of the State or Territory in which such property is situated or such person is resident, as the case may be, to persons in whose favour a judgment of the Supreme Court of the State or Territory is given in like cases.

26A.—(1.) Every judgment debt, the entry of which is dated as of a date prior to the commencement of this section, shall carry interest at the rate of Seven pounds per centum per annum from the date as of which the judgment is so entered.^(a)

Interest on
judgments.
Inserted by
No. 35, 1921,
s. 5, and
substituted by
No. 63, 1933,
s. 2.

(2.) Every judgment debt, the entry of which is dated as of the date of, or as of a date subsequent to, the commencement of this section, shall carry interest at the rate of Five pounds per centum per annum from the date as of which the judgment is so entered.^(a)

27. When any claim is made to property taken in execution upon process issued out of the High Court, the Marshal or his Deputy may take in the Supreme Court of the State or Territory in which the property is situated the same proceedings by way of interpleader as if the process had been issued out of that Supreme Court; and that Supreme Court and the Judges thereof shall have jurisdiction to entertain and determine the matter.^(b)

Interpleader.
Amended by
No. 80, 1950,
s. 3 and
First Schedule.

(a) On 12th December, 1922, an Order of the High Court directed costs to be taxed and to be paid when taxed. On proceedings before Isaacs J. on 8th and 9th April, 1926. His Honour held that the costs ordered to be paid by the Order were a judgment debt within the meaning of this section and that interest was payable thereon from the date of the trial (not, as the plaintiffs argued, as from the date of the Certificate of Taxation). *Cooke and others v. Commonwealth and others*. (Unreported.)

(b) Held by the Supreme Court of New South Wales (Ferguson, J.) that the interpleader order and other process should be intitled in the Supreme Court, not the High Court. *Dent v. Snell*. (1926) 43 W.N. (N.S.W.) 140.

Discharge of
property taken
in execution.
U.S. 933.

Amended by
No. 80, 1950,
s. 3 and
First Schedule.

28. A seizure or attachment of property in execution upon process issued out of the High Court shall become inoperative when any event occurs by which, according to the laws of the State or Territory in which the property is situated, the seizure or attachment would become inoperative if made upon like process issued out of the Supreme Court of that State or Territory.

Receivers and Managers.

Duty of
receiver and
manager.

U.S. A.D. 1888.
Ch. 866, s. 2.

29. When in any cause pending in the High Court a receiver or manager appointed by the Court is in possession of any property, the receiver or manager shall manage and deal with the property according to the requirements of the laws of the State or part of the Commonwealth in which the property is situated, in the same manner in which the owner or possessor thereof would be bound to do if in possession thereof.

Liability and
protection of
receivers and
managers.
Ch. 866, s. 3.

30. A receiver or manager of any property appointed by the High Court may, without the previous leave of the Court, be sued in respect of any act or transaction of his in carrying on the business connected with the property.

Actions by and against the Marshal.

Action by or
against
Marshal.
U.S. 922.

31.—(1.) When the Marshal is a party to a cause in the High Court, all writs summonses orders warrants precepts process and commands in the cause which should in ordinary course be directed to him shall be directed to such disinterested person as the Court or a Justice appoints; and the person so appointed may execute and return them.

(2.) When a deputy of the Marshal is a party to a cause in the High Court, any writs summonses orders precepts process and commands in the cause which should in ordinary course be directed to him shall be directed to such person as the Marshal appoints; and the person so appointed may execute and return them.

Sections 32,
33 and 34
repealed by
No. 5, 1937,
s. 4 and
Schedule.

* * * * *

PART III.—APPEALS TO THE HIGH COURT.

Security.

Security

35.—(1.) In any appeal to the High Court, security shall not except under an order of the High Court be required to be given by a party appellant, except in the case of appeals from a judgment of the Supreme Court of a State or some other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council.

(2.) In the case of such last-mentioned appeals, security shall be given by the party appellant in such manner as is prescribed by Rules of Court for the prosecution of the appeal without delay, and

for the payment of all such costs as may be awarded by the High Court to the party respondent.^(a)

(3.) The amount of security shall unless otherwise ordered by the High Court or a Justice be Fifty pounds.

36. The High Court or a Justice may in any case reduce or increase the amount of security to be given by an appellant,^(b) and in the case of increase may order that unless the additional security is given within a time to be limited by the order the appeal shall be dismissed.

Procedure.

37. Appeals to the High Court shall be instituted within such time and in such manner as is prescribed by Rules of Court.^(c)

38. When an appeal has been instituted, the High Court or a Justice or the Court or Judge appealed from may order a stay of all or any proceedings under the judgment appealed from.^(d)

39.—(1.) When either party to a judgment from which an appeal lies to the High Court dies before the time allowed for instituting an appeal has expired, it shall not be necessary to revive the cause or matter by any formal proceedings.

(2.) If the personal representative of the deceased party desires to appeal, he may file in the Court in which the cause or matter is pending a duly certified copy of the instrument by which he is appointed, and thereupon may institute an appeal in the same manner as the party whom he represents might have done.^(e)

(3.) In the case of the death of the party in whose favour the judgment is given or made, notice of appeal may be given to his personal representative, or, if there is no such representative, to such person as the High Court or a Justice directs.

* * * * *

Schedule
repealed by
No. 5, 1937,
s. 4 and
Schedule.

(a) As to the effect of failure to give security within the time, see *Delph v. Karbowsky*, (1914) 18 C.L.R. 197; 20 A.L.R. 225. As to the jurisdiction of the Court to order payment of costs out of the security where the appellant has become insolvent, see *Commercial Bank of Australia Ltd. v. Roff Courtney King*, (1920) 42 A.L.J. 200; 26 A.L.R. 377; 1920 V.L.R. 588.

(b) Held by the High Court that applications for increase of amount of security must be made with expedition, whether there is a Justice of the High Court sitting in the State where the appeal is to be heard or not. *McLaughlin v. Daily Telegraph Newspaper Co. Ltd.*, (1904) 1 C.L.R. 143. As to matters to be taken into consideration by the Court in the exercise of its discretion, see *Roff Courtney King v. Commercial Bank of Australia Ltd.*, (1920) 28 C.L.R. 289.

(c) *Per Griffith, C.J., Barton and Gavan Duffy, J.J.*, compliance with the time and manner prescribed is a condition precedent to the coming into existence of a cause in the appellate jurisdiction. The Court held, therefore, that it has no jurisdiction to extend the time in the case of an appeal. *Delph Singh v. Karbowsky*, (1914) 18 C.L.R. 197; 20 A.L.R. 225. This decision has since been followed by the High Court in *R. v. Owens and Farrington; Ex parte Seaton*, (1933) 49 C.L.R. 20; 7 A.L.J. 49.

(d) In *Ex parte Quine; In re Me Kay*, (1912) 12 S.R. (N.S.W.) 662; 29 W.N. (N.S.W.) 176, the Supreme Court of New South Wales granted a stay of execution for the recovery of costs, on an affidavit that an application was about to be made to the High Court for special leave to appeal from the order under which the costs were payable.

(e) *Per the High Court*, this section does not refer to a case where the appeal had been instituted by the deceased prior to death. *Ryan v. Davies Bros. Ltd.*, (1921) 29 C.L.R. 527, at p. 535; 28 A.L.R. 178, at p. 180.

H.M.A.S. SYDNEY REPLACEMENT FUND ACT 1948.^(a)An Act relating to the Expenditure of the Moneys standing to the credit of the H.M.A.S. *Sydney* Replacement Fund.

Preamble.

WHEREAS the H.M.A.S. *Sydney* Replacement Fund (hereinafter referred to as "the Fund") is a trust account established under section sixty-two A of the *Audit Act* 1901-1947 :

AND WHEREAS the moneys standing to the credit of the Fund are the proceeds of public subscriptions invited for the purpose of establishing a fund for the replacement of the cruiser *Sydney*, which was lost in action in the year One thousand nine hundred and forty-one:

AND WHEREAS the purposes for which the Fund is established are defined under the *Audit Act* 1901-1947 as being—

(a) to bring to account all donations towards the replacement of H.M.A.S. *Sydney* ; and

(b) expenditure on a cruiser to replace H.M.A.S. *Sydney* :

AND WHEREAS the need of the Royal Australian Navy for one or more aircraft carriers is more urgent than the need for a further cruiser, and it is unlikely that a further cruiser will be obtained in the near future :

AND WHEREAS it is considered that in these circumstances the wishes of the subscribers of the moneys in the Fund would be met by the application of those moneys as soon as possible towards the acquisition for the Royal Australian Navy of an aircraft carrier to be named *Sydney* :

AND WHEREAS it is therefore desirable to vary the purpose for which the moneys standing to the credit of the Fund may be expended :

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

Short title.

1. This Act may be cited as the *H.M.A.S. Sydney Replacement Fund Act* 1948.^(a)

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Application of Fund.

3. Notwithstanding anything contained in the *Audit Act* 1901-1947, the Treasurer may authorize the expenditure of the moneys from time to time standing to the credit of the trust account established under section sixty-two A of that Act and known as the H.M.A.S. *Sydney* Replacement Fund for the purposes of the purchase or construction of an aircraft carrier, to be named *Sydney*, for the Royal Australian Navy.

(a) No. 34, 1948 ; assented to, and commenced, on 26th June, 1942. See s. 2.

HOSPITAL BENEFITS ACT 1945-1948.^(a)

An Act relating to Hospital Benefits, and for other purposes.

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

1. This Act may be cited as the *Hospital Benefits Act 1945-1948*.^(a)

Citation.
Short title
amended
No. 32, 1918,
s. 2.

2. This Act shall come into operation on a date to be fixed by Proclamation.^(a)

Commence-
ment.

3. The execution, by or on behalf of the Commonwealth, of agreements with all or any of the States, relating to the provision of hospital benefits, substantially in accordance with the heads of agreement specified in the First Schedule to this Act, is hereby authorized.^(b)

Execution of
agreements
relating to
hospital
benefits.

Amended by
No. 82 1948,
s. 3.

3A.—(1.) The execution, by or on behalf of the Commonwealth, of an agreement with any State, substantially in accordance with the form of agreement specified in the Second Schedule to this Act, amending the agreement entered into with that State under the last preceding section, is hereby authorized.

Execution of
amending
agreements.

Inserted by
No. 82, 1948,
s. 4.

(2.) Subject to the next succeeding sub-section, the regulations may authorize the execution, by or on behalf of the Commonwealth, of agreements with all or any of the States, substantially in accordance with forms of agreement specified in the regulations, amending any agreement the execution of which is authorized by this Act, including any such agreement as previously amended.

(3.) An agreement the execution of which is authorized by a regulation—

(a) shall deal only with the provision of hospital benefits ;
and

(a) The *Hospital Benefits Act 1945-1948* comprises the Acts set out in the following table :—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Hospital Benefits Act</i> 1945	1945, No. 47 ..	11th October, 1945 ..	6th December, 1945 <i>See Gazette</i> , 1945, p. 2660.
<i>Hospital Benefits Act</i> 1947	1947, No. 34 ..	12th June, 1947 ..	12th June, 1947
<i>Hospital Benefits Act</i> 1948	1948, No. 82 ..	21st December, 1948	21st December, 1948

(b) The agreements as executed are printed in Commonwealth Statutory Rules, 1945-1946, p. 1171 et seq.

- (b) if it is executed before the time at which that regulation ceases to be subject to the possibility of disallowance in pursuance of the *Acts Interpretation Act* 1901-1947, shall contain a provision that, if that regulation is disallowed in pursuance of that Act, the operation of the agreement shall thereupon terminate.

Patients in private hospitals or in hospitals outside Australia.

Amended by No. 34, 1947, s. 3.

4. The regulations may make provision for and in relation to payments by the Commonwealth of hospital benefits, at such rates and subject to such conditions as are prescribed, in respect of

- (a) patients in private hospitals as defined by the regulations ; and
(b) persons who are residents of Australia, as defined by the regulations, and who are temporarily absent from Australia, and such spouses, children or other dependants of any such residents of Australia as are prescribed.

Territories.

5. The Treasurer may pay to the Minister of State for Health such sums as are agreed upon between the Treasurer and that Minister towards the maintenance of public hospitals in the Australian Capital Territory and the Northern Territory.

Payments in respect of medical attendance, &c., in public wards of public hospitals.

Amended by No. 82, 1948, s. 5.

6.—(1.) There shall be payable, for each financial year, to such of the States as the Minister determines (being States which have executed agreements with the Commonwealth under this Act), by way of financial assistance, a sum not exceeding in the aggregate Five hundred thousand pounds.

(2.) The amount to be paid to any such State for any financial year shall be such amount (if any) as the Minister determines.

(3.) An amount payable to a State under this section for any financial year shall be paid upon condition that an amount not less than the first-mentioned amount is used by that State, in that financial year, in such manner and subject to such conditions as the Minister approves, in or towards the payment of salaries to medical practitioners, and to professional persons of such other classes as the Minister approves, attending qualified persons in public wards in public hospitals.

(4.) In the last preceding sub-section, the expressions " qualified persons ", " public wards " and " public hospitals " have, in relation to any State, the same meanings as those expressions have in the agreement executed between the Commonwealth and that State under section three of this Act, or in that agreement as amended.

Payment of hospital benefits to be made from National Welfare Fund.

Amended by No. 82, 1948, s. 6.

7. Payments for the purposes of this Act or the regulations, or for the purposes of any agreement the execution of which is authorized by this Act or the regulations (including the purposes of any arrangement made in pursuance of any such agreement), shall be made out of the Trust Account established under the

National Welfare Fund Act 1943-1945 and known as the National Welfare Fund.

8.—(1.) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for prescribing penalties not exceeding a fine of Fifty pounds, or imprisonment for a period not exceeding three months, for offences against the regulations.

(2.) Regulations made for the purposes of paragraph (b) of section four of this Act may be expressed to be deemed to have come into operation on a date specified in the regulations not being earlier than the first day of July, One thousand nine hundred and forty-six, and regulations so expressed shall be deemed to have had effect on and from the date so specified.

Regulations.

Added by
No. 34, 1947,
s. 4.

THE SCHEDULES.

FIRST SCHEDULE.

Schedule
titles amended.
No. 82, 1948,
s. 7.

HOSPITAL BENEFITS: HEADS OF AGREEMENT.

Section 3.

1. The agreement shall not have any force or effect unless and until authorised or approved by the Parliament of the State concerned.

2. The agreement shall be in force for a minimum period of five years and thereafter shall be subject to termination after [*here specify a period of notice by either party of not less than one year*].

3. The Commonwealth shall, subject to compliance by the State with the provisions of the agreement, pay to the State, by way of financial assistance, in respect of beds occupied by qualified persons in public and non-public wards in public hospitals, amounts determined in accordance with the agreement.

4. The amount to be paid by the Commonwealth for any financial year in respect of beds in public wards in public hospitals shall be determined by multiplying the Commonwealth Hospital Benefit Rate for Public Wards by the number of daily occupied beds in public wards in that financial year.

5. The amount to be paid by the Commonwealth for any financial year in respect of beds in non-public wards in public hospitals shall be determined by multiplying the Commonwealth Hospital Benefit Rate for Non-public Wards by the number of daily occupied beds in non-public wards in that financial year.

6.—(1.) The State shall, out of the amount paid to the State for each financial year under paragraph four of this Schedule, set aside the amount (if any) ascertained by subtracting from the amount so paid the aggregate of—

(a) the amount ascertained by multiplying the Commonwealth Hospital Benefit Expenditure Rate for Public Wards by the number of daily occupied beds in public wards in that financial year; and

(b) the amount by which donations (including voluntary contributions) received by public hospitals during that financial year and used for the maintenance of public hospitals is less than [*here insert an amount determined by the Commonwealth and the State based on the average*]

FIRST SCHEDULE—*continued.*

amount received by public hospitals during the financial years 1942-43 and 1943-44 by way of donations (including voluntary contributions) and used for the maintenance of public hospitals].

(2.) The State shall not use the amount so set aside, or interest thereon, otherwise than for capital expenditure on public hospitals as approved by the Commonwealth.

7. If the amount paid to the State for any financial year under paragraph four of this Schedule is less than the aggregate of the amounts referred to in clauses (a) and (b) of sub-paragraph (1.) of the last preceding paragraph, the Commonwealth shall pay to the State the amount of the difference.

8.—(1.) Subject to the next succeeding paragraph, the State shall ensure that no means test is imposed on, and that no fees are charged to or in respect of, qualified persons occupying beds in public wards in public hospitals.

(2.) The State may permit a public hospital to charge fees in respect of beds in a public ward which are temporarily used as non-public ward beds.

9.—(1.) The State shall ensure that the charges per day payable by qualified persons in respect of beds in non-public wards in public hospitals shall be reduced by the amount of the Commonwealth Hospital Benefit Rate for Non-public Wards.

(2.) The State shall ensure that no increase in those charges is made without the concurrence of the Commonwealth and that any such increase made after the first day of September, 1945, and prior to the date of the agreement shall cease to be applied, as from the date of the agreement, unless the Commonwealth concurs in the increase.

(3.) The Commonwealth shall not refuse its concurrence under the last preceding sub-paragraph in respect of any increase of charges necessitated by increased costs.

(4.) The State shall ensure that, except with the concurrence of the Commonwealth, no charge is made to qualified persons for services or comforts in public or non-public wards in public hospitals for which it was not customary to make a charge as at the first day of September, 1945.

10. The Commonwealth and the State, in conjunction with any other State which enters into an agreement with the Commonwealth in terms similar to the terms of the agreement, shall establish a council, to be known as the National Hospital Council to advise the Commonwealth and the States with respect to any matter relating to hospitals which is referred to the Council by the Commonwealth or a State.

11. The agreement may provide that nothing in the agreement shall be construed so as to affect the State's control of clinical teaching and research in public hospitals.

12. The agreement may contain such incidental and supplementary provisions as are necessary to give effect to the Commonwealth Hospital Benefits Scheme.

13. The agreement shall contain definitions substantially to the following effect and such other definitions as are necessary :—

“ the Commonwealth Hospital Benefit Rate for Public Wards ” means Six shillings or such other rate as is, from time to time, agreed upon between the Commonwealth and the State ;

“ the Commonwealth Hospital Benefit Rate for Non-public Wards ” means Six shillings or such other rate as is, from time to time, agreed upon between the Commonwealth and the State ;

“ the Commonwealth Hospital Benefit Expenditure Rate for Public Wards ” means [*here insert an amount determined by the Commonwealth and the State based on the average amount recovered during the financial years 1942-43 and 1943-44 from patients in public wards for each daily occupied bed*] or such other amount as is, from time to time, agreed upon between the Commonwealth and the State ;

“ public hospital ” means a hospital (not being a tuberculosis hospital within the meaning of the *Tuberculosis Act 1945*) which—

(a) is ordinarily recognized as a public hospital ; and

(b) is in receipt of a grant for maintenance from the State, and includes a State institution used for hospital purposes and a ward in any other institution maintained or subsidized by the State which is

FIRST SCHEDULE—*continued.*

used for hospital purposes and is for the time being approved by the Commonwealth.

"public ward" means a ward which is ordinarily recognized as a public ward;

"non-public ward" means a ward other than a public ward;

"qualified person" means a person who was ordinarily resident in Australia at the time of admission to a public hospital and is occupying a bed for the purposes of hospital treatment, and includes, where two or more children are born at one birth, any child born at that birth in excess of one, and also any newly born child except during the time the mother of that child is occupying a bed, but does not include a member of the staff of a public hospital receiving treatment in his own quarters or a person whose fees are borne by the Commonwealth or who has received, or is entitled to receive, those fees under any law in force in the State; and

"daily occupied bed" means a bed occupied by a qualified person for a full day (the day of admission and the day of discharge together being counted as one day).

SECOND SCHEDULE.

Section 3A.

Added by
No. 82, 1948,
s. 8.

AGREEMENT made the _____ day of _____, One thousand nine hundred and forty-_____, BETWEEN THE COMMONWEALTH OF AUSTRALIA (hereinafter called 'the Commonwealth') and THE STATE OF _____ (hereinafter called 'the State'):

WHEREAS on the _____ day of _____, One thousand nine hundred and forty-_____, the Commonwealth entered into an agreement (hereinafter called 'the principal agreement') with the State in pursuance of the *Hospital Benefits Act 1945* whereby the Commonwealth granted to the State financial assistance to enable it to make hospital services more fully available to the people of the State upon and subject to the terms and conditions set out in the principal agreement:

AND WHEREAS it is desired to amend the principal agreement in the manner hereinafter appearing:

NOW IT IS HEREBY AGREED as follows:—

1. This agreement shall not have any force or effect unless and until authorized or approved by the Parliament of the State.

2. Clause 1 (or clause 2 as the case may be) of the principal agreement is amended by omitting the definitions of 'public hospital', 'qualified person', 'the Commonwealth Hospital Benefit Expenditure Rate for Public Wards', 'the Commonwealth Hospital Benefit Rate for Non-Public Wards', and 'the Commonwealth Hospital Benefit Rate for Public Wards' and substituting the following definitions:—

"public hospital" means a hospital which—

(a) is ordinarily recognized as a public hospital; and

(b) is in receipt of a grant for maintenance from the State,

and includes a State institution used for hospital purposes and a ward in any other institution maintained or subsidized by the State which is used for hospital purposes and is for the time being approved by the Commonwealth, but does not include a public ward in a tuberculosis hospital within the meaning of the *Tuberculosis Act 1945* of the Commonwealth or a public ward in any hospital or part of a hospital the maintenance expenditure of which by the State is subject to an agreement under the *Tuberculosis Act 1948*;

"qualified person" means a person who was ordinarily resident in Australia at the time of admission to a public hospital and is occupying a bed for the purpose of hospital treatment and includes, where two or more children are born at one birth, any child born at that birth in excess of one, and also any newly born child except during the time the mother

*Hospital Benefits Act 1945-1948.*SECOND SCHEDULE—*continued.*

of that child is occupying a bed, but does not include the persons referred to in sub-clause (1.) of clause 3A hereof;';

' "the Commonwealth Hospital Benefit Rate for Non-Public Wards" means—

(a) in relation to the period from the date of commencement of this agreement until the thirty-first day of October, 1948—an amount of Six shillings;

(b) in relation to the remainder of the term of this agreement—an amount of Eight shillings, or such other amount as is, from time to time, agreed upon between the Commonwealth and the State;';

' "the Commonwealth Hospital Benefit Rate for Public Wards" means—

(a) in relation to the period from the date of commencement of this agreement until the thirtieth day of June, 1948—an amount of Six shillings;

(b) in relation to the remainder of the term of this agreement—an amount of Eight shillings, or such other amount as is, from time to time, agreed upon between the Commonwealth and the State;'.
'

3. After clause 3 of the Principal Agreement the following clauses are inserted:—

' 3A.—(1.) The following persons shall not be qualified persons for the purposes of this agreement:—

(a) a member of the staff of a public hospital receiving treatment in his or her own quarters;

(b) a person the whole of whose hospital fees (hereafter in this clause referred to as "fees") are paid or payable (directly or indirectly) by the Commonwealth;

(c) a person who has received, may receive or is entitled to receive, whether by way of damages or otherwise, the whole of his fees, or an amount representing in whole or in part the whole of his fees, under any law (including the common law) in force in the State, or in settlement of a claim under any such law; and

(d) a person the whole of whose fees are payable by any other person under any law in force in the State.

' (2.) In the case of a person—

(a) portion of whose fees are paid or payable (directly or indirectly) by the Commonwealth;

(b) who has received, may receive or is entitled to receive, whether by way of damages or otherwise, portion of his fees, or an amount representing in whole or in part portion of his fees, under any law (including the common law) in force in the State, or in settlement of a claim under any such law; or

(c) portion of whose fees are payable by any other person under any law in force in the State,

the portion of the fees, or the portion of an amount representing fees, referred to in this sub-clause shall, for the purposes of this sub-clause, be deducted from the total hospital fees payable in respect of the hospital treatment of that person and the number (calculated to the nearest whole number) arrived at by dividing the remaining amount by the daily hospital fee shall be deemed to be the number of days during which that person was a qualified person for the purposes of this agreement.

' 3B.—(1.) Where the Minister for Health of the State, or a person authorized by him to act under this clause, considers that the question whether, having regard to the last preceding clause, a person is, or was during any period, a qualified person cannot be satisfactorily determined for the time being, he may, by writing under his hand, direct that that person shall not be treated as being, or shall not be treated as having been during a specified period, a qualified person, and that person shall, subject to the next succeeding sub-clause, be deemed not to be at any time after the direction is given, or not to have been during the period (if any) specified in the direction, a qualified person for the purposes of this agreement.

' (2.) The Minister for Health of the State, or a person authorized by him to act under this clause may, by writing under his hand, revoke a direction given under the last preceding sub-clause, and thereupon—

SECOND SCHEDULE—*continued.*

- (a) the question whether the person affected by the direction is, or was during any period, a qualified person shall be determined as if the direction so revoked had not been given;
- (b) any necessary adjustment in payments by the Commonwealth under this agreement shall be made; and
- (c) the State shall ensure that any necessary adjustment in respect of hospital fees paid or payable by that person shall be made.

4. After clause 6 of the principal agreement the following clause is inserted:—

6A. Where an agreement is entered into between the Government of the Commonwealth and the Government of another part of His Majesty's dominions or of any foreign country providing for reciprocity in matters relating to hospital benefits, the Treasurer of the Commonwealth, on behalf of the Commonwealth, may enter into arrangements with the Treasurer of the State, on behalf of the State, providing for hospital benefits to be made available in accordance with the terms of that agreement to residents of that part of His Majesty's dominions or of that foreign country who are for the time being in Australia.

5. As from the first day of July, 1948, clauses 7 and 8 (*or 8 and 9 as the case may be*) of the principal agreement (dealing with amounts to be set aside by the State for capital expenditure on public hospitals and further payments to the State) shall be deemed to have ceased to have effect, but the State shall not use any amount (or interest) which has been set aside or should have been set aside in pursuance of the said clauses otherwise than for capital expenditure on public hospitals as approved by the Commonwealth.

6. In all other respects the principal agreement is confirmed.

IN WITNESS whereof the Prime Minister of the Commonwealth and the Premier of the State have signed this amending agreement the day and year first above written.

SIGNED by the Prime Minister of the
Commonwealth for and on behalf
of the Commonwealth in the
presence of—

SIGNED by the Premier of the State
for and on behalf of the State
in the presence of—

IMMIGRATION ACT 1901-1949.^(a)

An Act to place certain restrictions on Immigration and to provide for the removal from the Commonwealth of prohibited Immigrants.

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.
Short title
amended,
No. 32, 1918,
s. 2.

Definitions.
Amended by
No. 17, 1905,
s. 3; by
No. 38, 1912,
s. 2; by
No. 51, 1920,
s. 2; by
No. 26, 1932,
s. 2; by
No. 36, 1940,
s. 2; and by
No. 86, 1948,
s. 2.

1. This Act may be cited as the *Immigration Act 1901-1949*.^(a)
2. In this Act, unless the contrary intention appears—
 - “Authorized officer”, in relation to the exercise of any power or the discharge of any duty or function under this Act, means an officer authorized for that purpose by the Minister;
 - “Collector of Customs”, in relation to any power or function, includes an officer authorized in writing by the Minister to exercise or perform that power or function;
 - “Master of a vessel” includes the pilot of an aircraft;
 - “Officer” means any officer appointed under this Act, or any Officer of Customs or of the Department of Immigration or any member of the police force of a State or Territory being part of the Commonwealth;

(a) The *Immigration Act 1901-1949* comprises the *Immigration Restriction Act 1901* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table :—

Act	Year and Number	Date of Assent	Date of Commencement.
<i>Immigration Restriction Act 1901</i>	1901, No. 17 ..	23rd December, 1901	23rd December, 1901
<i>Immigration Restriction Amendment Act 1905</i>	1905, No. 17 ..	21st December, 1905	1st February, 1906 (See <i>Gazette</i> , 1906, p. 96).
<i>Immigration Restriction Act 1908</i>	1908, No. 25 ..	14th December, 1908	14th December, 1908
<i>Immigration Restriction Act 1910</i>	1910, No. 16 ..	16th September, 1910	16th September, 1910
<i>Immigration Act 1912</i>	1912, No. 38 ..	24th December, 1912	24th December, 1912
<i>Immigration Act 1920</i>	1920, No. 51 ..	2nd December, 1920	2nd December, 1920
<i>Immigration Act 1924</i>	1924, No. 47 ..	20th October, 1924	20th October, 1924
<i>Immigration Act 1925</i>	1925, No. 7 ..	20th July, 1925	20th July, 1925
<i>Immigration Act 1930</i>	1930, No. 56 ..	29th November, 1930	29th November, 1930
<i>Immigration Act 1932</i>	1932, No. 26 ..	30th May, 1932	30th May, 1932
<i>Immigration Act 1933</i>	1933, No. 37 ..	9th December, 1933	9th December, 1933
<i>Immigration Act 1935</i>	1935, No. 13 ..	12th April, 1935	12th April, 1935
<i>Immigration Act 1940</i>	1940, No. 36 ..	4th June, 1940	2nd July, 1940
<i>Immigration Act 1948</i>	1948, No. 86 ..	21st December, 1948	1st June, 1949 (See <i>Gazette</i> , 1949, p. 1577).
<i>Immigration Act 1949</i>	1949, No. 31 ..	12th July, 1949 ..	12th July, 1949

The Principal Act was also affected by the *Contract Immigrants Act 1905* (1905, No. 19). This Act was repealed by the *Statute Law Revision Act 1950* (1950, No. 80).

- "Passport" includes a document of identity issued from official sources, whether within or outside Australia, and having the characteristics of a passport;
- "Registered agent" means a person registered in pursuance of section fourteen H of this Act;
- "Vessel" includes aircraft.

3.—(1.) The immigration^(a) into the Commonwealth of the persons described in any of the following paragraphs of this section (hereinafter called "prohibited immigrants") is prohibited, namely:—

- (a) any person who fails to pass the dictation test: that is to say, who, when an officer or person duly authorized in writing by an officer dictates to him not less than fifty words in any prescribed^(b) language, fails to write them out in that language in the presence of the officer or authorized person.^(c)

No regulation prescribing any language or languages shall have any force until it has been laid before both Houses

Prohibited immigrants.
See Natal 1897, No. 1, s. 3.

W.A. 1897, No. 13, s. 2.
N.S.W. 1898, No. 3, s. 3.

Para. (a) substituted by No. 17, 1905, s. 4 and amended by No. 47, 1924, s. 2.

(a) British subjects entering the Commonwealth may be required to take an oath. See *War Precautions Act Repeal Act 1920-1934*, s. 9. For discussions of the meaning of "immigration" and "immigrant" see *Munn v. Ah On*, (1905) 7 W.A.L.R. 182; *Chiu Gee v. Martin*, (1905) 3 C.L.R. 649; 12 A.L.R. 425; *Ah Sheung v. Lindberg*, 1906 V.L.R. 323; 27 A.L.J. 189; 12 A.L.R. 190; (and, on appeal, *sub. nom. Attorney-General for the Commonwealth v. Ah Sheung* (1906) 4 C.L.R. 949); *Ah Yin v. Christie*, (1907) 4 C.L.R. 1428; 13 A.L.R. 372; *Potter v. Minahan*, (1908) 7 C.L.R. 277; 14 A.L.R. 635; *Danohue v. Wong Sau*, (1925) 36 C.L.R. 404; *R. v. MacFarlane*; *Ex parte O'Flanagan and O'Kelly*, (1923) 32 C.L.R. 518; 29 A.L.R. 353; and *Ex parte Walsh and Johnson*; *In re Yates*, (1925) 37 C.L.R. 36; 32 A.L.R. 46. Held by the High Court that a previous conviction as a prohibited immigrant is no evidence that he is a prohibited immigrant on a subsequent date. *Bain v. Ah Kee*, (1914) 17 C.L.R. 433; 20 A.L.R. 721. For a discussion of the time when and the manner in which the tests in this section may be applied see *O'Keefe v. Calwell*, (1949) 77 C.L.R. 261 *per Williams J.*, at pp. 293-295.

(b) Section 5 of the *Immigration Restriction Amendment Act 1905* is as follows:—"5. Until a regulation prescribing any language or languages under section three of the Principal Act as amended by this Act shall come into force, any language authorized by section three of the Principal Act before the commencement of this Act shall be deemed to be a prescribed language within the meaning of that section as so amended."

Paragraph (a) of section 3 of the Act of 1901, for which the present paragraph (a) (as since amended) was substituted in 1905, was as follows:—"Any person who when asked to do so by an officer fails to write out a dictation and sign in the presence of the officer a passage of fifty words in length in an European language directed by the officer." Concerning this paragraph the following decisions have been given:—It is essential that a passage of fifty words, neither more nor less, should be dictated. Where the officer stopped after reading ten words out, being satisfied that the immigrant did not understand what was being read to him, and had not attempted to write any of the ten words so dictated, no offence was committed. *Christie v. Ah Foo*, (1904) 29 V.L.R. 533; 25 A.L.J. 189; 10 A.L.R. 34; *Munn v. Ah On*, (1905) 7 W.A.L.R. 182. It is for the officer, and not the immigrant, to select the European language for the purpose of applying the dictation test. *Chiu Gee v. Martin*, (1905) 3 C.L.R. 649; 12 A.L.R. 425. "An European Language" means a standard form of speech recognized as the received and ordinary means of communication among the inhabitants of an European community for all purposes of the social body, and that Scottish Gaelic is not such a language. *R. v. Wilson*; *Ex parte Kisch*, (1934) 52 C.L.R. 234; 41 A.L.R. 130.

The decision that it is for the officer and not the immigrant to select the language was again followed by the High Court in *R. v. Davey*; *Ex parte Freer*, (1936) 56 C.L.R. 381; 43 A.L.R. 71; 10 A.L.J. 338.

Held by the High Court (Evatt J.) that it is immaterial that the immigrant deliberately prevented herself from hearing the dictation. Failure to pass the test results automatically upon the occurrence of a double event, viz.:—

- (1) The officer (or person duly authorized in writing by the officer) dictates to the person arriving a certain number of words in an European language, and

- (2) The person arriving fails to write down those words in the said European language in the presence of the officer (or authorized person).

R. v. Davey; *Ex parte Freer*, (1936) 56 C.L.R. 381; 43 A.L.R. 71; 10 A.L.J. 338.

(c) As to the method of administering the dictation test, see *Potter v. Minahan*, (1908) 7 C.L.R. 277; 14 A.L.R. 635. Held by Pring J. of the Supreme Court of New South Wales, that where a defendant, charged with being a prohibited immigrant, has failed to pass the dictation test in the presence of an officer, the Court has no jurisdiction to apply the test to the defendant at the hearing of the charge. *McManus v. Santos*, (1907) 24 W.N. (N.S.W.) 37.

of the Parliament for thirty days and, before or after the expiration of such thirty days, both Houses of the Parliament, by a resolution, of which notice has been given, have agreed to such regulation ;

Substituted by
No. 38, 1912,
s. 3.

Substituted by
No. 51, 1920,
s. 3.

Substituted by
No. 38, 1912,
s. 3.

Substituted by
No. 38, 1912,
s. 3.

Substituted by
No. 49, 1924,
s. 2.

Added by
No. 38, 1912,
s. 3.

Added by
No. 38, 1912,
s. 3, and
amended by
No. 26, 1932,
s. 3.

Added by
No. 38, 1912,
s. 3.

Added by
No. 38, 1912,
s. 3.

Added by
No. 51, 1920,
s. 3.

Substituted by
No. 36, 1940,
s. 3.

- (b) any person not possessed of the prescribed certificate of health ;
- (c) any idiot, imbecile, feeble-minded person, epileptic, person suffering from dementia, insane person, person who has been insane within five years previously, or person who has had two or more attacks of insanity ;
- (d) any person suffering from a serious transmissible disease or defect ;
- (e) any person suffering from pulmonary tuberculosis, trachoma, or with any loathsome or dangerous communicable disease, either general or local ;
- (f) any person who, in the opinion of an officer, is likely, if he enters the Commonwealth, to become a charge upon the public by reason of infirmity of mind or body, insufficiency of means to support himself, or any other cause ;
- (g) any person suffering from any other disease, disability, or disqualification which is prescribed ;
- (ga) any person who has been convicted of a crime and sentenced to imprisonment for one year or more ;
- (gb) any person who has been convicted of any crime involving moral turpitude, but whose sentence has been suspended or shortened conditionally on his emigration, unless five years have elapsed since the expiration of the term for which he was sentenced ;
- (gc) any prostitute, procurer, or person living on the prostitution of others ;
- (gd) any person who advocates the overthrow by force or violence of the established government of the Commonwealth or of any State or of any other civilized country, or of all forms of law, or who advocates the abolition of organized government, or who advocates the assassination of public officials or who advocates or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization which entertains and teaches any of the doctrines and practices specified in this paragraph ;
- (ge) any alien who, on demand by an officer, fails to satisfy the officer—
 - (a) that he is the holder of a landing permit, issued by or on behalf of the Minister, authorizing the admission of the holder into Australia, and that

he is able to comply with the conditions specified therein ; or

(b) that his admission into Australia has otherwise been authorized by or on behalf of the Minister ;

(gf) any person who in the opinion of an officer is not under the age of sixteen years, and who, on demand by an officer, fails to prove that he is the holder of a passport—

Added by
No. 51, 1920,
s. 3 ; amended
by No. 47, 1924,
s. 2 ; and by
No. 7, 1925,
s. 2.

(i) which was issued to him by and on behalf of the Government of the Commonwealth or any Government recognized by the Government of the Commonwealth ;

Substituted by
No. 86, 1948,
s. 4.

(ii) which contains a personal description sufficient to identify him and to which is attached a photograph of him ;

(iii) which is still in force ; and

(iv) which, if issued by or on behalf of a Government other than a Government of any part of His Majesty's dominions, is, except where a visé is dispensed with in pursuance of an international arrangement to which the Commonwealth is a party, viséed or endorsed for entry into Australia by a consular or passport officer of the Commonwealth or of any other part of His Majesty's dominions ;

Substituted by
No. 86, 1948,
s. 4.

(gg) any person who has been deported in pursuance of any Act and whose re-entry into the Commonwealth has not been authorized by the Minister ; and

Added by
No. 51, 1920,
s. 3 ; amended
by No. 36, 1940,
s. 3.

(gh) any person declared by the Minister to be in his opinion, from information received from the Government of the United Kingdom or of any other part of the British Dominions or from any foreign Government, through official or diplomatic channels, undesirable as an inhabitant of, or visitor to, the Commonwealth ;^(a)

Added by
No. 7, 1925,
s. 2.

But the following are excepted :—

(h) Any person possessed of a certificate of exemption as prescribed in force for the time being ;

Exemptions.

(i) members of the King's regular land or sea forces ;

Natal, 1897,
No. 1, s. 2 ;
W.A. 1897,
No. 13, s. 2 ;
N.S.W., 1898,
No. 3, s. 2.

(j) the master and crew of any public vessel of any Government during the period of that vessel's stay in an Australian port ;

See Vict. No.
1073, s. 8.

(k)^(b) the master and crew of any other vessel landing during

Para. (h)
amended by
No. 38, 1912,
s. 3.

(a) Held by the High Court to be a valid exercise of the power of the Parliament. *R. v. Carter ; Ex parte Kisch*, (1934) 52 C.L.R. 221 ; 41 A.L.J. 125. *Per* the High Court (Evatt J.) there must in fact be information from the specified Government and through the specified channels, not merely a declaration by the Minister to that effect. *Ibid.*

Para. (j)
amended by
No. 86, 1948,
s. 4.

(b) Two Chinese, who were members of the crews of vessels arriving in Australia, were charged with being immigrants who within five years after entering the Commonwealth had been required to pass a dictation test and had failed to do so. The magistrate took the view that the effect of this paragraph was to make an exception of the persons therein specified from the category of prohibited immigrants for all purposes of the Act and acquitted the defendants. Held by the High Court that the magistrate was wrong in holding that s. 5 refers back to s. 3 in relation to exemptions. In order to determine whether a person is guilty of an offence under s. 5 (6) it is only necessary to consider whether he is a person who is by virtue of s. 5 deemed to be a prohibited immigrant offending against the Act. *Gamble v. Lau Sang and anor.*, (1943) 67 C.L.R. 455 ; 49 A.L.J. 338, 17 A.L.J. 131.

the stay of the vessel in any port in the Commonwealth :

Provided^(a) that the master shall upon being so required by any officer, and before being permitted to clear out from or leave the port, muster the crew in the presence of an officer ; and if it is found that any person, who according to the vessel's articles^(b) was one of the crew when she arrived at the port, and who would in the opinion of the officer^(c) be a prohibited immigrant but for the exception contained in this paragraph, is not present,^(d) then such person shall not be excepted by this paragraph, and until the contrary is proved shall be deemed to be a prohibited immigrant and to have entered the Commonwealth contrary to this Act :

Added by
No. 38, 1912,
s. 3.

Provided also that identification cards bearing the full name, thumbprint, photograph, and prescribed description of each member of the crew, and indorsed by the master, have been produced to any officer on demand :

Added by
No. 47, 1924,
s. 2.

Provided further that the exception contained in this paragraph shall not apply to any member of the crew as to whom the master reports in writing to an officer that the member has deserted or is absent without leave, and, until the contrary is proved, the member shall be deemed to be a prohibited immigrant and to have entered the Commonwealth contrary to this Act ;^(e)

Amended by
No. 47, 1924,
s. 2.

(l) any person duly accredited to the Government of the Commonwealth by the Government of the United Kingdom or any other Government or sent by any Government on any special mission.

Paras. (m) and
(n) omitted ;
No. 17, 1905,
s. 4.

* * * * *

Sub-section (2.)
added by
No. 86, 1948,
s. 4.

(2.) An intending immigrant shall be required to make, in the prescribed form, a declaration as to whether he is such a person as is described in paragraph (gd) of the last preceding sub-section,

(a) Held by the High Court that this proviso applies to a prosecution of the master, &c., of a vessel under section 9, whether it does or does not apply to a prosecution against the immigrant himself. Held also that the most natural grammatical construction of the language of the proviso is that the officer is to be of opinion that the person in question *would, if called upon*, fail to pass the dictation test. *Preston v. Donohoe*, (1906) 3 C.L.R. 1089 ; 12 A.L.J. 426.

(b) Held by the Full Court of the Supreme Court of New South Wales that where a member of the crew, who would, in the opinion of the officer, be a prohibited immigrant, is absent from the muster, it must be strictly proved (in order to make the master liable under section 9), that the absence was entered on the ship's articles as a member of the crew. *Donohoe v. Le Coispeiller*, (1902) 19 W.N. (N.S.W.) 223.

(c) Held by the High Court that where an officer has applied his mind to a relevant question, his opinion cannot be questioned in a prosecution founded on that opinion. *Preston v. Donohoe*, (1906) 3 C.L.R. 1089. See also *Donohoe v. Le Coispeiller*, (1902) 19 W.N. (N.S.W.) 223.

(d) Held by the High Court that where a member of the crew who would, in the opinion of the officer, be a prohibited immigrant, is absent from the muster, he is an immigrant who has " evaded " an officer within the meaning of section 5. *Li Wan Quai v. Christie*, (1906) 3 C.L.R. 1125 ; 12 A.L.J. 429.

(e) Held by the High Court to be *intra vires* the Parliament and to apply to prosecutions under section 9. *Orient Steam Navigation Co. Ltd. v. Gleeson*, (1931) 44 C.L.R. 254 ; 4 A.L.J. 371 ; 37 A.L.R. 61.

and, unless he makes a declaration that he is not such a person, his immigration into the Commonwealth shall be prohibited and he shall be a prohibited immigrant within the meaning of this Act.

3A.—(1.) The Governor-General may establish Commonwealth Medical Bureaux at such places outside the Commonwealth as he thinks fit.

Establishment of medical bureaux and appointment of officers.

(2.) The Minister may appoint a Chief Medical Officer to be in charge of a Commonwealth Medical Bureau and such other officers in connexion with the Bureau as he thinks necessary.

Inserted by No. 38, 1912, s. 4.

(3.) The salaries of such officers shall be paid out of moneys to be provided by the Parliament.

(4.) Officers so appointed shall not be subject to the *Commonwealth Public Service Act* 1902-1911^(a) or any Act amending or substituted for the same.

3B.—(1.) The Minister may appoint duly qualified medical practitioners to be medical referees for the purposes of this Act at such places outside or within the Commonwealth as he thinks fit.

Appointment of medical referees.

(2.) Medical referees shall be paid such fees as are prescribed.

Inserted by No. 38, 1912, s. 4.

3C. The Minister may authorize a list of questions to be put to and answered by an intending immigrant on his examination by a medical referee.

Minister may prescribe list of questions.

Inserted by No. 38, 1912, s. 4.

3D.—(1.) An intending immigrant shall be examined as to his physical and mental fitness by a medical referee, and shall answer the authorized list of questions put to him by the medical referee, who shall, if he is satisfied that the intending immigrant is of sound health, issue to him, on payment of the prescribed fee, a certificate of health in the prescribed form.

Medical examination of intending immigrants.

Inserted by No. 38, 1912, s. 4.

(2.) Where an intending immigrant embarks at a port where there is no medical referee, he shall prior to his departure be examined as to his physical and mental fitness by the ship's medical officer, and shall answer the authorized list of questions put to him by the ship's medical officer, who shall, if he is satisfied that the intending immigrant is of sound health, issue to him, on payment of the prescribed fee, a certificate of health in the prescribed form.

(3.) If the medical referee or the ship's medical officer is not satisfied that the intending immigrant is of sound health, he shall send a report on the health of the intending immigrant, together with the answers of the intending immigrant to the authorized list of questions to the Chief Medical Officer, who may, if he thinks fit, on payment of the prescribed fee, issue a certificate of health in the prescribed form to the intending immigrant:

Provided that the Chief Medical Officer shall not issue a certificate of health to any person believed by him to be suffering from or

(a) Now the *Public Service Act* 1922-1950, *infra*.

affected with any disease or disability either specifically mentioned or of a class mentioned in this Act or the regulations.

(4.) The Chief Medical Officer may require an intending immigrant to be examined as to his physical and mental fitness by him or by a duly qualified medical practitioner appointed by him.

Immigrant not possessing certificate may be permitted to be examined.

Inserted by No. 38, 1912, s. 4.

3E.—(1.) A Collector or Sub-collector of Customs may, if he thinks fit, permit an intending immigrant who on arrival in the Commonwealth does not possess a certificate of health in the prescribed form to be examined as to his physical and mental fitness by a medical referee upon payment of the prescribed fee.

(2.) The medical referee shall, if he is satisfied that the intending immigrant is of sound health, issue to him a certificate of health in the prescribed form.

Master to report when certificates issued by ship's medical officer.

Inserted by No. 38, 1912, s. 4.

3F. The master of a ship carrying passengers to Australia shall on the ship's arrival at her first port of entry in the Commonwealth report to an officer all cases in which a certificate of health has been issued to an intending immigrant by the ship's medical officer.

Penalty : Fifty pounds.

Medical officer to certify that immigrants have been examined on voyage.

Inserted by No. 38, 1912, s. 4.

3G.—(1.) The master of a ship carrying passengers to Australia shall furnish to the officer in charge at a port of entry a certificate by the ship's medical officer that he has individually examined each intending immigrant at least once during the voyage to Australia.

(2.) The medical officer of a vessel carrying passengers to Australia shall report to the officer in charge at a port of entry all cases of intending immigrants who on the voyage to Australia have shown indications of suffering from or being affected with any disease or disability, either specifically mentioned or of a class mentioned in this Act or the regulations.

Penalty : Fifty pounds.

Certificates to be attached to passenger list.

Inserted by No. 38, 1912, s. 4.

3H. All certificates of health issued to intending immigrants shall be attached to the passenger list and handed to an officer at the port of entry.

Officer may detain immigrant for further examination.

Inserted by No. 38, 1912, s. 4.

3I. An officer may, if he thinks fit, detain an intending immigrant on his arrival at a port of entry in Australia for a further examination as to his physical and mental fitness by a medical referee :

Provided that the detention of the immigrant shall not affect the liability of the master, owners, agents, or charterers of the vessel, in which the immigrant came to the Commonwealth, under section thirteen A of this Act.

Minister may prevent immigrant from entering the Commonwealth.

Inserted by No. 38, 1912, s. 4.

3J. The Minister may, if he thinks fit, prevent an intending immigrant from entering the Commonwealth, notwithstanding that a certificate of health has been issued to the intending immigrant.^(a)

(a) *Per* the High Court (Evatt J.) : This power is intended to be exercised on grounds relating to health and does not confer upon the Minister an absolute and unqualified power to prevent an intending immigrant from entering the Commonwealth. *R. v. Dacey; Ex parte Freer*, (1936) 56 C.L.R. 381, at p. 385 ; 43 A.L.R. 71, at pp. 72-73 ; 10 A.L.J. 338.

3k.—(1.) The Governor-General may by Proclamation prohibit, either wholly or in excess of specified numerical limits, and either permanently or for a specified period, the immigration into the Commonwealth, or the landing at any specified port or place in the Commonwealth, of aliens of any specified nationality, race, class or occupation, in any case where he deems it desirable so to do—

Prohibition by
proclamation.
Inserted by
No. 7, 1925,
s. 3.

- (a) on account of the economic, industrial or other conditions existing in the Commonwealth;
- (b) because the persons specified in the Proclamation are in his opinion unsuitable for admission into the Commonwealth; or
- (c) because they are deemed unlikely to become readily assimilated or to assume the duties and responsibilities of Australian citizenship within a reasonable time after their entry.

(2.) Any person who enters the Commonwealth in contravention of the prohibition contained in any such Proclamation shall be deemed to be a prohibited immigrant.

4.^(a)—(1.) The Minister or an authorized officer may issue^(b) a certificate of exemption in the prescribed form authorizing the person named in the certificate (being a prohibited immigrant or an immigrant who may be required to pass the dictation test) to enter or remain in the Commonwealth, and the person named in the certificate shall not, while the certificate is in force, be subject to any of the provisions of this Act restricting entry into or stay in the Commonwealth.^(c)

Certificate
to enter
or remain
temporarily.
Substituted by
No. 36, 1940,
s. 4.
Sub-section (1.)
substituted by
No. 31, 1949,
s. 3.

(2.) The certificate shall be expressed to be in force for a specified period only, but the period may be extended from time to time by the Minister or by an authorized officer.^(d)

(3.) Any such certificate may at any time be cancelled by the Minister by writing under his hand.

(a) Held by the High Court that this section is a valid exercise of the power to legislate with respect to immigration. *Koon Wing Lau v. Calwell*; *Ng Kwan v. Commonwealth*, (1950) 80 C.L.R. 534; [1950] A.L.R. 97; 24 A.L.J. 25.

(b) Unless the person named in the certificate has applied for it or unless the application for it being waived by the authorities, he accepts it when delivery is tendered it has not been validly issued—*per Rich, Dixon and Williams J.J.* *Koon Wing Lau v. Calwell*; *Ng Kwan v. Commonwealth*, (1950) 80 C.L.R. 534; [1950] A.L.R. 97; 24 A.L.J. 25.

(c) Section 4 (1) of the *Immigration Act 1901-1940* for which the present sub-section has been substituted was as follows: "The Minister, or an officer thereto authorized in writing by the Minister (in this section referred to as 'an authorized officer'), may issue a certificate of exemption in the prescribed form authorizing any person who, unless he possesses such a certificate, is liable to be prohibited under this Act from entering or remaining in the Commonwealth, to enter or remain in the Commonwealth without being subject to any of the provisions of this Act restricting entry into or stay in the Commonwealth". Held by the High Court (*Rich, McTiernan, Williams and Webb J.J.*; *Latham C.J.* and *Dixon J.* dissenting) that the expression "person . . . liable to be prohibited . . . from entering or remaining in the Commonwealth means a person who is really a prohibited immigrant and not one who may be turned into a prohibited immigrant by the application of some provision of the Act." "Liable" does not mean exposure to liability. *O'Keefe v. Calwell*, (1949) 77 C.L.R. 261; [1949] A.L.R. 381.

(d) Held by the High Court (*Latham C.J.*, *McTiernan* and *Webb J.J.*; *Rich, Dixon* and *Williams J.J.* dissenting) that the period of operation of a certificate may be extended without the delivery of any document to or the notification of the person named in the certificate. *Koon Wing Lau v. Calwell*; *Ng Kwan v. Commonwealth* (1950) 80 C.L.R. 534; [1950] A.L.R. 97; 24 A.L.J. 25.

Sub-section (4.)
substituted by
No. 31, 1949,
s. 3.*

(4.) Upon the expiration or cancellation of any such certificate, the Minister may declare the person named in the certificate to be a prohibited immigrant and that person may thereupon be deported from the Commonwealth in pursuance of an order of the Minister.^(a)

Sub-section (5.)
omitted by No.
86, 1948, s. 5.

* * * * *

(6.) Where, in pursuance of this section, a person enters the Commonwealth from any vessel, a penalty shall not attach to the vessel or its master, owners, agents or charterers in respect of such entry; but the master, owners, agents or charterers of the vessel may, at any time within five years after the entry of the person into the Commonwealth, be required by notice in writing given by any Collector of Customs, to provide a passage for that person from the Commonwealth to the place whence he came, and in default of compliance with that requirement shall be guilty of an offence.

Penalty: One hundred pounds.

Exemption
from dictation
test of subjects
or citizens of a
country with
which an
arrangement
has been made.

Inserted by
No. 17, 1905,
s. 8.

4A.—(1.) If the Minister notifies by notice in the *Gazette* that an arrangement has been made with the Government of any country regulating the admission to the Commonwealth of the subjects or

(a) Prior to the amendment of s. 4 in 1905, the second paragraph of that section was as follows:—"Upon the expiration or cancellation of any such certificate, the person named therein may, if found within the Commonwealth, be treated as a prohibited immigrant offending against this Act." It was held by the Full Court of Western Australia that the proper construction of this paragraph was that, on the expiration or cancellation of the certificate, the person named therein might be proceeded against as a prohibited immigrant, the effect of the certificate being merely to suspend the operation of the Act. *Mann v. Ah On*, (1905) 7 W.A.L.R. 182.

L., formerly a member of the crew of a Dutch ship and an alien had since 1943 obtained certificates of exemption under this section. Seven months after the expiration of the last certificate he was declared a prohibited immigrant under sub-s. (4) and ordered to be deported. Upon his failure to embark on a ship he was arrested. On application by L. for a Writ of *Habeas Corpus* it was held by the Supreme Court of N.S.W. that as this Act and the National Security Regulations wholly covered the matter to the exclusion of any exercise of the Royal Prerogative L.'s right to remain or liability to be deported must be determined in accordance with the statutory provisions. Held further that this section provided an independent code for those who had obtained exemption from the provisions of s. 3 by means of a certificate of exemption and was not affected by s. 5 (2). Held also that the word "upon" in sub-s. (4) means "after" and consequently L.'s declaration as a prohibited immigrant was not invalid because it was made "upon" the expiration of his certificate of exemption. *Ex parte Leeputti*; *Re Murphy*, (1947) 47 S.R. (N.S.W.) 433.

See also *Koon Wing Lau v. Calwell*; *Ng Kwan v. Commonwealth*, (1950) 80 C.L.R. 534; [1950] A.L.R. 97; 24 A.L.J. 25.

* Section 4 of the *Immigration Act* 1949 reads as follows:—

"Where, before the commencement of this Act, a person (being a person empowered by or under the *Immigration Restriction Act* 1901, or by or under that Act as amended, to issue certificates of exemption) purported to issue (a) a certificate of exemption to a person named in the certificate (being, at the time when the certificate was issued, a prohibited immigrant or an immigrant who might be required to pass the dictation test) and—

(a) the person named in the certificate was, at the commencement of this Act, an immigrant; or

(b) the certificate purported to have been in force at any time within the period of two years immediately preceding the commencement of this Act,

the certificate shall be deemed to have been validly issued, and the provisions of the Principal Act, as amended by this Act, shall apply to and in relation to the person named in the certificate, and to and in relation to the certificate, as if the certificate had been issued under the Principal Act as so amended." (b)

(a) Held by the High Court that the writing out and signing of a certificate without delivery or notification to the immigrant does not amount to the issue or purported issue of a certificate. *Koon Wing Lau v. Calwell*; *Ng Kwan v. Commonwealth* (1950) 80 C.L.R. 534; [1950] A.L.R. 97; 24 A.L.J. 25.

(b) Held by the High Court (Latham C.J., Dixon, McTiernan and Webb J.J.; Rich and Williams J.J. dissenting as to paragraph (b) but treating that paragraph as severable) that this section comes wholly within the immigration power. *Koon Wing Lau v. Calwell*; *Ng Kwan v. Commonwealth*, (1950) 80 C.L.R. 534; [1950] A.L.R. 97; 24 A.L.J. 25.

citizens of that country, the subjects or citizens of that country shall not, while the notice continues to have effect, be required to pass the dictation test.

(2.) The Minister shall not issue any such notice until the arrangement has been sanctioned by resolution of both Houses of the Parliament.

(3.) Any such notice shall cease to have effect upon the Minister notifying, by notice in the *Gazette*, that it is cancelled.

4AA. If the Minister notifies, by notice in the *Gazette*, that an arrangement has been made with the Government of any country under which persons who are British subjects or subjects or citizens of that country, are not, when proceeding from that country to the Commonwealth, or from the Commonwealth to that country, required to be in possession of passports, persons who are British subjects or subjects or citizens of that country shall not be subject to the prohibition contained in paragraph (gf) of section three of this Act.

Exemption from passport provision in case of countries with which arrangement in force.

Inserted by No. 51, 1920, s. 5.

4B.—(1.) Any person who has resided in Australia for a period or periods in the aggregate of not less than five years, and who is about to depart from the Commonwealth, may in manner prescribed apply to an officer authorized in that behalf for a certificate in the prescribed form excepting him, if he returns to the Commonwealth within the period limited in the certificate, from the provisions of paragraph (a) of section three of this Act.

Certificate excepting from dictation test.

Inserted by No. 17, 1905, s. 8.

(2.) The officer may in his discretion give the certificate on payment of the prescribed fee, or, without assigning any reason, withhold it.

(3.) Where the Minister is satisfied that a certificate given under this section has been obtained by any untrue statement of fact or intention, the Minister may revoke the certificate, which shall thereupon be taken to be of no effect, and shall on demand be delivered up to the Minister.

(4.) A person to whom a certificate under this section has been issued (which certificate has not been revoked) shall not, on his return to the Commonwealth within the time limited by the certificate, if he produces and delivers the certificate to an officer, be required to pass the dictation test.

5.—(1.) Any immigrant who—

(a) evades^(a) or has, since the commencement of the *Immigration Restriction Act* 1901, evaded an officer ;

(b) enters or has, since the commencement of the *Immigra-*

Immigrants evading the officers or found within the Commonwealth.

Sub-section (1.) substituted by No. 47, 1924, s. 3 ;

Amended by No. 56, 1930, s. 2.*

Amended by No. 36, 1940, s. 5.

(a) Concerning s. 5 (1) of the *Immigration Restriction Act* 1901-1905 (for which this sub-section has been substituted) the High Court held that a member of the crew of a vessel who had deserted his ship and was absent from a muster of the crew made in pursuance of s. 3 (k) was an immigrant who has evaded an officer within the meaning of that section. *Li Wan Quai v. Christie*, (1906) 3 C.L.R. 1125 ; 12 A.L.J.R. 429.

* Section 2 (2) of the *Immigration Act* 1930 reads " The amendments effected by this section shall be deemed to have commenced on the date of the commencement of the *Immigration Act* 1924 ". See footnote (b) on page 2007.

tion Restriction Act 1901, entered the Commonwealth at any place where no officer is stationed ;

- (c) obtains or has, since the commencement of the *Immigration Restriction Act* 1901, obtained entrance or re-entrance into the Commonwealth by means of any permit, certificate, passport, credentials, identification card or other document which was not issued to him or is forged, or has been obtained by false representations ;
- (d) has been admitted temporarily into the Commonwealth in pursuance of any special arrangement between the Commonwealth Government and any other Government and fails to observe the conditions of his admission ; or
- (e) has been admitted into the Commonwealth as an indentured labourer for service in the pearling industry and is deemed by the Minister to be an undesirable person,

may, if at any time thereafter, he is found within the Commonwealth, be required to pass the dictation test, and shall, if he fails to do so, be deemed to be a prohibited immigrant offending against this Act.

Amended by
No. 17, 1905,
s. 9,
No. 51, 1920,
s. 6, and by
No. 26, 1932,
s. 4.

Substituted by
No. 47, 1924,
s. 3.

(2.) Any immigrant^(a) may at any time within five years after he has entered the Commonwealth be required to pass the dictation test, and shall if he fails to do so be deemed to be a prohibited immigrant offending against this Act.^(b)

(3.) In any prosecution under either of the last two preceding sub-sections, the averment of the prosecutor, contained in the information, that the defendant is an immigrant who^(b)—

- (a) has evaded an officer ;
 - (b) has entered the Commonwealth at a place where no officer is stationed ;
 - (c) has obtained entrance or re-entrance into the Commonwealth by means of any permit, certificate, passport, credentials, identification card or other document which was not issued to him or is forged or was obtained by false representations ;
 - (d) has been admitted temporarily into the Commonwealth in pursuance of a special arrangement between the Commonwealth Government and another Government and has failed to observe the conditions of his admission ;
 - (e) has been admitted into the Commonwealth as an indentured labourer for service in the pearling industry and is deemed by the Minister to be an undesirable person ;
- or

Amended by
No. 36, 1940,
s. 5.

(a) See footnote (a) to s. 3 on p. 1997, *supra*.

(b) Held by the High Court that in a prosecution under sub-s. (2) the prosecution may rely on an averment pursuant to sub-s. (3) as to some of the facts alleged notwithstanding that it has elected to prove other facts. *Gabriel v. Ah Mook*, (1924) 34 C.L.R. 591 ; 31 A.L.R. 84.

See also footnote (b) to s. 3 (k) and footnote (a) to s. 4, *supra*.

(f) has entered the Commonwealth within five years before failing to pass the dictation test, shall be deemed to be proved in the absence of proof to the contrary by the personal evidence of the defendant either with or without other evidence.^{(a)(b)}

Amended by
No. 26, 1932,
s. 4.

(3A.) Proof to the contrary by the personal evidence of the defendant, within the meaning of the last preceding sub-section, shall not (unless it is proved that the defendant was born in Australia) be deemed to have been given unless the defendant in his personal evidence states truly the name of the vessel by which he travelled to Australia and the date and place of his arrival in Australia.^{(b)(c)}

Substituted by
No. 7, 1925,
s. 4;
amended by
No. 26, 1932,
s. 4.

(3B.) Where the prosecutor applies to the Court for an adjournment of the proceedings to obtain evidence in rebuttal of any evidence tendered by the defendant, the Court shall grant an adjournment for such time as is necessary for that purpose.

Inserted by
No. 7, 1925,
s. 4.

(3C.) Official documents of the Commonwealth, or of a State, or of a Territory under the authority of the Commonwealth, and telegrams and affidavits produced out of the official custody of the Commonwealth purporting to have been sent or taken by an officer, shall, if they contain information or statements upon matters relevant to the proceedings, be admissible in evidence.

Inserted by
No. 7, 1925,
s. 4.

(4.) In any prosecution for an offence against sub-section (1.) or sub-section (2.) of this section, a defendant who gives evidence shall not be excused from answering any question put to him on the ground that the answer may tend to criminate him or make him liable to a penalty; but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury.

Added by
No. 38, 1912,
s. 5; amended
by No. 47, 1924,
s. 3.

(4A.) In any prosecution under this section where it is alleged that the defendant was a member of the crew of a vessel, the averment of the prosecutor that the defendant was a member of the crew of that vessel shall be deemed to be proved in the absence of proof to the contrary if the prosecutor produces an identification

Inserted by
No. 51, 1920,
s. 6.

(a) As to evidence necessary to rebut an averment made under the corresponding provision of the *Immigration Restriction Act 1901-1910*, see *Ah Hoy v. Hough*, (1912) 14 W.A.L.R. 214.

(b) Held by the High Court (Isaacs, Powers, Rich and Starke JJ.; Higgins J. agreeing insular as they relate to an averment that the defendant had "evaded an officer" but doubting insular as they relate to an averment "that the defendant is an immigrant"; Knox C.J. and Gavan Duffy J. dissenting) that these sub-sections are *intra vires* the Parliament. *Williamson v. Ah On*, (1926) 39 C.L.R. 95; 33 A.L.R. 13. Prior to the amendments made to sub-s. (1) by the amending Act of 1930 the High Court held that sub-ss. 3 and 3A were limited in their application to prosecutions under sub-ss. (1) and (2) and did not extend to a prosecution in respect of an act governed by s. 5 (1) of the *Immigration Restriction Act 1901-1908*. *Ah Yon v. Gleeson*, (1930) 43 C.L.R. 589; 4 A.L.J. 160; 36 A.L.R. 273. (See also *Ah Hing v. Hough*, (1926) 28 W.A.L.R. 95). After the amendments to sub-s. (1) effected by the amending Act of 1930 the Supreme Court of New South Wales held that sub-ss. (3) and (3A.) applied to an act within the meaning of sub-s. (1) committed in 1911 notwithstanding that the conviction had been recorded prior to the commencement of the 1930 amending Act. *Maher v. Young*, (1931) 31 S.R. (N.S.W.) 363; 48 W.N. (N.S.W.) 116. Held by the High Court that the provisions of sub-s. (3) may not be applied to a prosecution under s. 7 of the Act. *Griffin v. Wilson*, (1935) 52 C.L.R. 260; 41 A.L.R. 229. Held by the Supreme Court of Western Australia (McMillan C.J. and Draper J.; Northmore J. dissenting) that, having regard to the concluding words of sub-s. (3), a magistrate should consider the evidence of other witnesses called by the defence even though he is unable to place reliance on the personal evidence of the defendant. *Ah On and Ah Con v. Williamson and Pickett*, (1925) 28 W.A.L.R. 74.

(c) Held by the High Court that this sub-section does not operate as a legal obstacle in the way of a person who satisfies the proper tribunal that he arrived in a colony before the establishment of the Commonwealth. *Ah Abdul v. Maher*, (1931) 46 C.L.R. 580; 5 A.L.J. 324.

card in the prescribed form relating to a member of the crew of a vessel of that name, and bearing a personal description, photographs and thumb prints of the defendant.

Added by
No. 38, 1912,
s. 5.

(5.) If an immigrant is within three years of his entering the Commonwealth found to be suffering from or affected with any disease or disability either specifically mentioned or of a class mentioned in this Act or the regulations, he shall be deemed to be a prohibited immigrant, unless it is proved to the satisfaction of the Minister that he was free from the disease or disability at the time he entered the Commonwealth.

Added by
No. 13, 1935,
s. 2.

(6.) Any person who is, by virtue of this section, deemed to be a prohibited immigrant offending against this Act shall be guilty of an offence.^(a)

Penalty: Imprisonment for six months, and, in addition to or substitution for such imprisonment, deportation from the Commonwealth pursuant to an order made in that behalf by the Minister.

Entry permitted
on certain
conditions.

See Natal 1897,
No. 1, s. 5;
W.A. 1897 No.
13, s. 5;
N.S.W. 1898,
No. 3, s. 5.

Amended by
No. 17, 1905,
s. 10; and by
No. 38, 1912,
s. 6.

6. Any prohibited immigrant within the meaning of paragraph (a) only of section three may if thought fit by an officer be allowed to enter the Commonwealth or to remain within the Commonwealth upon the following conditions:—

(a) He shall on entering the Commonwealth or on failing to pass the dictation test, deposit with an officer the sum of One hundred pounds.

(b) He shall within thirty days after depositing such sum obtain from the Minister a certificate of exemption as prescribed or depart from the Commonwealth, and thereupon the deposit shall be returned; but otherwise the deposit or any part thereof may be forfeited and he shall be deemed to be a prohibited immigrant offending against this Act:

Amended by
No. 17, 1905,
s. 7.

Provided that in the case of a person entering the Commonwealth from any vessel under this section no penalty shall attach to the vessel or its master owners agents or charterers.

Unlawful entry
of prohibited
immigrants.

See Natal 1897,
No. 1, s. 4;
W.A. 1897,
No. 13, s. 4;
N.S.W. 1898,
No. 3, s. 4.

Amended by
No. 38, 1912,
s. 7, by No. 47,
1924, s. 4, and
by No. 13, 1935,
s. 3.

7. Every prohibited immigrant entering or found within the Commonwealth^(b) in contravention or evasion of this Act and every

(a) See footnote (b) to s. 3 (k), *supra*.

(b) Held by the High Court that the fact that stowaways, who were discovered, were brought ashore in custody is no defence to a subsequent prosecution for being prohibited immigrants found within the Commonwealth. *Chia Gee v. Martin*, (1905) 3 C.L.R. 649; 12 A.L.R. 425. A, a Chinese, was, on arrival in the Commonwealth by boat, prevented by the captain from landing, on the ground that he was a prohibited immigrant. On the return of a writ of *habeas corpus* directed to the captain, it was held by a Judge of the Supreme Court of Victoria that A was identical with a naturalized Victorian subject of that name, and was therefore not an immigrant. The Judge therefore ordered his release. On a subsequent prosecution of A for being a prohibited immigrant found within the Commonwealth, it was held by the High Court that the judgment of the Supreme Court of Victoria was not admissible evidence upon the question of fact of the identity of A. *Christie v. Ah Sheung*, (1906) 3 C.L.R. 998; 12 A.L.R. 432.

P. had assisted in the transportation of prohibited immigrants from place to place in the Commonwealth. Held by the High Court (Latham C.J., Dixon and McTiernan JJ; Starke and Evatt JJ, dissenting) that in the absence of evidence showing that P. had something to do with the prohibited immigrants being within the Commonwealth, he was not guilty of aiding an offence against this section. *R. v. Goldie; Ex parte Picklum*, (1937) 59 C.L.R. 254; 44 A.L.R. 25; 11 A.L.J. 304.

person who, by virtue of this Act, is deemed to be a prohibited immigrant offending against this Act shall be guilty of an offence against this Act, and shall be liable upon summary conviction to imprisonment for not more than six months, and in addition to or substitution for such imprisonment shall be liable pursuant to any order of the Minister to be deported from the Commonwealth.^(a)

7AA. Any imprisonment imposed for an offence against section five or section seven of this Act shall cease for the purpose of deportation, or, subject to authority being granted by the Minister, if the offender finds two sureties each in the sum of One hundred pounds and each approved by the Collector of Customs or Sub-collector of Customs at the port concerned for his leaving the Commonwealth within one month or within such extended period as is authorized by the Minister.

Deportation of prisoner.

Amended by No. 38, 1912, s. 7; by No. 47, 1924, s. 4; by No. 13, 1935, s. 3; and by No. 36, 1940, s. 6.

7A. Where a person is convicted under section five or section seven of this Act and appeals against his conviction, he shall not be released on bail unless he finds two sureties, each in the sum of One hundred pounds and each approved by the Collector of Customs or Sub-collector of Customs at the port concerned, for his appearance at the hearing of the appeal.

Sureties to be found where appeal lodged.

Inserted by No. 7, 1925, s. 5, and amended by No. 13, 1935, s. 4.

8. Any person, not being a British subject either natural-born or naturalized, who is convicted of a crime of violence against the person or of extorting any money or thing from any resident of the Commonwealth by force or threat, or of any attempt to commit such a crime, or who is convicted of any other criminal offence for which he is sentenced to imprisonment for one year or longer, shall be liable, upon the expiration of, or during, any term of imprisonment imposed on him therefor, to be deported from the Commonwealth pursuant to any order of the Minister.

Certain persons may be deported.

Substituted by No. 36, 1940, s. 7.

8A^(b).—(1.) Where the Minister is satisfied that, within five years after the arrival in Australia of a person who was not born in Australia and who arrived in Australia on or after the date of commencement of this section, that person—

Deportation of certain persons.

Inserted by No. 51, 1920, s. 7; amended by No. 47, 1924, s. 5; by No. 26, 1932, s. 6, and by No. 37, 1933, s. 2.

- (a) has been convicted in Australia of a criminal offence punishable by imprisonment for one year or longer^(c);
- (b) is living on the prostitution of others;

(a) Held by the High Court that an averment pursuant to s. 5 (3) may not be made use of on a prosecution under this section. *Griffin v. Wilson*, (1935) 52 C.L.R. 260; 41 A.L.R. 229.

(b) Held by the High Court (Knox C.J., Isaacs, Rich and Starke J.J.; Higgins J. doubting) to be *intra vires* the Parliament as a law respecting immigration. *R. v. MacFarlane*; *Ex parte O'Flanagan and O'Kelly*, (1923) 32 C.L.R. 518; 29 A.L.R. 353.

(c) Held by the Supreme Court of Victoria (O'Bryan J.) that there is no difference in meaning between the expression "twelve months" in s. 74 of the *Crimes Act* 1928 (Victoria) and "one year" in this paragraph. Held further, that a deportation order based on this paragraph sufficiently complies with the requirements of this section if it contains a statement of the fact that the deportee has been convicted of an offence punishable by imprisonment for one year or longer. The order need not state when, how or whither the deportation is to be carried out. *R. v. The Governor of the Metropolitan Gaol*, 1949 V.L.R. 91; [1949] A.L.R. 478.

- (c) has become an inmate of an insane asylum or public charitable institution; or
- (d) is a person who advocates the overthrow by force or violence of the established government of the Commonwealth or of any State, or of any other civilized country, or of all forms of law, or who advocates the abolition of organized government, or who advocates the assassination of public officials or who advocates or teaches the unlawful destruction of property, or who is a member of, or affiliated with, any organization which teaches any of the doctrines and practices specified in this paragraph,

he may, in the case of a person to whom he is satisfied that the provisions of paragraph (a), (b), or (c) apply, make an order for his deportation, and, in the case of a person to whom he is satisfied that the provisions of paragraph (d) apply, he may, by notice in writing, summon the person to appear before a Board at the time specified in the summons and in the manner prescribed, to show cause why he should not be deported from the Commonwealth.

(2.) A Board^(a) appointed for the purposes of the last preceding sub-section shall consist of three members to be appointed by the Minister.

Amended by
No. 47, 1924,
s. 5.

(3.) The Chairman shall be a person who holds or has held the office of Judge, or Police, Stipendiary or Special Magistrate.

(4.) (a) If the person fails to appear at the time specified in the summons to show cause why he should not be deported,
or

(b) the Board recommends that he be deported from the Commonwealth,

the Minister may make an order for his deportation.

Sub-section (5.)
omitted by
No. 7, 1925,
s. 6.

Deportation
upon
proclamation of
industrial
disturbance.

Inserted by
No. 7, 1925,
s. 7.

* * * * *

8AA.^(b)—(1.) If at any time the Governor-General is of opinion that there exists in Australia a serious industrial disturbance prejudicing or threatening the peace, order or good government of the Commonwealth, he may make a Proclamation to that effect, which Proclamation shall be and remain in force for the purposes of this section until it is revoked by the Governor-General.

(2.) When any such Proclamation is in force, the Minister, if he is satisfied that any person not born in Australia has been concerned

(a) Held by the High Court that a Board appointed pursuant to this section is not a judicial tribunal and that prohibition does not therefore lie to prevent it from proceeding with the matter of a summons to show cause against deportation. Held also that *quo warranto* and *certiorari* are inappropriate remedies. *R. v. MacFarlane*; *Ex parte O'Flanagan and O'Kelly*, (1923) 32 C.L.R. 518; 29 A.L.R. 353.

(b) Held by the High Court (Knox C.J., Isaacs, Rich and Starke JJ.; Higgins J. dissenting) to be a valid exercise of the power conferred on the Parliament by s. 51 (xxvii.) of the Constitution to legislate with respect to immigration but (per Knox C.J., Higgins and Starke JJ.; Isaacs and Rich JJ. dissenting) is not authorized by any power of the Commonwealth other than the immigration power and cannot therefore apply to persons who have ceased to be immigrants and have become members of the Australian community. *Ex parte Walsh and Johnston*; *In re Yates*, (1925) 37 C.L.R. 36; 32 A.L.R. 46.

in Australia in acts directed towards hindering or obstructing, to the prejudice of the public, the transport of goods or the conveyance of passengers in relation to trade or commerce with other countries or among the States, or the provision of services by any department or public authority of the Commonwealth, and that the presence of that person in Australia will be injurious to the peace, order or good government of the Commonwealth in relation to matters with respect to which the Parliament has power to make laws, may, by notice in writing,^(a) summon the person to appear before a Board, at the time specified in the summons and in the manner prescribed, to show cause why he should not be deported from the Commonwealth.

(3.) Sub-sections (2.), (3.) and (4.) of section eight A of this Act shall apply in relation to the Board mentioned in the last preceding sub-section.

8AB.—(1.) Where any person who was not born in Australia has, at any time, whether before or after the commencement of this section, within three years before the notice in writing referred to in this section, been convicted in Australia of an offence against the laws of the Commonwealth relating to trade and commerce or conciliation and arbitration for the prevention or settlement of industrial disputes, and the Minister is satisfied that any of the acts constituting the offence were directed towards hindering or obstructing, to the prejudice of the public, the production or transport of goods or the conveyance of passengers or the provision of necessary services, and that the presence of that person in Australia will be injurious to the peace, order or good government of the Commonwealth, the Minister may, by notice in writing, summon the person to appear before a Board, at the time specified in the summons and in the manner prescribed, to show cause why he should not be deported from the Commonwealth.

Deportation for offences to prejudice of public.

Inserted by No. 7, 1925, s. 7.

(2.) Sub-sections (2.), (3.), and (4.) of section eight A of this Act shall apply in relation to the Board mentioned in the last preceding sub-section.

8AC. A person summoned to appear before a Board in pursuance of either of the last two preceding sections shall be deemed not to have been born in Australia unless he proves that he was born in Australia.

Onus of proof as to place of birth.

Inserted by No. 7, 1925, s. 7.

8B.—(1.) A national of any country who, in pursuance of any treaty to which the Commonwealth is a party, is liable to be returned to that country, may be deported from the Commonwealth to that country pursuant to any order of the Minister.

Power to deport foreign nationals.

Inserted by No. 51, 1920, s. 7.

(2.) The master, owners, agents and charterers of any vessel shall, when required so to do by the Minister or any person thereto

(a) Held by Isaacs and Rich JJ., that the person must be informed with reasonable definiteness of what particular acts the Minister is satisfied. *Ex parte Walsh and Johnson*; *In re Yates*, (1925) 37 C.L.R. 36; 32 A.L.R. 46.

authorized in writing by the Minister, provide a passage to any port to which the vessel is bound and such accommodation as the Minister, or any person thereto authorized in writing by the Minister, thinks fit for any person ordered to be deported from the Commonwealth in pursuance of the last preceding sub-section.

Dependants of
deportee.

Inserted by
No. 26, 1932,
s. 7.

8BA. Where an order has been made under this Act for the deportation of any person, the wife and dependent children of that person may, if the wife so desires, be included in the order for deportation and thereupon the provisions of this Act relating to deportation shall apply to the wife and dependent children.

Custody
pending
deportation.

Inserted by
No. 7, 1925,
s. 8.

Amended by
No. 36, 1940,
s. 8.

8c. Where the Minister has made an order under this Act for the deportation of any person, that person shall, unless the Minister otherwise directs, be deported accordingly, and may—

- (a) pending deportation and until he is placed on board a vessel for deportation from Australia ;
- (b) at any port in Australia at which the vessel calls after he has been placed on board ; and
- (c) on board the vessel until her departure from her last port of call in Australia,

be kept in such custody as the Minister or an officer directs.

Penalty on
masters and
owners of ships.

Natal 1897,
No. 1, s. 8 ;
W.A. 1897,
No. 13, s. 8 ;
N.S.W. 1898,
No. 3, s. 8.

Amended by
No. 17, 1905,
ss. 7, 12.

Proviso
omitted ;
No. 17, 1905,
s. 12.

Penalty for
bringing
stowaways
into the
Commonwealth.

Inserted by
No. 25, 1908,
s. 3.

9. The master, owners, agents, and charterers of any vessel from which any prohibited immigrant enters the Commonwealth contrary to this Act shall be guilty of an offence against this Act, and be jointly and severally liable on summary conviction to a penalty of One hundred pounds for each prohibited immigrant so entering the Commonwealth.^(a)

* * * * *

9A.—(1.) If any vessel, having on board any stowaway^(b) who is a prohibited immigrant, comes into any port^(c) in Australia, the

(a) Held by the High Court to be *intra vires* the Parliament. *Orient Steam Navigation Co. Ltd. v. Gleeson*, (1931) 44 C.L.R. 254 ; 4 A.L.J. 371 ; 37 A.L.R. 61. Held by the High Court that the proviso to s. 3 (k) (now the first proviso) applies to a prosecution under this section. *Preston v. Donohoe*, (1906) 3 C.L.R. 1089 ; 12 A.L.R. 426. The third proviso to s. 3 (k) has also been held by the High Court to apply to prosecutions under this section. *Orient Steam Navigation Co. Ltd. v. Gleeson*, *supra*. Where the information omitted to allege that the defendant was master of the ship on the day when the immigrant entered the Commonwealth, and also omitted to specify the particular class of prohibited immigrant within which the immigrant was alleged to fall, it was held by the High Court that, even if these allegations were necessary, the omission of them was a defect which, under the State Justices Act, might be cured by an amendment of the conviction according to the evidence. *Preston v. Donohoe*, *supra*. Held, also, that the provisions of this section are not in conflict with the *Imperial Merchant Shipping Act*. *Ibid.* Held, also, that a magistrate, in dealing with a case under this section, has the same power as to costs as if he had been exercising his ordinary jurisdiction. *Alexander v. Donohoe*, (1906) 4 C.L.R. 781 ; 13 A.L.R. 630. As to the power of the High Court to amend a conviction under this section. *see ibid.*

Held by the Supreme Court of New South Wales that the penalty of one hundred pounds for each stowaway provided in this section is fixed and irreducible notwithstanding the provisions of s. 41 of the *Acts Interpretation Act 1901-1937*. *R. v. Francis Booth*, 48 S.R. (N.S.W.) 10.

(b) Held by the High Court that the term "stowaway" is not exhaustively defined by s. 9D. That section is an extension of the term, indicating that persons belonging to the class mentioned, though not in fact, apart from the section, stowaways, are deemed to be stowaways for the purposes of the Act. *Muller v. Dalgety and Co. Ltd.*, (1909) 9 C.L.R. 693 ; 16 A.L.R. 17.

(c) Held by the High Court that the word "port" is to be regarded in the ordinary sense of a shipping or commercial port. *Muller v. Dalgety and Co. Ltd.* (*supra*).

master, owners, agents, and charterers of the vessel shall be jointly and severally liable on summary conviction to a penalty of One hundred pounds for each such stowaway:^(a)

Provided that, where the master of the vessel has within the twelve months preceding the conviction been convicted of an offence against this section, he shall be liable to a penalty of Two hundred pounds for each prohibited immigrant so entering the Commonwealth.

Added by
No. 38, 1912,
s. 8.

(2.) Every stowaway brought into any port on board a vessel shall be deemed to be a prohibited immigrant unless it is proved that he has passed the dictation test or that an officer has given him permission to land without restriction.

Amended by
No. 10, 1910,
s. 3.

9B.—(1.) Any officer may at any time search any vessel in any port or in any territorial waters of the Commonwealth to ascertain whether there are any stowaways on board the vessel, and for that purpose may board the vessel, and enter into any part of the vessel.

Power to search
vessels for
stowaways.

Inserted by
No. 25, 1908,
s. 3.

(2.) At the request of an officer, the master of a vessel shall facilitate the boarding of the vessel, and shall by all means in his power facilitate the searching of the vessel by the officer, and if he fails or neglects to do so he shall be liable on summary conviction to a penalty of One hundred pounds.

9C.—(1.) Any officer may, by notice in writing to the master of the vessel, detain any vessel at any port or place for a reasonable time for the purpose of enabling him to search the vessel to ascertain whether there are any stowaways on board the vessel.

Power to detain
vessel for
searching.

Inserted by
No. 25, 1908,
s. 3.

(2.) If the master of any vessel detained in pursuance of this section moves his vessel without the consent of the officer, while she is under detention, he shall be liable on summary conviction to a penalty of One hundred pounds.

9D. Any person on board a vessel at the time of her arrival from any place outside Australia at any port in Australia who is not—

Definition of a
stowaway.

Inserted by
No. 25, 1908,
s. 3; amended
by No. 10, 1910
s. 4.

(a) a *bonâ fide* passenger on the vessel, or

(b) a member of the crew of the vessel whose name is on the articles,

shall be deemed to be a stowaway,^(b) unless the master of the vessel forthwith after the arrival of the vessel at the port gives notice to an officer that the person is on board the vessel, and does not permit him to land until the officer has had an opportunity of satisfying himself that the person is not a prohibited immigrant.

(a) Held by the High Court that the offence created by this section is complete at the coming of the ship into port, and cannot be purged by subsequent notice, even if that notice be given at the earliest possible moment after knowledge of the fact. *Muller v. Dalgety and Co., Ltd.* (*supra*).

(b) Held by the High Court that this section does not exhaustively define the term "stowaway" as used in s. 9A, but is an extension of that term, including persons who, though not in fact stowaways, are deemed to be stowaways for the purposes of the Act. *Muller v. Dalgety and Co., Ltd.* (1909) 9 C.L.R. 693; 16 A.L.R. 17.

Detention of
vessel.
See Vict. No.
1073, s. 14.

10.—(1.) The Minister, or any Collector of Customs specially empowered by him, may by writing under his hand authorize any officer to detain any vessel from which any prohibited immigrant has, in the opinion of the officer, entered the Commonwealth contrary to this Act; and the vessel may then be detained either at the place where she is found, or at any place to which the Minister or Collector may order her to be brought. The Minister or such Collector shall forthwith give notice to the owner or agent of the vessel of the detention of such vessel.

Powers of
detaining
officer.

(2.) For the purposes of the detention and other lawful dealing with the vessel the officer so authorized shall be entitled to obtain such writ of assistance or other aid as is provided under any law relating to the Customs with respect to the seizure of vessels or goods.

Detention
to cease if
bond given.

Amended by
No. 17, 1905,
s. 7.

(3.) The detention shall be for safe custody only, and shall cease if a bond with two sufficient sureties to the satisfaction of the Minister or the Collector be given by the master owners agents or charterers of the vessel for the payment of any penalty which may be adjudged under this Act to be paid for the offence or default.

Sale of vessel
on default.

(4.) If default is made in payment of any such penalty, the officer may seize the vessel; and the like proceedings shall thereupon be taken for forfeiting and condemning the vessel as in the case of a vessel seized for breach of any law relating to the Customs, and the vessel shall be sold.

Application of
proceeds.

(5.) The proceeds of the sale shall be applied first in payment of the penalty and of all costs incurred in and about the sale and the proceedings leading thereto, and the balance shall be paid to the owners of or other persons lawfully entitled to the vessel before condemnation and sale.

S. 11 repealed;
No. 19, 1905,
s. 3.

* * * * *

Assisting
persons to
contravene Act.

See Natal 1897,
No. 1, s. 11;
N.S.W. 1898,
No. 3, s. 10.

12.—(1.) Any person who in any way wilfully assists any other person to contravene or attempt to contravene any of the provisions of this Act, or makes or authorizes any contract or agreement the performance of which would be a contravention of this Act, shall be guilty of an offence against this Act.

(2.) Any person who makes or authorizes such contract or agreement shall be liable to the Commonwealth for any expense incurred by the Commonwealth in respect of any immigrant prohibited by reason of the contract or agreement.

Penalty for
being concerned
in bringing
immigrants
secretly to the
Commonwealth.

Inserted by
No. 10, 1910,
s. 5; amended
by No. 47, 1924,
s. 6.

12A. Every person who is directly or indirectly concerned in—

(a) the bringing or coming to the Commonwealth of any immigrant, under circumstances which lead to the inference that the immigrant intended to land in the Commonwealth secretly or without the knowledge of an officer; or

- (b) the concealing of any immigrant with intent to enable him to land in the Commonwealth secretly or without the knowledge of an officer ; or
- (c) the concealment of any immigrant with intent to prevent his discovery by an officer,

shall be guilty of an offence against this Act, and be liable on summary conviction to a penalty of Two hundred pounds or six months' imprisonment or both.

12B.—(1.) Any person arriving in the Commonwealth who—

- (a) has in his possession, without lawful excuse (proof whereof shall lie upon him), any false certificate of naturalization or false certificate of birth ; or
- (b) falsely represents to an officer that he is the person named in any certificate of naturalization or certificate of birth ; or
- (c) produces to an officer any certificate of naturalization or certificate of birth with intent to deceive or mislead him,

shall be guilty of an offence against this Act.

Penalty : One hundred pounds or six months' imprisonment.

(2.) In this section—

“ Certificate of naturalization ” includes any certificate or letters of naturalization or denization issued in the Commonwealth or in a State or in a Colony which has become a State, or any document purporting to be a certificate of naturalization or any document resembling or apparently intended to resemble a certificate of naturalization ; and

“ Certificate of birth ” includes any certified copy of any entry in or certified extract from any official register of births kept in the Commonwealth or in a State or in a Colony which has become a State, or any document purporting to be a certificate of birth or any document resembling or apparently intended to resemble a certificate of birth.

13. Any person who is wilfully instrumental in bringing or attempting to bring into the Commonwealth any prohibited immigrant within the meaning of paragraphs (b), (c), (d), (e), (f), (g), or (gc) of section three of this Act contrary to this Act shall, in addition to any other penalty, be liable to the Commonwealth for any expense in respect of the maintenance of the prohibited immigrant whilst within the Commonwealth.

False
naturalization
papers.

Inserted by
No. 10, 1910,
s. 5.

Bringing idiots
or insane
persons, &c.,
into the
Commonwealth.
See Natal 1897,
No. 1, s. 13 ;
W.A. 1897,
No. 13, s. 13.

Amended by
No. 17, 1905,
s. 13 ; and by
No. 38, 1912,
s. 9.

Duty of master, &c., of vessel bringing prohibited immigrant to provide return passage.

Inserted by No. 17, 1905, s. 14; amended by No. 7, 1925, s. 9 and by No. 26, 1932, s. 8.

13A.—(1.) The master, owners, agents, or charterers of a vessel in which a prohibited immigrant, or a person who under section three or section five of this Act becomes a prohibited immigrant or a person whose deportation has been ordered by the Minister in pursuance of section eight A eight AA eight AB or eight BA of this Act, comes to the Commonwealth, shall, on being required in writing by any Collector of Customs so to do, without charge to the Commonwealth, provide a passage for the prohibited immigrant or person to the place whence he came, and shall also be liable to pay to the Commonwealth for the State a fair sum to recoup the State for the cost of keeping and maintaining the prohibited immigrant or person while awaiting his deportation from Australia.

Added by No. 7, 1925, s. 9.

(2.) The master, owner, agents or charterers of any vessel shall, on being required in writing by a Collector of Customs so to do, receive on board for conveyance to any port to which the vessel is bound and which is specified by the Collector, any person against whom an order for deportation under this Act has been made, and shall also receive on board for such time as is required by the Collector, any person charged with the custody of the person against whom the order has been made.

Added by No. 7, 1925, s. 9.

(3.) For the services specified in the last preceding sub-section the Minister shall pay to the master, owner, agents, or charterers such passage money as is prescribed.

Power of master to prevent prohibited immigrant from landing.

Inserted by No. 17, 1905, s. 14; amended by No. 51, 1920, s. 8.

13B. The master of a vessel on which a prohibited immigrant, or a person reasonably supposed to be a prohibited immigrant, is, may, with the necessary assistance, take all reasonable measures to prevent the prohibited immigrant^(a) from entering the Commonwealth from the vessel in contravention of this Act.

Custody of stowaway during stay of vessel in Australia.

Inserted by No. 86, 1948, s. 6.

13C.—(1.) A stowaway who is a prohibited immigrant and is brought into a port in Australia may—

(a) if an authorized officer so directs; or

(b) if the master of the vessel on which the stowaway was brought into that port so requests and an authorized officer approves,

be taken ashore by an officer and kept in such custody, and for such period after the vessel's arrival in that port and before its departure from its last port of call in Australia, as the authorized officer directs, and may, upon the expiration of that period, be returned to the vessel by an officer.

(2.) The master, owners, agents or charterers of the vessel shall be liable to pay to the Commonwealth a fair sum for the cost of keeping and maintaining the stowaway while he is kept in custody

(a) Per Evatt J. that power of the master conferred by this section extends to the prohibited immigrant only and not to the "person reasonably supposed to be a prohibited immigrant". Even assuming the contrary, however, His Honour considered that once a Court has determined that a person is not a prohibited immigrant the master is no longer justified in detaining the person on the vessel. *R. v. Carter*; *Ex parte Kisch*, (1934) 52 C.L.R. 221; 41 A.L.J. 125.

in pursuance of this section and the cost of the transportation of the stowaway and of any custodian between the vessel and the place of custody.

(3.) A stowaway shall not, for the purposes of this Act, be deemed, by reason only of his having been taken ashore in pursuance of this section, to have entered the Commonwealth or to have been given permission to land.

14. Every officer may with any necessary assistance prevent any prohibited immigrant, or person reasonably supposed to be a prohibited immigrant, from entering the Commonwealth, and may take all legal proceedings necessary for the enforcement of this Act.

Powers to enforce Act.

Amended by No. 10, 1910, s. 6.

14A. Every officer may, without warrant, arrest any person reasonably supposed to be a prohibited immigrant offending against this Act, and no person shall resist or prevent such arrest.

Power to arrest prohibited immigrant.

Inserted by No. 17, 1905, s. 15; amended by No. 10, 1910, s. 7.

14B.—(1.) Any officer may stop and search any vessel or vehicle in which he has reason to suspect any prohibited immigrant to be.

Power to search for prohibited immigrants.

(2.) Any officer may, at any reasonable hour in the day time, enter any building premises or place in which he has reasonable cause to believe any prohibited immigrant to be, and search the building premises or place to ascertain whether any prohibited immigrant is therein.

Inserted by No. 10, 1910, s. 8.

14C. Every officer may, without warrant, arrest any person reasonably supposed to be a person whose deportation has been ordered by the Minister in pursuance of this Act, and no person shall resist or prevent such arrest.

Arrest of persons liable to deportation.

Inserted by No. 26, 1932, s. 9.

Penalty : One hundred pounds or imprisonment for six months.

14D.—(1.) A Collector or Sub-Collector of Customs may require and take security for compliance with the provisions of this Act or with any condition imposed in pursuance of this Act or the regulations—

Securities.

Inserted by No. 37, 1933, s. 3.*

(a) by a deposit of cash or Treasury Bonds or negotiable instruments, together with a Memorandum of Deposit in a form approved by the Minister, or

(b) by a security in accordance with a form approved by the Minister.

(2.) A security given in pursuance of paragraph (b) of the last preceding sub-section shall suffice for all the purposes of a bond or guarantee, and shall, without sealing, bind its subscribers as if it were sealed, and, unless otherwise provided therein, jointly and severally, and for the full amount.

* Sub-section (2.) of s. 3 of the *Immigration Act* 1933 reads—

"(2.) All securities which have, prior to the commencement of sub-s. (1.) of this section, been taken or enforced by the Commonwealth in relation to the immigration of any person into Australia, shall be deemed to have been lawfully taken or enforced."

Unregistered
agents not to
charge fees.

Inserted by
No. 86, 1948,
s. 7.

14E.—(1.) A person shall not demand or receive any fee, commission or other reward for or in relation to any services rendered or to be rendered by that person in respect of—

- (a) an application by or on behalf of an intending immigrant for admission to Australia; or
- (b) arranging or securing the passage of an intending immigrant to Australia,

unless that person is a registered agent.

Penalty: Two hundred pounds or imprisonment for one year.

(2.) A person shall not be entitled to sue for, recover or set-off any fee, commission or other reward which he is prohibited by this section from demanding.

Advertising,
&c., by persons
other than
registered
agents.

Inserted by
No. 86, 1948,
s. 7.

14F.—(1.) A person, not being a registered agent, shall not, directly or indirectly—

- (a) describe himself as or represent himself to be a registered agent; or
- (b) advertise in any manner whatsoever that he will render any services in respect of applications by or on behalf of intending immigrants for admission to Australia or arranging or securing the passages of intending immigrants to Australia.

Penalty: Two hundred pounds or imprisonment for one year.

Exemption.
Inserted by
No. 86, 1948,
s. 7.

14G. The Minister or an authorized officer may, in his discretion, exempt from the operation of the last two preceding sections any person engaged in the business of the carriage of persons by ship or aircraft for remuneration if the Minister or authorized officer is satisfied that that person offers no special services for reward to intending immigrants seeking admission to Australia.

Registration
of agents.
Inserted by
No. 86, 1948,
s. 7.

14H.—(1.) A person who desires to become a registered agent may make application for registration in the prescribed manner.

(2.) An application under this section—

- (a) shall be accompanied by such lodgment fee as is prescribed; and
- (b) shall be supported by such evidence of the good fame, integrity and character of the applicant as is prescribed or is required by the Minister or an authorized officer.

(3.) In the case of a company the evidence referred to in the last preceding sub-section shall relate to every director and every manager or other administrative officer of the company.

(4.) If the applicant satisfies an authorized officer that he is a fit and proper person, the authorized officer may register the applicant as a registered agent.

(5.) Upon registration of an agent under this Act the authorized officer shall issue to the registered agent a certificate of registration in the prescribed form.

14J.—(1.) Subject to this Act, registration as an agent shall remain in force for such period as is specified in the certificate of registration, but that period may be extended from time to time upon application made as prescribed.

Duration of registration of agent.

Inserted by No. 86, 1948, s. 7.

(2.) An authorized officer shall have the same discretion and powers in relation to the extension of the period of an agent's registration as he has under the last preceding section in relation to the original registration of an agent.

14K.—(1.) The Minister or an authorized officer may cancel the registration of a registered agent upon being satisfied that the agent—

Cancellation of registration of agent.

Inserted by No. 86, 1948, s. 7.

- (a) has neglected the interests of a client ;
- (b) has been guilty of any misconduct as an agent ;
- (c) is not a fit and proper person to remain registered ; or
- (d) has become bankrupt,

or, in the case of a company, that a director or the manager or other administrative officer of the company has been guilty of such neglect or misconduct or is not a fit and proper person to remain registered or that the company has gone into liquidation.

(2.) Where the registration of a registered agent is cancelled, an appeal shall lie to a County Court, District Court, Local Court of Full Jurisdiction or any court exercising in any part of the Commonwealth a limited civil jurisdiction and presided over by a Judge or a Police, Stipendiary or Special Magistrate, and the decision of the court on the appeal shall be final and conclusive.

14L.—(1.) The regulations may prescribe the fees or charges which may be made by registered agents in respect of any services specified in section fourteen E of this Act and, where the regulations contain no such provision, the Minister may, by notice in writing given to the registered agent who is supplying or has supplied any such service, fix the maximum charge for that service.

Maximum fees.
Inserted by No. 86, 1948, s. 7.

(2.) Where the maximum charge for any service has been fixed by the Minister in pursuance of the last preceding sub-section, then, notwithstanding the terms of any agreement, a registered agent shall not demand or receive an amount which, together with any amount previously received in respect of that service, exceeds the maximum charge so fixed.

Penalty : Two hundred pounds or imprisonment for one year.

(3.) Any amount received in respect of any such service before the maximum charge was so fixed shall, to the extent that it exceeds the maximum charge so fixed, be repayable and may be sued for and recovered in any court of competent jurisdiction.

14M.—(1.) A registered agent shall, whenever required so to do by the Minister or an authorized officer, furnish particulars of any fee, commission or other reward charged or proposed to be charged by him, or of any agreement entered into or proposed to be entered

Registered agent liable to furnish particulars of fees, &c.

Inserted by No. 86, 1948, s. 7.