

(2.) In any prosecution for an offence under this section of a person who has not previously been convicted of an offence against this Act, or against any law of the Commonwealth or of a State relating to Income Tax, it shall be a defence if the defendant proves—

- (a) that the return or answer to which the prosecution relates was prepared or made by him personally; and
- (b) that the false return or false answer was made through ignorance or inadvertence.

(3.) A prosecution for an offence against this section may be commenced at any time.

228.—(1.) Any person required by this Act to sign an agent's certificate who fails to do so or who signs an agent's certificate which is false in any particular shall be guilty of an offence.

Penalty : Not less than One pound or more than Fifty pounds.

(2.) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

229. Any person who, in any declaration made under, or authorized or prescribed by this Act or the regulations, knowingly and wilfully declares to any matter or thing which is false or untrue, shall be deemed to be guilty of wilful and corrupt perjury, and shall upon conviction be liable to imprisonment for a period not exceeding four years.

230.—(1.) Any person who, or any company on whose behalf the public officer, or a director, servant or agent of the company in any return knowingly and wilfully understates the amount of any income^(a) or makes any misstatement affecting the liability of any person to tax or the amount of tax shall be guilty of an offence.^(b)

(a) Held by the Supreme Court of Victoria (O'Bryan J.) that the word "income" in this section is not restricted to gross income and accordingly a taxpayer understates the amount of his income within the meaning of the section if he overstates the amount of allowable deductions from his gross income. *McGovern v. Galt*, 1948 V.L.R. 285; [1948] A.L.R. (Vol. 2) 477; 8 A.T.D. 272.

Held further that in ascertaining the sum which the Court may order a taxpayer to pay in addition to a penalty, the comparison to be adopted is that between the amount of tax which would be payable if the income stated in the return were correct and the amount of tax which would be payable if the amount of income which the taxpayer has knowingly and wilfully understated were added to the amount of income stated in the return. *Ibid.*

(b) Held by the Supreme Court of Victoria (Fullagar J.) that a person is not guilty of an offence against this section unless he knows that he is committing and intends to commit a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of duty. *Jackson v. Butterworth*, 1946 V.L.R. 330; 52 A.L.R. 382; 8 A.T.D. 214.

Held by the High Court that a public officer of a company who knowingly and wilfully understates the company's income in a return is guilty of an offence against this section and should not be prosecuted as an accessory under section 5 of the *Crimes Act 1914-1946*. *Mallan v. Lee*, (1949) 80 C.L.R. 198; [1949] A.L.R. 992. *Per Latham C.J.*; Whether "criminal" or not, proceedings under this section relate to an offence against a law of the Commonwealth, to which the *Crimes Act 1914-1946*, s. 5, clearly applies. *Ibid.*, 80 C.L.R. at p. 207; [1950] A.L.R., at p. 1000.

Penalty : Not less than Twenty-five pounds, or more than Five hundred pounds and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the statement in the return had been accepted as correct.^(a)

(2.) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

Fraudulent
avoidance of
tax.

*Cf. I.T.A.,
s. 69.*

231.—(1.) Any person who, or any company on whose behalf the public officer, or a director, servant or agent of the company, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation shall be guilty of an offence.

Penalty : Not less than Twenty-five pounds, or more than Five hundred pounds and, in addition, the Court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that has been avoided or attempted to be avoided.

*Cf. I.T.A.,
s. 70.*

(2.) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

Obstructing
officers.

*Cf. I.T.A.,
s. 72.*

232. 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 : Not less than One pound or more than Fifty pounds.

Taxation
prosecutions.
*Cf. I.T.A.,
s. 74.*

233.—(1.) A taxation prosecution may be instituted in the name of the Commissioner by action in the High Court or in the Supreme Court of any State.

(2.) Where the penalty sought to be recovered does not exceed Five hundred pounds, or the excess is abandoned, the prosecution may be instituted in the name of the Commissioner or a Deputy Commissioner by information in a court of summary jurisdiction.

Defendant to
have right of
trial in
Superior
Court.

*Cf. I.T.A.,
s. 76.*

234. In any taxation prosecution instituted in a court of summary jurisdiction, where the penalty exceeds One hundred pounds and the excess is not abandoned, the defendant within seven days after service of process may elect in manner prescribed to have the case tried in the High Court or a Supreme Court, and thereupon the prosecution shall stand removed at the option of the

(a) The Commissioner and a taxpayer who had evaded payment of tax compromised as to the amount of tax to be paid. In order to obtain a judgment for the purpose of enforcing the agreement prosecutions were instituted. Holding that the Legislature had conferred upon the Judiciary a discretion to impose a penalty within the limits of ss. 68 and 69 of the *Income Tax Assessment Act 1922-1934* (to which ss. 230 and 231 of this Act are similar) and had not conferred upon the Executive power to agree as to the amount of the penalties, the High Court (*Starke J.*) held the agreement to be contrary to public policy and adjourned the proceedings *sine die*. *Attorney-General for the Commonwealth and Another v. E. A. and L. Abrahams*, (1928) 1 A.L.J. 388.

Commissioner to the High Court or the Supreme Court of the State in which the prosecution has been instituted, and shall be conducted as if it had been originally instituted in the Court to which it is removed.

235. In any taxation prosecution in the High Court or a Supreme Court, the case shall be tried and the penalty, if any, adjudged by a Justice or Judge of the Court. Mode of trial.

236. In any taxation prosecution in a court of summary jurisdiction in a State, an appeal shall lie from any conviction or order of dismissal to such Court and in such manner as is provided by the law of that State for appeals from convictions or orders of dismissal. Appeal.
Cf. I.T.A.,
s. 78.

237. Every taxation 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. Prosecution in
accordance
with Practice
Rules.
Cf. I.T.A.,
s. 77.

238. All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act. Information,
&c., to be
valid if in
words of Act.
Cf. I.T.A.,
s. 79.

239.—(1.) An objection shall not be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between the 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.
Cf. I.T.A.,
s. 80.

(2.) If any such defect or variance appears to the Court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the Court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

240. A conviction, warrant of commitment or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any taxation act shall not 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.
Cf. I.T.A.,
s. 81.

241. Any of the following offences, namely :—

- (a) failure to duly furnish any return or information ;
- (b) making or delivering a return which is false in any particular, or making a false answer ; or

Place where
offence
committed.

(c) failure to comply with any requirement, shall be deemed to have been committed either—

- (i) at the place where the return or information was furnished, or should, in accordance with this Act, the regulations or a requirement of the Commissioner, have been furnished, or where the answer was made, or where the requirement should have been complied with; or
- (ii) at the usual or last known place of business or abode of the defendant,

and may be charged as having been committed at either of those places.

Protection to
witnesses.
Cf. I.T.A.,
s. 82.

242. A witness on behalf of the Commissioner or Deputy Commissioner in any taxation prosecution shall not be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Averment of
prosecutor
sufficient.
Cf. I.T.A.,
s. 83.

243.—(1.) In any taxation prosecution, every averment^(a) 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.^(b)

(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) an averment of the intent^(c) of the defendant; or

(a) Held by the High Court that the word "averment" as used in this sub-section means allegation contained in the information, complaint, declaration or claim as the case may be. *Brady v. Thornton*, (1947) 75 C.L.R. 140; 53 A.L.R. 438; 21 A.L.J. 243; 8 A.T.D. 269.

Held by the Supreme Court of New South Wales (concerning the *Income Tax Assessment Act 1922-1934*) that an averment that has neither been read to the accused nor tendered in evidence is not evidence of the matter averred. *Ex parte Wood; Re Williams and Another*, (1932) 32 S.R. (N.S.W.) 177; 49 W.N. (N.S.W.) 40; 1 A.T.D. 337.

(b) An information laid under this Act contained allegations that "the defendant did make a return of income which said return was false in a particular, to wit, the amount of £739 returned by the said defendant therein as total gross income from his business of hair-dresser and tobacconist was understated by an amount of not less than £958." Held by the High Court that the allegations were averments of fact and not of law and in the absence of any fresh evidence the defendant should be convicted. *Brady v. Thornton*, (1947) 75 C.L.R. 140; 53 A.L.R. 438; 21 A.L.J. 243; 8 A.T.D. 269.

(c) Held by the Supreme Court of Victoria (Fullagar J.) that the word "intent" in this sub-section is to be given a wide meaning and should be regarded as referring to any mental element forming an essential part of the Crown case. *Jackson v. Butterworth*, 1946 V.L.R. 330; 52 A.L.R. 382; 8 A.T.D. 214.

(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.

244.—(1.) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner or a Deputy Commissioner the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be.

Evidence of authority to institute proceedings.
Cf. I.T.A., s. 75.

(2.) The production of a telegram purporting to have been sent by the Commissioner or a Deputy Commissioner and purporting to authorize an officer to institute any taxation prosecution shall be sufficient evidence of the authority of the officer to institute the prosecution in the name of the Commissioner or Deputy Commissioner, as the case may be.

245.—(1.) In any action, prosecution or other proceeding in any Court by the Commissioner or a Deputy Commissioner, he may appear either personally or by a barrister or solicitor, or by some officer in the public service of the Commonwealth or a State.

Appearance by Commissioner.

(2.) 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.

246. 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.

Minimum penalties.
Cf. I.T.A., s. 84.

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

Treatment of convicted offenders.

- (a) commit the offender to gaol until the penalty is paid ;
- (b) release the offender upon his giving security for the payment of the penalty ; or
- (c) 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 or money adjudged to be paid in any other case.^(a)

Cf. I.T.A., s. 85.

(a) Held by the Supreme Court of Victoria (Fullagar J.) that this section enables the Court to choose one of three methods of enforcement which are exclusive of each other, and such choice should be expressed by the Court in its judgment : there is no power by subsequent order to prescribe another method of enforcement. *Jackson v. Gromann*, 1948 V.L.R. 408 ; [1948] A.L.R. (Vol. 2) 513 ; 8 A.T.D. 379. Held by the Supreme Court of Victoria (Sholl J.) that this section does not necessarily require that the selection by the Court of one of the three methods of obtaining payment of a penalty must be precisely contemporaneous with the imposition of the penalty. Dicta of Fullagar J. in *Jackson v. Gromann (supra)* and of Williams J., of the High Court, in *McGovern v. Hillman Tobacco Pty. Ltd.*, (1949) 4 A.I.T.R. 272, discussed. *McGovern v. Carra*, 1950 V.L.R. 454 ; [1950] A.L.R. 920. See also *McGovern v. Galt*, 1948 V.L.R. 285 ; [1948] A.L.R. (Vol. 2) 477.

Release of
offenders.
Cf. I.T.A.,
s. 86.

248.—(1.) The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge such person—

- (a) on payment to him of the penalty adjudged ;
- (b) on a certificate by the Commissioner or the Deputy Commissioner that the penalty has been paid or released ; or
- (c) if the penalty adjudged to be paid is not paid or released, according to the following table :—

Amount of Penalty.	Period after commencement of imprisonment on the expiration of which defendant is to be discharged.
£2 and under	7 days.
Over £2 and not more than £5	14 days.
Over £5 and not more than £20	1 month.
Over £20 and not more than £50	2 months.
Over £50 and not more than £100	3 months.
Over £100 and not more than £200	6 months.
Over £200	1 year.

(2.) Where any person is committed to gaol for non-payment of more than one penalty, the imprisonment of that person, for the period specified in the last preceding sub-section in respect of the amount of any one of those penalties, shall not relieve him from liability to imprisonment for the period so specified in respect of the amount of any other such penalty, and the last-mentioned period of imprisonment shall commence at the expiration of the first-mentioned period of imprisonment.

Enforcement
of orders for
payment.

249.—(1.) Where an order for the payment of a sum of money by any person to the Commissioner is made under this Part by a court of summary jurisdiction, a certificate of such order in the prescribed form and containing the prescribed particulars (which certificate the clerk or other proper officer of the court is hereby required to grant) may, in the prescribed manner and subject to the prescribed conditions, be registered in any court having jurisdiction to entertain civil proceedings to the amount of the order.

(2.) From the date of registration the certificate shall be a record of the court in which it is registered and shall have the same force and effect in all respects as a judgment of that court and, subject to the prescribed conditions, the like proceedings (including proceedings in bankruptcy) may be taken upon the certificate as if the order had been a judgment of that court in favour of the Commissioner.

(3.) The Commissioner's costs of registration of the certificate and other proceedings under this section shall, subject to the

prescribed conditions, be deemed to be payable under the certificate.

250. In all taxation prosecutions the court may award costs against any party, and all the provisions of this Act relating to the recovery of penalties, except commitment to gaol, shall extend to the recovery of any costs adjudged to be paid.

251. The adjudgment or payment of a penalty under this Act shall not relieve any person from liability to assessment and payment of any tax for which he would otherwise be liable.

Costs.

*Cf. I.T.A.,
s. 87.*

*Penalties not
to relieve
from tax.*

*Cf. I.T.A.,
s. 71.*

PART VIIA.—REGISTRATION OF TAX AGENTS.

Part VIIA.
inserted by
No. 10, 1943,
s. 26.

251A. In this Part, unless the contrary intention appears—

“application” means an application to a Board in pursuance of this Part ;

“Board” means a Tax Agents’ Board constituted, or deemed to be constituted, under this Part ;

“registered tax agent” means a person or partnership who or which is registered as a tax agent in pursuance of this Part.

Definitions.

Inserted by
No. 10, 1943,
s. 26.

251B. For the purposes of this Part—

(a) the Australian Capital Territory shall be deemed to be part of the State of New South Wales ;

(b) the Territory of Papua shall be deemed to be part of the State of Queensland ; and

(c) the Northern Territory of Australia shall be deemed to be part of the State of South Australia.

Territories.

Inserted by
No. 10, 1943,
s. 26.

251c. For the purposes of this Part there shall be in each State a Tax Agents’ Board.

*Tax Agents’
Boards.*

Inserted by
No. 10, 1943,
s. 26.

251d.—(1.) Subject to this Part, each Board shall consist of three members who shall be—

*Constitution
of Boards.*

Inserted by
No. 10, 1943,
s. 26.

(a) the officer for the time being performing the duties of Accountant at the Commonwealth Sub-Treasury in the State, who shall be the Chairman of the Board ;

(b) the officer for the time being performing the duties of Commonwealth Chief Auditor for the State, or such substitute for that officer as the Governor-General at any time appoints ; and

(c) a person appointed by the Governor-General.

(2.) A vacancy in the office of a member shall not invalidate the proceedings of a Board.

(3.) A member of a Board who is not an officer of the Public Service of the Commonwealth or of a State shall be paid such fees and expenses as the Governor-General directs.

Conduct
of business
of Board.

Inserted by
No. 10, 1943,
s. 26.

251E. At all meetings of a Board—

- (a) any two members shall form a quorum ;
- (b) all questions shall be decided by a majority of the members present ;
- (c) in the absence of the Chairman of the Board, the officer for the time being performing the duties of Commonwealth Chief Auditor for the State, or the person appointed as his substitute (as the case may be) shall act as Chairman ; and
- (d) the Chairman or Acting Chairman (as the case may be) shall have a deliberative, but not a casting, vote.

Board not
to be sued.

Inserted by
No. 10, 1943,
s. 26.

251F. No action or suit shall be brought or maintained against any person who is or has been a member of a Board for any non-feasance or misfeasance in connexion with his duties.

Summoning of
witnesses, &c.

Inserted by
No. 10, 1943,
s. 26.

251G. A Board or a member of a Board shall have such powers as are prescribed with respect to the taking of evidence, the administration of oaths or affirmations, the summoning of witnesses and the production of documents.

Use of Boards
constituted
under State
Acts.

Inserted by
No. 10, 1943,
s. 26.

251H. Notwithstanding anything contained in this Part, where a Board for the registration of tax agents has been duly constituted under any State Act relating to income tax, that Board, while it continues to be so constituted, shall, upon an arrangement to that effect between the Governor-General and the Governor in Council of the State concerned being notified by the Treasurer in the *Gazette*, be deemed for the purposes of this Part to be a Board constituted under this Part having the same powers and functions and entitled to the same privileges, and, except as provided in this section, subject to the same provisions of this Act and the Regulations as a Board constituted under this Part :

Provided that the Chairman or Acting Chairman of any Board so constituted under any such State Act shall be the person appointed or holding office as Chairman or Acting Chairman in accordance with the relevant provisions of that State Act.

Registration of
tax agents.

Inserted by
No. 10, 1943,
s. 26.

251J.—(1.) A person or partnership desiring to be registered as a tax agent may make application to a Board for registration.

(2.) Every application under this section shall be accompanied by a lodgment fee of One pound, which the Board shall pay to the Commissioner.

(3.) If the applicant satisfies the Board that—

Amended by
No. 11, 1947,
s. 32.

- (a) in the case of an individual—the applicant ;
- (b) in the case of a partnership—a member of the partnership specified in the application ; or
- (c) in the case of a company—a person, specified in the application, employed by the company,

is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters and that—

- (d) in the case of a partnership—every member of the partnership ; or
- (e) in the case of a company—every director, and every manager or other administrative officer, of the company,

is over the age of twenty-one years at the date on which the application is made, and is of good fame, integrity and character, the Board shall register the applicant as a tax agent.

(4.) Where a partnership or company is registered as a tax agent, the member or person referred to in paragraph (b) or (c) of the last preceding sub-section shall be registered by the Board as a nominee of the tax agent for the purposes of this Part.

(5.) A partnership or a company may, either in an application for registration as a tax agent or, if it is already so registered, in an application made for the purpose, request a Board to register as additional or substituted nominees of the partnership or company for the purposes of this Part any other members of the partnership or persons employed by the company, and shall pay, in respect of each such proposed nominee, a lodgment fee of One pound, which the Board shall pay to the Commissioner.

(6.) If the Board is satisfied that any person in respect of whom a request is made under the last preceding sub-section is a fit and proper person to prepare income tax returns and transact income tax business on behalf of taxpayers, it may register that person as an additional or substituted nominee of the tax agent for the purposes of this Part.

(7.) Where an application is made to a Board by an individual who is registered as a tax agent under the law of any State, the Board shall grant the application, and no lodgment fee shall be required.

(8.) Where an application is made to a Board by a company or partnership which is registered as a tax agent under the law of any State, and a person specified in the application as a proposed nominee for the purposes of this Part is a person who the Board which granted registration under the law of the State was satisfied

was qualified and fit to act as a tax agent, the Board shall grant the application, and no lodgment fee shall be required except in respect of any proposed additional nominees.

(9.) Where an application is made to a Board by a partnership or company on behalf of which a person is registered as a tax agent under the law of any State and that person is a proposed nominee, the Board shall grant the application, and no lodgment fee shall be required except in respect of any proposed additional nominees.

Amended by
No. 11, 1947,
s. 32.

(10.) Every partnership which is registered as a tax agent shall forthwith notify the Board by which it was registered of any change in the constitution of the partnership, and every company which is registered as a tax agent shall forthwith notify the Board by which it was registered if any person who is a nominee of the company for the purposes of this Part ceases to be employed by the company or if a person becomes a director, or a manager or other administrative officer, of the company.

Penalty : Ten pounds.

(11.) A person shall cease to be a nominee of a partnership or company—

- (a) in the case of a partnership—if he ceases to be a member of the partnership ;
- (b) in the case of a company—if he ceases to be employed by the company ;
- (c) upon notification by the partnership or company to the Board by which it was registered that it no longer desires that person to be its nominee ; or
- (d) if that Board serves upon the partnership or company a notice that in its opinion that person is no longer a fit and proper person to be a nominee of the partnership or company, as the case may be.

Added by
No. 28, 1944,
s. 10.

(12.) Where, whether before or after the commencement of this sub-section—

- (a) an application under this section has not been granted or has been withdrawn ; or
- (b) the registration of a person or a partnership as a tax agent, or as a nominee of a tax agent, has ceased,

in circumstances which, in the opinion of the Board, justify the repayment of the lodgment fee paid under sub-section (2.) or (5.) of this section, the Board shall notify the Commissioner in writing accordingly, and the Commissioner shall repay the lodgment fee.

Annual notice
by tax agents.
Inserted by
No. 11, 1947,
s. 33.

251JA. Where—

- (a) the registration of a tax agent is in force at the commencement of this section, or on any first day of April after that commencement ; and

- (b) the tax agent desires that the registration shall continue in force,

the tax agent shall, on or before the thirtieth day of June, One thousand nine hundred and forty-seven, or within seven days after that first day of April, as the case may be, or within such further time as the Board allows, notify the Board by which the tax agent was registered, in a form approved by the Board, that the tax agent desires to continue to be registered, and furnish to the Board such particulars as are specified in the form.

251K.—(1.) Registration as a tax agent shall remain in force until cancelled in accordance with this Act.

Cancellation of
registration
of tax agents.

(2.) A Board may cancel the registration of any tax agent upon being satisfied that—

Inserted by
No. 10, 1943,
s. 26.

- (a) any return which has been prepared by or on behalf of the tax agent is false in any material particular ; unless the tax agent establishes to the satisfaction of the Board that he had no knowledge of the falsity or that the falsity was due to his inadvertence ;

(b) the tax agent—

- (i) has neglected the business of a principal ;
(ii) has been guilty of misconduct as a tax agent ;
or
(iii) is not a fit and proper person to remain registered ; or

- (c) in the case of a partnership or company—a nominee of the tax agent is not a fit and proper person to be such a nominee, or that a person who has become a member of the partnership, or a director, or manager or other administrative officer, of the company is under the age of twenty-one years or is not of good fame, integrity and character.

Amended by
No. 11, 1947,
s. 34.

(2A.) A Board shall cancel the registration of a tax agent if the tax agent—

Inserted by
No. 11, 1947,
s. 34.

- (a) was registered at the commencement of this sub-section or on any first day of April occurring after that commencement ; and
(b) has failed to give notice to the Board, and furnish particulars, in accordance with the last preceding section within the time allowed by or under that section after that commencement, or after that first day of April, as the case may be.

(3.) A Board shall cancel the registration of an individual as a tax agent upon his death or bankruptcy, or his permanently ceasing to carry on business as a tax agent.

(4.) A Board shall cancel the registration of a tax agent which is a partnership or a company—

- (a) if there is no nominee registered in respect of the tax agent ;
- (b) in the case of a company, if the company goes into liquidation or, in the case of a partnership, if any partner becomes bankrupt ; or
- (c) if it permanently ceases to carry on business as a tax agent.

Amended by
No. 11, 1947,
s. 34.

(5.) Where the registration of a tax agent is cancelled, an appeal shall lie to a County Court, District Court, or Local Court of Full Jurisdiction, or a Court of Requests constituted by a barrister, solicitor, attorney or proctor of any State, or Territory being part of the Commonwealth, 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, subject to the next succeeding sub-section, be final and conclusive.

Inserted by
No. 11, 1947,
s. 34.

(5A.) An appeal shall lie from the decision of a court under the last preceding sub-section to the Supreme Court of the State or Territory, and the decision of the Supreme Court on the appeal shall be final and conclusive.

Amended by
No. 11, 1947,
s. 34.

(6.) The Regulations may prescribe the practice and procedure in connexion with appeals under sub-section (5.) or (5A.) of this section.

(7.) A registered tax agent shall forthwith notify the Board by which the tax agent was registered of any event or matter specified in sub-section (3.) or (4.) of this section.

Penalty : Ten pounds.

Unregistered
tax agents
not to charge
fees.

Inserted by
No. 10, 1943,
s. 26 ; amended
by No. 28, 1944,
s. 11.

251L.—(1.) A person, other than a person exempted under this section, shall not demand or receive any fee for or in relation to the preparation of any income tax return or objection, or for or in relation to the transaction of any business on behalf of a taxpayer in income tax matters, unless he is a registered tax agent.

Penalty : Not less than Two pounds or more than One hundred pounds.

(2.) A Board may, in its discretion, exempt any person from the operation of this section upon being satisfied—

- (a) that the total income derived by that person as a tax agent during the period of twelve months immediately preceding the date of his application for such exemption did not exceed Twenty pounds ;

Para. (b)
omitted by
No. 28, 1944,
s. 11.

* * * * *

(3.) An exemption under this section may, in the discretion of the Board, be renewed every twelve months, and shall lapse at the expiration of twelve months from the date of the grant of the exemption or, if it has been renewed, of the last renewal.

(4.) Sub-section (1.) of this section shall not apply to any solicitor or counsel acting in the course of his profession in the preparation of any objection or in any litigation or proceedings before a board, or so acting in an advisory capacity either in connexion with the preparation of any income tax return or with any income tax matter.

(5.) A person shall not be entitled to sue for, recover or set-off any fee which he is prohibited by this section from demanding.

(6.) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence. Inserted by No. 11, 1947, s. 35.

251M.—(1.) If, through the negligence of a registered tax agent, or of a person exempted under the last preceding section, a taxpayer becomes liable to pay a fine or other penalty or any additional tax, the registered tax agent, or the person, as the case may be, shall be liable to pay to the taxpayer the amount of that fine or other penalty or additional tax, and that amount may be sued for and recovered by the taxpayer in any court of competent jurisdiction. Negligence of registered tax agent, &c. Inserted by No. 10, 1943, s. 26.

(2.) Nothing in this section shall exonerate the taxpayer from his liability.

251N.—(1.) A registered tax agent or a person exempted under section two hundred and fifty-one L of this Act shall not allow any person, not being his employee, a registered tax agent or, in the case of a partnership which is registered as a tax agent, a member of that partnership— Preparation of returns, &c., on behalf of registered tax agent. Inserted by No. 10, 1943, s. 23.

(a) to prepare on his behalf, either directly or indirectly, his own or any other income tax return or objection ;
or

(b) to conduct on his behalf, either directly or indirectly, any business of himself or any other person relating to any income tax return or income tax matter.

Penalty : Not less than Two pounds or more than Fifty pounds.

(2.) A partnership or company which is registered as a tax agent shall not allow any person to do anything specified in paragraph (a) or (b) of the last preceding sub-section except under the supervision and control of a nominee of the partnership or company.

Penalty : Not less than Two pounds or more than Fifty pounds.

(3.) Nothing in this section shall be construed as prohibiting the employment by a registered tax agent or person exempted under section two hundred and fifty-one L of this Act of solicitor or counsel to act in the course of his profession in the preparation of any objection or in any litigation or proceedings before a board, or in an advisory capacity either in connexion with the preparation of any such return or the conduct of any such business.

Advertising,
&c., by persons
other than
registered
tax agents.

Inserted by
No. 10, 1943,
s. 26.

251o. A person, not being a registered tax agent or a person exempted under section two hundred and fifty-one L of this Act, shall not, directly or indirectly—

- (a) describe himself as or represent himself to be a tax agent ; or
- (b) advertise in any manner whatsoever that income tax returns will be prepared by him or that any other matter in connexion with income tax will be attended to by him.

Penalty : Not less than Two pounds or more than Fifty pounds.

Offences by
partnerships.

Inserted by
No. 10, 1943,
s. 26.

251p. Where, under any provision of this Part, an obligation is imposed on a partnership to do, or refrain from doing, anything, every partner shall, upon the failure of the partnership to comply with the obligation, unless he proves that he had no knowledge of the failure, be guilty of an offence, and be liable to the penalty provided in respect of the obligation :

Provided that not more than one partner shall be punished for one offence.

Removal of
business to
another State.

Inserted by
No. 11, 1947,
s. 36.

251q. Where a registered tax agent or a person exempted under section two hundred and fifty-one L of this Act removes his place of business, or if he has more than one place of business, his principal place of business, to another State, the Board in that State shall, for the purposes of this Part, be deemed to be the Board by which the tax agent or person was registered or exempted.

PART VIII.—MISCELLANEOUS.

Public officer
of company.
Cf. I.T.A.,
s. 88.

252.—(1.) Every company carrying on business in Australia, or deriving in Australia income from property, shall at all times, unless exempted by the Commissioner, be represented for the purposes of this Act by a public officer being a person residing in Australia and duly appointed by the company or by its duly authorized agent or attorney. With respect to every such company and public officer the following provisions shall apply :—

- (a) The company, if it has not appointed a public officer before the commencement of this Act, shall appoint a public officer within three months after the com-

mencement of this Act or after the company commences to carry on business or derive income in Australia.

- (b) The company shall keep the office of the public officer constantly filled.
- (c) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and an address for service upon him has been given to the Commissioner.
- (d) If the company fails to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.

Penalty : Two pounds for every day during which the failure continues.

- (e) Service of any document at the address for service, or on the public officer of the company, shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient.
- (f) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the regulations, and in case of default shall be liable to the same penalties.
- (g) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not excuse the company from the necessity of complying with any of the provisions of this Act or the regulations, or from any penalty for failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.
- (h) Any notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company.
- (i) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him.
- (j) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring

the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.

(2.) A public officer of a company duly appointed under the previous Act, and holding that office at the commencement of this Act, shall be deemed to be the public officer of the company duly appointed under this Act.

Section 253
repealed by
No. 88, 1936,
s. 18.

Agents and
trustees.
Cf. I.T.A.,
s. 89.

* * * * *

254. With respect to every agent and with respect also to every trustee, the following provisions shall apply:—^(a)

- (a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon.
- (b) He shall in respect of that income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he is a trustee of the estate of a deceased person, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (d) He is hereby authorized and required to retain from time to time out of any money which comes to him

^(a) Held by the High Court (Gavan Duffy C.J., Starke and Evatt J.J.; Rich, Dixon and McTiernan J.J. dissenting) that the so-called trustees of the Wheat Pool of Western Australia (a pool enabling its members to dispose of their wheat to the best advantage through a centralized selling organization) are not trustees within the meaning of a similar section (s. 89) of the *Income Tax Assessment Act 1922-1923*, and were not, therefore, liable to be taxed in respect of a portion of the proceeds of the sale of wheat paid into a reserve fund and were not liable to be taxed as agents because although the proceeds of the wheat is income derived by the trustees as mandatories or agents that income cannot be taken as net profit or assessable income of the growers for no account is taken of the cost of producing the wheat. *Deputy Federal Commissioner of Taxation v. Trustees of the Wheat Pool of Western Australia*, (1932) 48 C.L.R. 5; 6 A.L.J. 73; 39 A.L.R. 222; 1 A.T.D. 356.

in his representative capacity so much as is sufficient to pay the tax which is or will become due in respect of the income.

- (e) He is hereby made personally liable for the tax payable in respect of the income to the extent of any amount that he has retained, or should have retained, under the last preceding paragraph; but he shall not be otherwise personally liable for the tax.
- (f) He is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner.
- (g) Where as one of two or more joint agents or trustees he pays any amount for which they are jointly liable, the other or others shall be liable to pay him each his equal share of the amount so paid.
- (h) For the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of tax.

255.—(1.) With respect to every person having the receipt control or disposal of money belonging to a non-resident, who derives income from a source in Australia or who is a shareholder, debenture holder, or depositor in a company deriving income from a source in Australia, the following provisions shall, subject to this Act, apply :—

Person in receipt or control of money for non-resident.
Cf. I.T.A., s. 90.

- (a) he shall when required by the Commissioner pay the tax due and payable by the non-resident;
- (b) he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the non-resident so much as is sufficient to pay the tax which is or will become due by the non-resident;
- (c) he is hereby made personally liable for the tax payable by him on behalf of the non-resident to the extent of any amount that he has retained, or should have retained, under the last preceding paragraph; but he shall not be otherwise personally liable for the tax;
- (d) he is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner.

(2.) Every person who is liable to pay money to a non-resident shall be deemed to be a person having the control of money belong-

Sub-section (2.) amended by No. 50, 1942, s. 29.

ing to the non-resident, and all money due by him to the non-resident shall be deemed to be money which comes to him on behalf of the non-resident.

Person paying
royalty to a
non-resident
taxpayer.

Sub-section (1.)
amended by
No. 50, 1942,
s. 30.

256.—(1.) Every person who is liable to pay money as or by way of royalty to a non-resident shall, before making any payment to or on behalf of that non-resident, furnish to the Commissioner a statement of the amount of royalty due to the non-resident, whether such royalty became due either before or after the passing of this Act, and ascertain from the Commissioner the amount, if any, to be retained in respect of tax due, or which may become due, by the non-resident.

(2.) The last preceding section shall apply in respect of payments of royalty referred to in this section.

Payment of
tax
by banker.
Cf. I.T.A.,
s. 92.

257. Where any income of any person out of Australia is paid into the account of that person with a banker, the Commissioner may, by notice in writing to the banker, appoint him to be the person's agent in respect of the money so paid so long as the banker is indebted in respect thereof, and thereupon the banker shall accordingly be that person's agent.

Recovery of
tax paid on
behalf of
another
person.
Cf. I.T.A.,
s. 63.

258. Every person who, in pursuance of this Act, pays any tax for or on behalf of any other person may recover the same from that other person as a debt, together with the costs of recovery, in any court of competent jurisdiction, or may retain or deduct the same out of any money in his hands belonging or payable to that other person.

Contribution
from joint
taxpayers.
Cf. I.T.A.,
s. 64.

259. Where two or more persons are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax in respect of any of the taxable income—

- (a) shall be entitled to receive by way of contribution from any other of such persons a sum bearing the same proportion to the tax as that other person's share of the taxable income bears to the whole taxable income ; and
- (b) may recover that sum from that other person in any court of competent jurisdiction ; or may retain or deduct that sum out of any money in his hands belonging or payable to that other person.

Contracts to
evade tax void.
Cf. I.T.A.,
93.

260. Every contract, agreement, or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

- (a) altering the incidence of any income tax ;

- (b) relieving any person from liability to pay any income tax or make any return ;
- (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act ; or
- (d) preventing the operation of this Act in any respect,

be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose.^(a)

261.—(1.) A covenant or stipulation in a mortgage, which has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying income tax on the interest to be paid under the mortgage—^(b)

Covenant by mortgagor to pay tax.
Cf. I.T.A., s. 94.

- (a) if the mortgage was entered into on or before the thirteenth day of September, One thousand nine hundred and fifteen—shall not be valid to impose on the mortgagor the obligation of paying income tax to any greater amount than the amount (if any) which would have been payable by the mortgagor if his taxable income consisted solely of a sum equivalent to the amount of interest to be paid under the mortgage without taking into account any income tax payable on that interest ; and
- (b) if the mortgage was entered into after that date—shall be absolutely void.

(a) The following cases were decided on s. 93 of the *Income Tax Assessment Act 1922-1934*, which is almost identical with this section:—The absolute owner of shares in a company made a declaration of trust in favour of such religious and charitable organizations as he should think fit during his life ; at his death the shares were to revert to his estate. Held by the High Court that the settlement was not within the meaning of s. 69 and that, notwithstanding the power of selection, the taxpayer had divested himself of the whole of the income from the shares, which did not, therefore, form part of his taxable income. *Tunley v. Federal Commissioner of Taxation*, (1927) 39 C.L.R. 528 ; 1 A.L.J. 126. Where a taxpayer, in order to avoid the application of s. 16 (d) of the *Income Tax Assessment Act 1922-1925* (which provided that a premium demanded and given in connexion with leaseholds should be included in assessable income) interposed a company in which he was the sole beneficial shareholder, subsequently obtaining the money when the company went into voluntary liquidation, the High Court treated the premium demanded as being portion of the taxpayer's assessable income, holding that the interposition of the company was contrary to the provisions of paragraph (c) of that section. *Clarke v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 56 ; 6 A.L.J. 241 ; 39 A.L.R. 64 ; 2 A.T.D. 121. Section 21 of the *Income Tax Assessment Act 1922-1933* (cf. s. 104 of this Act) provided for the calculation of tax on the income of a company which the Commissioner considered could reasonably have been distributed amongst its members. Held by the High Court that a *bona fide* agreement not to distribute income but to pay it to a creditor was not an agreement preventing the operation of this Act within the meaning of paragraph (d) of that section. *G. E. Stuart Ltd. v. Federal Commissioner of Taxation*, (1927) 39 C.L.R. 327 ; 1 A.L.J. 60 ; 33 A.L.R. 378. Held by Knox C.J. (and affirmed on appeal by the Full Court of the High Court) that the provisions of an identical section in the *Income Tax Assessment Act 1915-1916* extended to contracts, &c., which would, if valid, enable a taxpayer to evade the payment of tax in respect of what is really his own income but did not render void a declaration of trust whereby the beneficial interest in the income was *bona fide* transferred to other persons—notwithstanding that, in the opinion of the Court, the trustee was to some extent influenced by a desire to lessen the burden of taxation. *Deputy Federal Commissioner of Taxation v. Purcell*, (1921) 29 C.L.R. 464 ; 27 A.L.R. 364. Held further by Knox C.J. (the point not being considered on appeal) that the onus was on the Commissioner to show that a transaction was within the terms of that section. *Ibid.*

(b) *Per Isaacs J.* (concerning the corresponding section (s. 54) of the *Income Tax Assessment Act 1915*), the governing words of the section are to be read in their legal as distinct from their popular sense. *Brett v. Barr-Smith*, (1919) 26 C.L.R. 87 ; 1919 V.L.R. 170 ; 25 A.L.R. 75.

(2.) A covenant or stipulation in a mortgage, whether entered into before or after the commencement of this sub-section, which has or purports to have the purpose or effect of including in or adding to the interest payable, in any specified circumstances, by the mortgagor, any amount in respect of income tax payable by the mortgagee upon the interest to be paid under the mortgage, shall be void to the extent only to which it has or purports to have that purpose or effect.

(3.) Where, in any mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of such reduction to be diminished by or in proportion to any amount of income tax payable by the mortgagee the portion of the provision which provides for that diminution shall be void, and the reduction of the rate or amount of interest shall take effect as if the portion of the provision which provides for that diminution had not been inserted.

(4.) Any provision in a mortgage by or under which it is provided that any income tax payable by the mortgagee, or any portion thereof, shall or may be taken into account for the purpose of fixing, measuring, or calculating the rate of interest payable under the mortgage or any reduction or alteration of that rate shall, to the extent to which it provides for income tax to be so taken into account (but not otherwise), be void, whether the provision be in the form of a covenant or agreement to pay interest, or a proviso or a stipulation for an alternative, substituted, or reduced rate of interest in lieu of a higher rate payable by the mortgagor pursuant to any such covenant or agreement, or otherwise.

(5.) For the purposes of this section, "mortgage" includes any charge, lien or encumbrance to secure the repayment of money, and any collateral or supplementary agreement, whether in writing or otherwise, and whether or not it be one whereby the terms of any mortgage are varied or supplemented, or the due date for the payment of money secured by mortgage is altered, or an extension of time for payment is granted.

Periodical
payments in
the nature of
income.
*Cf. I.T.A.,
s. 93A.*

262. Where under any contract agreement or arrangement made or entered into orally or in writing, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of any property on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the property by periodical payments which, in the opinion of the Commissioner, are either wholly or in part really in the nature of income of that person such of those payments as are derived in the year of income shall, to the extent to which they are in that

opinion in the nature of income, be included in his assessable income.^(a)

262A.—(1.) Subject to sub-section (2.) of this section, every person carrying on a business shall keep sufficient records in the English language of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained and shall retain such records for a period of at least seven years after the completion of the transactions, acts or operations to which they relate.

Taxpayer to
keep records.
Inserted by
No. 10, 1943,
s. 27.

Penalty : Not less than Two pounds or more than One hundred pounds.

(2.) This section shall not require the preservation of any records—

- (a) in respect of which the Commissioner has notified the taxpayer that their preservation is not required ; or
- (b) of a company which has gone into liquidation and which has been finally dissolved.

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

Access to
books, &c.
Cf. I.T.A.,
s. 96.

264.—(1.) The Commissioner may by notice in writing require any person, whether a taxpayer 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.
Cf. I.T.A.,
s. 97.

- (a) to furnish him with such information as he may require ; and
- (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, 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.

(a) For £70,000 a company disposed of an agency which was its sole activity and was consequently wound up. Held by the High Court (concerning a similar section (s. 93A) of the *Income Tax Assessment Act 1922-1934*) that the amount was of a capital nature and not taxable and that this section had no application. *Californian Oil Products Ltd. (in liquidation) v. Federal Commissioner of Taxation*, (1934) 52 C.L.R. 28 ; 40 A.L.R. 339 ; 8 A.L.J. 195 ; 3 A.T.D. 10.

Release of
taxpayers
in cases of
hardship.
Cf. I.T.A.,
s. 95.

265.—(1.) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Treasury and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time that—

(a) a taxpayer has suffered such a loss or is in such circumstances ; or

(b) owing to the death of a person, who, if he had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

that the exaction of the full amount of tax will entail serious hardship, the Board may release the taxpayer or the trustee of the estate of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessment as are necessary for that purpose.^(a)

(2.) The Commissioner or his substitute shall be Chairman of the Board, and the decision of the majority shall prevail.

(3.) Where an application is made for release in respect of an amount of tax if that amount is not less than Five hundred pounds, the Board shall, and if that amount is less than Five hundred pounds, the Board may refer the application to a member of a Board of Review constituted under this Act and shall notify the applicant in writing of its having done so.

(4.) The member of the Board of Review who shall have jurisdiction to deal with applications referred under this section shall, at the discretion of the Chairman of that Board, be the Chairman or such other member as he authorizes in writing to deal with the application.

(5.) The applicant may appear before the member of the Board of Review or the member of the Board of Review may require the applicant to appear before him, either in person or by a representative, and the member of the Board of Review may examine the applicant or his representative upon oath concerning any statements which the applicant has, or desires to have, placed before the Board constituted by this section.

(6.) The member of the Board of Review shall be assisted in his examination of the applicant by an officer of the Department of Taxation who is a qualified accountant.

(7.) The member of the Board of Review may permit the taxpayer to be assisted at the examination by such persons as the member of the Board of Review considers the circumstances justify.

(a) Concerning a similar provision (s. 95 (1.)) of the *Income Tax Assessment Act 1922-1934* it was held by the High Court (Williams J.) that where income tax unpaid at the death of a taxpayer was partly remitted by a Board constituted under that sub-section there was, until the part thereof had been actually remitted, an existing liability to pay the full amount assessed. *Scott Fell v. Federal Commissioner of Taxation*, (1944) 69 C.L.R. 250 ; 50 A.L.J.R. 365 ; 18 A.L.J. 215.

(8.) A record shall be made of the information elicited by the member of the Board of Review during his examination.

(9.) The member of the Board of Review shall submit a report to the Board constituted by this section upon the facts disclosed by his examination, and shall draw the attention of that Board to any facts which in his opinion have particular bearing upon the application for release from tax. The report shall be accompanied by the record mentioned in sub-section (8.) of this section.

Sub-section (9.)
amended by
No. 50, 1942,
s. 31.

(10.) In lieu of referring any application to a member of a Board of Review in accordance with sub-section (3.) of this section, the Board constituted under this section may refer the application to the Chairman of a Valuation Board constituted under the *Land Tax Assessment Act 1910* (or under that Act as amended), in which case sub-sections (5.) to (9.) of this section shall apply as if the references to the member of the Board of Review were references to the Chairman of the Valuation Board.

Sub-section
(10.) added by
No. 50, 1942,
s. 31.

(11.) In any case where the amount of the liability does not exceed Twenty pounds, the powers conferred by sub-section (1.) of this section on the Board specified in that sub-section may be exercised by the Commissioner.

Sub-section
(11.) added by
No. 50, 1942,
s. 31.

265A.—(1.) Subject to the next succeeding sub-section, where, in respect of the income of any year of income, income tax is payable by the trustee of the estate of a deceased person who has been a member of the Defence Force, the trustee shall, by force of this section, be released from the payment of so much of that tax as remains after deducting any tax deductions unapplied—

Release of
liability of
members of
Defence Force
on death.

Inserted by
No. 3, 1944,
s. 27;
amended by
No. 4, 1945,
s. 17, and No.
37, 1945, s. 7.

- (a) where the assessable income of the year of income consists solely of pay and allowances earned as a member of the Defence Force—from the amount of income tax so payable by the trustee ; or
 - (b) where the assessable income of the year of income includes income other than such pay and allowances—
 - (i) from the amount of income tax so payable by the trustee ; or
 - (ii) from the amount by which the income tax payable in respect of the income of the year of income has been increased by the inclusion of such pay and allowances in the assessable income of that year or those years,
- whichever is the less.

(2.) Nothing in the last preceding sub-section shall be construed so as to authorize or require the Commissioner to refund any amount paid as or for income tax by or on behalf of the taxpayer or his trustee.

(3.) The provisions of sub-section (1.) of this section shall not apply in any case where the death of the taxpayer has occurred in circumstances (including the circumstances of his service) in which the Commonwealth would not be liable to pay pensions under the *Australian Soldiers' Repatriation Act 1920-1943*^(a) to the dependants of deceased members of the Forces.

(4.) Any decision of an authority acting under the *Australian Soldiers' Repatriation Act 1920-1943*^(a) on any question affecting the right of any dependants of a deceased member of the forces to a pension under that Act in respect of his death shall, so long as that decision has not been reversed or overruled, be conclusive evidence of the matters of fact or law so decided for the purposes of the application of the last preceding sub-section in relation to that deceased member of the Forces.

(5.) In this section, "tax deductions unapplied" means the amount of any deductions made in pursuance of Division 2 of Part VI. of this Act, or in pursuance of that Division as applied by the *Social Services Contribution Assessment Act 1945*, from pay or allowances earned by the deceased person as a member of the Defence Force, being deductions which have not been credited in payment of income tax or social services contribution, and in respect of which a payment has not been made by the Commissioner.

Treatment of
amounts
received by
Commissioner.
Inserted by
No. 37, 1945,
s. 8.

265B. Notwithstanding anything contained in any other law, the amount which the Commissioner shall treat as having come into his possession under this Act in any financial year shall be so much of the total amount which comes into his possession in pursuance of this Act and of the *Social Services Contribution Assessment Act 1945* in that year as remains after deducting therefrom the amount which, under that last-mentioned Act, he is required to treat as having come into his possession in that year under that Act.

Regulations.
Cf. I.T.A.,
s. 100.

266. 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.

(a) See now the *Repatriation Act 1920-1950, infra*.

THE FIRST SCHEDULE.

Heading
amended by
No. 4, 1945,
s. 18.

FIRST COLUMN. Acts Repealed.	SECOND COLUMN. Extent of Repeal.
<i>Income Tax Assessment Act 1922</i>	The whole
<i>Income Tax Assessment Act 1923</i>	The whole
<i>Taxation of Loans Act 1923</i>	Section five
<i>Income Tax Assessment Act 1924</i>	The whole
<i>Income Tax Assessment (Live Stock) Act 1924</i>	The whole
<i>Income Tax Assessment Act 1925</i>	The whole
<i>Income Tax Assessment Act 1927</i>	The whole
<i>Income Tax Assessment Act 1928</i>	The whole
<i>Income Tax Assessment Act 1929</i>	The whole
<i>Income Tax Assessment Act 1930</i>	The whole
<i>Income Tax Assessment Act (No. 2) 1930</i>	The whole
<i>Income Tax Assessment Act 1931</i>	The whole
<i>Financial Relief Act 1932</i>	Part III.
<i>Income Tax Assessment Act 1932</i>	The whole
<i>Financial Relief Act 1933</i>	Part III.
<i>Income Tax Assessment Act 1933</i>	The whole
<i>Income Tax Assessment Act 1934</i>	The whole
<i>Income Tax Assessment Act (No. 2) 1934</i>	The whole
<i>Income Tax Assessment (Bonus Shares) Act 1926</i>	The whole

THE SECOND SCHEDULE.

Sec. 79A.

Added by
No. 4, 1945,
s. 19.

PART I.

Zone A.

1. All that portion of the mainland of Australia lying north of a line commencing at a point on the western coastline at the north-western corner of the Road District of Gascoyne Minilya and thence in a general easterly direction following the boundaries dividing the Road Districts of Gascoyne Minilya Upper Gascoyne Meekatharra and Wiluna from the Road Districts of Ashburton Tableland and Nullagine in the State of Western Australia by the Tropic of Capricorn to the boundary dividing the Northern Territory of Australia and the State of Queensland by that boundary south to its junction with a northern boundary of the Shire of Diamantina in the State of Queensland thence generally north easterly by the boundaries dividing the Shires of Diamantina Winton Flinders Dalrymple and Herberton from the Shires of Boulia Cloncurry McKinlay Wyangarie Etheridge and Woothakata to the 145th meridian of east longitude by that meridian part of the northern boundary of the Shire of Woothakata beforementioned and the boundary dividing the Shires of Douglas and Cook to the eastern coastline.

2. All the islands forming part of Australia lying adjacent to the coastline of the portion of Australia described in paragraph 1 of this Part.

3. The Territories of Papua, Norfolk Island and New Guinea.

PART II.

Zone B.

1. All that portion of the mainland of Australia lying south of the southern boundary of Zone A and north of a line commencing at the northeastern corner of the Shire of Broomsound in the State of Queensland thence generally westerly and southerly by the boundaries dividing the Shires of Broomsound Belyando Jericho Bauhinia Booringa and Balonne from the Shires of Sarina Nebo Wangaratta Dalrymple Aramac Barcaldine Blackall Tambo Murweh and Paroo to the boundary dividing the States of Queensland and New South Wales thence

THE SECOND SCHEDULE—*continued.*

east by that boundary to its junction with the Barwon River at the northeastern corner of the Western Division in the State of New South Wales thence generally south-westerly by part of the boundary dividing the Central and Western Divisions of the State of New South Wales to the northernmost corner of the County of Mouramba and by the boundaries dividing the Counties of Mouramba Mossgiel Waljeers Kilfera Taila Wentworth and Tara from the Counties of Robinson Booroondarra Woore Manara Perry and Windeyer to the boundary dividing the States of New South Wales and South Australia thence south by that boundary to the northeast corner of the County of Hamley in the State of South Australia thence by the north boundaries of the Counties of Hamley and Young part of the north boundary of the County of Burra part of the east boundary of the District Council District of Hallett the east and a north boundary of the District Council District of Peterborough east and north boundaries of the District Council District of Carrieton to the southeast corner of the District Council District of Hawker the eastern north and west boundaries of that District Council District a western boundary of the District Council District of Kanyaka to the north boundary of the County of Frome thence west by part of that boundary and its prolongation west to the west boundary of the County of Manchester thence by the boundaries dividing the Counties of Manchester York and Buxton from the County of Hore-Ruthven part of the west boundary of the County of Buxton and part of the western boundary of the District Council District of Kimba to the easternmost corner of the District Council District of Le Hunte thence generally north-westerly by the east and north boundaries of the District Council Districts of Le Hunte and Streaky Bay and the east north and west boundaries of the District Council District of Murat Bay to the southern coastline thence by that coastline westerly to the southwestern corner of the Road District of Phillips River in the State of Western Australia thence generally north-westerly by the boundaries dividing the Road Districts of Gnowangerup Kent Lake Grace Kulin Kondinin Narembeen Merredin and Nungarin from the Road Districts of Phillips River Yilgarn and Westonia to the northeast corner of the Road District of Nungarin thence westerly and north-westerly by the boundaries dividing the Road Districts of Nungarin Kununoppin-Trayning Wyalkatchem Dowerin and Wongan-Ballidu from the Road Districts of Mukinbudin Mt. Marshall Koorda and Dalwallinu to the No. 2 rabbit proof fence by that fence to the north boundary of the Road District of Perenjori and thence by the boundaries dividing the Road Districts of Perenjori Morawa Mingenew Irwin Greenough and Geraldton from the Road Districts of Yalgoo Mullewa and Upper Chapman to the western coastline.

2. All that portion of Tasmania lying south and west of a line commencing on the west coast at the southwest corner of the County of Wellington and thence generally easterly and southerly by the boundaries dividing the counties of Wellington Devon and Westmorland from the counties of Russell Lincoln and Cumberland to the point on the River Shannon where the hydro-electric transmission line from Waddamana to Launceston crosses that river thence in a straight line in a general south-westerly direction to the trigonometrical station known as Fishers Sugar Loaf thence by a straight line in a general south-westerly direction to the point where the Lyell Highway crosses the Dee River thence by a straight line in a general south-westerly direction to the confluence of the Derwent and Florentine Rivers thence by a straight line in a general southerly direction passing through the trigonometrical station on South East Cape to the southern coastline.

3. All the islands forming part of Australia lying adjacent to the coastline of either of the portions of Australia described in paragraphs 1 and 2 of this Part.

Third Schedule
added by
No. 11, 1947,
s. 37.

THE THIRD SCHEDULE.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM AND THE GOVERNMENT OF THE COMMONWEALTH
OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME.

Signed in London, 29th October, 1946.

The Government of the United Kingdom of Great Britain and Northern
Ireland and the Government of the Commonwealth of Australia, desiring to

THE THIRD SCHEDULE—*continued.*

conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :—

ARTICLE I.

(1) The taxes which are the subject of the present Agreement are—

(a) In Australia :

The Commonwealth income tax (including super-tax), the social services contribution, the additional amount of tax assessed in respect of the undistributed amount of the distributable income of a private company, the further tax imposed on the portion of the taxable income of a company (other than a private company) which has not been distributed as dividends, and the war-time (company) tax (hereinafter referred to as "Australian tax").

(b) In the United Kingdom :

The income tax (including sur-tax), the excess profits tax, and the national defence contribution (hereinafter referred to as "United Kingdom tax").

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Agreement or by the Government of any territory to which the present Agreement is extended under Article XIV.

ARTICLE II.

(1) In the present Agreement, unless the context otherwise requires—

(a) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

(b) The term "Australia" means the Commonwealth of Australia and includes the Territories of Papua, New Guinea and Norfolk Island.

(c) The terms "one of the territories" and "the other territory" mean the United Kingdom or Australia, as the context requires.

(d) The term "tax" means United Kingdom tax or Australian tax, as the context requires.

(e) The term "person" includes any body of persons, corporate or unincorporate.

(f) The terms "United Kingdom resident" and "Australian resident" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and is not a resident of Australia for the purposes of Australian tax and any person who is a resident of Australia for the purposes of Australian tax and is not resident in the United Kingdom for the purposes of United Kingdom tax.

(g) The terms "resident of one of the territories" and "resident of the other territory" mean a United Kingdom resident or an Australian resident, as the context requires.

(h) The terms "United Kingdom enterprise" and "Australian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a United Kingdom resident and an industrial or commercial enterprise or undertaking carried on by an Australian resident; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or an Australian enterprise, as the context requires.

(i) The term "industrial or commercial enterprise or undertaking" includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities, or in the business of banking, insurance, life insurance or dealing in investments, and the term "industrial or commercial profits" includes profits from such activities or business but does not include income in the form of dividends, interest, rents, royalties, management charges, or remuneration for personal services.

*Income Tax and Social Services Contribution
Assessment Act 1936-1950.*

THE THIRD SCHEDULE—*continued.*

- (j) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch or other fixed place of business and includes a management, factory, mine, or agricultural or pastoral property, but does not include an agency in the other territory unless the agent has, and habitually exercises, authority to conclude contracts on behalf of such enterprise otherwise than at prices fixed by the enterprise or regularly fills orders on its behalf from a stock of goods or merchandise in that other territory :

Provided that an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such and receiving remuneration in respect of those dealings at the rate customary in the class of business in question :

Provided further that the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

- (k) Words in the singular include the plural, and words in the plural include the singular.

(2) The terms "Australian tax" and "United Kingdom tax", as used in the present Agreement, do not include any tax payable in Australia or the United Kingdom which represents a penalty imposed under the law of Australia or the United Kingdom relating to the taxes which are the subject of the present Agreement.

(3) In the application of the provisions of the present Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the taxes which are the subject of the present Agreement.

ARTICLE III.

(1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Australian tax unless the enterprise is engaged in trade or business in Australia through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Australia, but only on so much of them as is attributable to that permanent establishment : Provided that nothing in this paragraph shall affect—

- (a) the operation of Divisions 14 and 15 of Part III. of the Australian *Income Tax Assessment Act 1936-1946* (or that Act as amended from time to time) relating to film business controlled abroad and insurance with non-residents, or the corresponding provisions of any statute substituted for that Act : or
- (b) the application of the law of Australia regarding the imposition of war-time (company) tax where a holding company has elected that its subsidiary companies shall be treated as branches.

(2) The industrial or commercial profits of an Australian enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment : Provided that nothing in this paragraph shall affect any pro-

THE THIRD SCHEDULE—*continued.*

visions of the law of the United Kingdom regarding the imposition of excess profits tax and national defence contribution in the case of inter-connected companies.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income derived from sources in that other territory.

If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this paragraph shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this paragraph.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

ARTICLE IV.

(1) Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory and
- (c) in either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length with one another,

then, if by reason of those conditions profits which might be expected to accrue to one of the enterprises do not accrue to that enterprise, there may be included in the profits of that enterprise the profits which would have accrued to it if it were an independent enterprise and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

(2) Profits included in the profits of an enterprise of one of the territories under paragraph (1) of this Article shall be deemed to be income derived from sources in that territory and shall be taxed accordingly.

(3) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in that paragraph.

ARTICLE V.

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships whose port of registry is in that territory, or aircraft registered in that territory, shall be exempt from tax in the other territory.

THE THIRD SCHEDULE—*continued.*

ARTICLE VI.

(1) Any dividend paid to a United Kingdom resident by a company which is a United Kingdom resident shall be exempt from Australian tax.

(2) Any dividend paid by a company which is a resident of Australia (whether or not also resident in the United Kingdom or elsewhere) to a company which—

- (a) is a United Kingdom resident,
- (b) is subject to United Kingdom tax in respect thereof, and
- (c) beneficially owns all the shares (less directors' qualifying shares) of the former company,

shall be exempt from Australian tax :

Provided that the exemption shall not apply if—

- (i) the total of the directors' qualifying shares exceeds five per centum of the paid-up capital of the company paying the dividend, or
- (ii) ordinarily more than one-half of the taxable income of that company is derived from interest, dividends and rents other than interest, dividends and rents from any wholly-owned subsidiary company the taxable income of which consists wholly or mainly of industrial or commercial profits.

(3) Subject to such provisions as may be enacted in Australia for the purpose of determining the amount of Australian tax payable in respect of any dividend, and without limiting the exemptions provided by paragraphs (1) and (2) of this Article, the amount of Australian tax payable in respect of any dividend the whole or part of which is paid out of profits derived from sources in Australia to a United Kingdom resident who is subject to United Kingdom tax in respect thereof and is not engaged in trade or business in Australia through a permanent establishment situated therein, shall not exceed half the amount which would be payable in respect of the dividend or part thereof but for this paragraph.

(4) Notwithstanding the foregoing provisions of this Article, the amount of the additional tax assessable in respect of the undistributed amount of the distributable income of a company which is a private company for purposes of Australian tax shall be the amount which would have been assessable if those provisions had not been included in this Agreement.

(5) Any dividend paid by a company resident in the United Kingdom (whether or not also a resident of Australia or elsewhere) to an individual who—

- (a) is an Australian resident,
- (b) is subject to Australian tax in respect thereof, and
- (c) is not engaged in trade or business in the United Kingdom through a permanent establishment situated therein,

shall be exempt from United Kingdom sur-tax.

ARTICLE VII.

(1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory ; but no exemption shall be allowed under this Article in respect of so much of any such royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this Article the term 'royalty' means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources or a rent or royalty in respect of a motion picture film.

ARTICLE VIII.

(1) Remuneration (other than pensions) paid by the Government of the Commonwealth of Australia or of any State of Australia to any individual for services rendered to that Government in the discharge of governmental functions

THE THIRD SCHEDULE—*continued.*

shall be exempt from United Kingdom tax if the individual is not ordinarily resident in the United Kingdom or is resident in the United Kingdom solely for the purpose of rendering those services.

(2) Remuneration (other than pensions) paid by the Government of the United Kingdom to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Australian tax if the individual is not a resident of Australia or is resident in Australia solely for the purpose of rendering those services.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments or by the Government of any State of Australia.

ARTICLE IX.

(1) An individual who is a United Kingdom resident shall be exempt from Australian tax on remuneration or other income in respect of personal (including professional) services performed in Australia in any year of income if—

- (a) he is present in Australia for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a United Kingdom resident, and
- (c) the remuneration or other income is subject to United Kingdom tax.

(2) An individual who is an Australian resident shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed in the United Kingdom in any year of assessment if—

- (a) he is present in the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of an Australian resident, and
- (c) the profits or remuneration are subject to Australian tax.

(3) The provisions of this Article shall not apply to the profits, remuneration or other income of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

ARTICLE X.

(1) Any pension or annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and subject to tax in that other territory in respect thereof, shall be exempt from tax in the first-mentioned territory.

(2) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

ARTICLE XI.

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

ARTICLE XII.

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Australian tax payable, whether directly or by deduction, in respect of income derived from sources in Australia shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company which is a resident of Australia, the credit shall take into account, in addition to any Australian tax payable in respect of the dividend, the Australian tax (other than war-time (company) tax) payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and

THE THIRD SCHEDULE—*continued.*

representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Australian tax (other than war-time (company) tax) so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

For the purposes of this paragraph, any amount which is included in a person's taxable income under Division 14 or 15 of Part III, of the Australian *Income Tax Assessment Act 1936-1946* (or that Act as amended from time to time) relating to film business controlled abroad and insurance with non-residents, or under the corresponding provisions of any statute substituted for that Act, shall be deemed to be derived from sources in Australia.

(2) Where Australian tax is payable in respect of income derived from sources in the United Kingdom by a person who is a resident of Australia, being income in respect of which United Kingdom tax is payable, whether directly or by deduction, the United Kingdom tax so payable (reduced by the amount of any relief or repayment attributable to that income to which that person is entitled under the law of the United Kingdom) shall, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in Australia, be allowed as a credit against the Australian tax payable in respect of that income: Provided that where the income is a dividend paid by a company resident in the United Kingdom the credit shall be allowed only if the recipient elects to have the amount of the United Kingdom tax (as so reduced) included in his assessable income for purposes of Australian tax.

For the purposes of this paragraph, a dividend paid by a company resident in the United Kingdom shall be deemed to be income derived from sources in the United Kingdom, and the United Kingdom tax payable in respect of any such dividend before reduction as aforesaid shall be deemed to include the amount of United Kingdom income tax deductible from the gross amount of the dividend (but not so much of that income tax as exceeds tax on that gross amount at the net United Kingdom rate applicable to the dividend for purposes of United Kingdom tax where, owing to the allowance of double taxation relief in the United Kingdom, that net rate is less than the rate of United Kingdom income tax deductible from the dividend).

(3) Where tax is imposed by both Contracting Governments on income derived from sources outside both Australia and the United Kingdom by a person who is a resident of Australia for purposes of Australian tax and is also resident in the United Kingdom for purposes of United Kingdom tax, there shall be allowed against the tax imposed by each Contracting Government a credit which bears the same proportion to the amount of that tax (as reduced by any credit allowed in respect of tax payable in the territory from which the income is derived) or to the amount of tax imposed by the other Contracting Government (reduced as aforesaid), whichever is the less, as the former amount (before any such reduction) bears to the sum of both amounts (before any such reduction).

(4) For the purposes of this Article, profits, remuneration or other income in respect of personal (including professional) services performed in one of the territories shall be deemed to be income derived from sources in that territory.

ARTICLE XIII.

(1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court) concerned with the assessment or collection of, or the determination of appeals in relation to, the taxes which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means, in the case of Australia, the Commissioner of Taxation or his authorised representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or

THE THIRD SCHEDULE—*continued.*

their authorised representative; and in the case of any territory to which the present Agreement is extended under Article XIV., the competent authority for the administration in such territory of the taxes to which the present Agreement applies.

ARTICLE XIV.

(1) Either of the Contracting Governments may, on the coming into force of the present Agreement or at any time thereafter while it continues in force, by a written notification of extension given to the other Contracting Government, declare its desire that the operation of the present Agreement shall extend, subject to such modification as may be necessary, to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate or trusteeship, which impose taxes substantially similar in character to those which are the subject of the present Agreement. The present Agreement shall, subject to such modifications (if any) as may be specified in the notification, apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than sixty days from the date of the notification) or, if no date is specified in respect of any such territory, on the sixtieth day after the date of the notification, unless, prior to the date on which the Agreement would otherwise become applicable to a particular territory, the Contracting Government to whom notification is given shall have informed the other Contracting Government in writing that it does not accept the notification as to that territory. In the absence of such an extension, the present Agreement shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments may, by written notice of termination given to the other Contracting Government, terminate the application of the present Agreement to any territory to which it has been extended under paragraph (1), and in that event the present Agreement shall cease to apply, as from the date or dates specified in the notice or if no date is specified at the expiration of six months after the date of the notice, to the territory or territories named therein, but without affecting its continued application to Australia, the United Kingdom or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present Agreement in relation to any territory to which it is extended by notification by the United Kingdom or Australia, references to the "United Kingdom" or, as the case may be, "Australia" shall be construed as references to that territory.

(4) The termination in respect of Australia or the United Kingdom of the present Agreement under Article XVI shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of the present Agreement to any territory to which the Agreement has been extended by Australia or the United Kingdom.

(5) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

ARTICLE XV.

The present Agreement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Australia as are necessary to give the Agreement the force of law in the United Kingdom and Australia respectively, and shall thereupon have effect—

- (a) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years; as respects sur-tax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years; and as respects excess profits tax and national defence contribution for any chargeable accounting period beginning on or after the first day of April, 1946, and for the unexpired portion of any chargeable accounting period current at that date;
- (b) in Australia, as respects tax for the year of tax beginning on the first day of July, 1946, and subsequent years.

*Income Tax and Social Services Contribution
Assessment Act 1936-1950.*

THE THIRD SCHEDULE—*continued.*

ARTICLE XVI.

The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 31st day of March in any calendar year after the year 1954, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective—

- (a) in the United Kingdom, as respects income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given ; as respects sur-tax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given ; and as respects national defence contribution for any chargeable accounting period beginning on or after the first day of April in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date ;
- (b) in Australia, as respects tax for any year of tax beginning on or after the first day of July in the calendar year next following that in which such notice is given.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed the present Agreement and have affixed thereto their seals.

Done at London, in duplicate, on the twenty-ninth day of October, One thousand nine hundred and forty-six.

(L.S.)

HUGH DALTON,
For the Government of the United Kingdom.

(L.S.)

JOHN A. BEASLEY,
For the Government of the Commonwealth of Australia.

INCOME TAX COLLECTION ACT 1923-1940.^(a)

An Act relating to the collection of Income Tax 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 *Income Tax Collection Act 1923-1940*.^(a)

Short title.

2. This Act shall be deemed to have commenced on the thirtieth day of June One thousand nine hundred and twenty-three.

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

Commence-
ment.

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

Definitions.

“Arrangement” means an arrangement made in pursuance of section four of this Act ;

“Pay” means pay at the rate received by the officer immediately prior to his retirement, and includes basic wage allowance, cost of living allowance, higher duties allowance, child endowment, and special allowances under Arbitration Court Awards, and such other allowances as are prescribed ;

“Service” means service under, or employment by, the Commonwealth, and includes any service which is, for the purposes of the *Commonwealth Public Service Act 1922*,^(b) reckoned as service in the Commonwealth Service, or which would have been reckoned as service in the Commonwealth Service if that Act had been in force at the time of appointment of the officer to the Commonwealth Service, and any temporary service with which the permanent service of the officer is continuous.

(a) The *Income Tax Collection Act 1923-1940* comprises the *Income Tax Collection Act 1923* 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>Income Tax Collection Act 1923</i>	1923, No. 28 ..	1st September, 1923	30th June, 1923
<i>Income Tax Collection Act 1924</i>	1924, No. 36 ..	8th October, 1924 ..	8th October, 1924
<i>Statute Law Revision Act 1934</i>	1934, No. 45 ..	6th August, 1934 ..	6th August, 1934
<i>Income Tax Collection Act 1938</i>	1938, No. 23 ..	5th July, 1938 ..	2nd August, 1938
<i>Income Tax Collection Act 1940</i>	1940, No. 40 ..	4th June, 1940 ..	4th June, 1940

(b) Now the *Public Service Act 1922-1950*, *infra*.

“ the Public Service Board ” means the Board of Commissioners constituted under the *Commonwealth Public Service Act 1922* ;^(a)

“ the Taxation Branch ” means the Taxation Branch of the Department of the Treasury.

(2.) In any case where the appointment of an officer who is a returned soldier within the meaning of the *Commonwealth Public Service Act* has been made retrospective the period of service of the officer shall be deemed to include the period to which his appointment was made retrospective.

Arrangement
with State for
collection of
Commonwealth
Income Tax.

4.—(1.) The Commonwealth may arrange with any State for the collection by State officers of the whole or part of the income tax payable in that State under Commonwealth law.

(2.) The Agreement relating to any such arrangement may make provision for any other matters necessary or convenient to be provided for carrying out the arrangement, including the transfer of officers from the Service of the Commonwealth to the Service of the State, and their re-transfer from the Service of the State to the Service of the Commonwealth, and the rights and obligations of such officers.

(3.) Any such provision shall be valid and effectual for all purposes.

Reduction of
staff through
economy
effected by
arrangement.

5. If, in consequence of the economy rendered possible by any arrangement made in pursuance of this Act, the services of any officer are no longer required either before or after this transfer to the Service of the State, he may be retired from the Service of the State, or the Service of the Commonwealth, as the case may be :

Provided that if the Public Service Board is of opinion that any such officer is more deserving than any officer employed in any other Department or Branch of the Commonwealth Service, that other officer may be retired from the Commonwealth Service, and the first-mentioned officer may be appointed in his stead.

Compensation
to officers who
are retired.

6.—(1.) There shall be payable to any officer who is retired in pursuance of the last preceding section compensation in the proportion of One month's pay for each year of service or portion of a year of service :

Provided that the amount payable to any officer shall not be less than the equivalent of six months' pay, and shall not exceed the pay of the officer for the unexpired period of his service.

(2.) In this section “ the pay of the officer for the unexpired period of his service ” means the total of the pay which, in the opinion of the Public Service Board, the officer would probably have

(a) See now the *Public Service Act 1922-1950*, *infra*.

received had he continued to occupy, until he attained the age of sixty-five years, the office occupied by him at the time of his retirement.

7.—(1.) Compensation in accordance with the last preceding section shall also be payable to any officer who, with the written consent of the Treasurer, retires voluntarily from the Commonwealth Service within twelve months after the date upon which an arrangement with the State in which he is employed comes into operation, and

Compensation
to officers
retiring
voluntarily.

- (a) whose office the Public Service Board certifies has been, or will be, filled by an officer of the Taxation Branch ; or
- (b) whose office, or any vacancy consequential upon the filling of whose office, has been, or will be, filled by an officer of the Taxation Branch who, in the opinion of the Treasurer is of substantially similar status to the officer who has retired.

(2.) The provisions of this Act shall apply in relation to any such officer who retires in pursuance of this section in like manner as they apply in relation to officers who are retired in pursuance of section five of this Act.

8.—(1.) Compensation payable in pursuance of this Act shall be in addition to—

Compensation
to be in
addition to
pay in lieu of
furlough, &c.

- (a) any pay in lieu of furlough payable to the officer under the provisions of section seventy-three of the *Commonwealth Public Service Act 1922* ;^(a)
- (b) any sum payable to the officer under the provisions of section seventy-four of the *Commonwealth Public Service Act 1922*,^(a) or which would have been so payable if the officer had attained the age of sixty years ; and
- (c) Where the officer is, immediately prior to his retirement, eligible for recreation leave for any period, the sum equivalent to the amount of salary which would be payable to him for that period if the leave were granted to him.

(2.) In determining the amount payable to an officer under the provisions of paragraph (a) or (b) of the last preceding sub-section, no deduction shall be made on account of any recreation leave already granted to the officer in respect of the year in which he retires or is retired.

9.—(1.) If it appears that any officer who is retired or retires in pursuance of this Act is entitled to any pension, retiring allowance, gratuity, or compensation under any other law (not including

Compensation
where person
entitled to
pension, &c.

(a) See now the *Public Service Act 1922-1950*, *infra*.

the *Australian Soldiers' Repatriation Act 1920-1922*^(a), compensation under this Act shall only be allowed upon the officer undertaking not to claim pension, retiring allowance, gratuity, or compensation under that other law.

(2.) Any officer who has given the undertaking referred to in the last preceding sub-section shall, for the purposes of section forty of the *Superannuation Act 1922*, be deemed to be an officer who has resigned from the service.

(3.) There shall be deducted from the compensation payable to any officer under this Act the amount of any compensation or special grant already paid to him in respect of any portion of the service in respect of which compensation is payable under this Act.

Compensation
not liable to
income tax.

10. Compensation paid under this Act shall not be liable to income tax under any law of the Commonwealth or a State.

Provision in
case of
re-appointment
of retired
officers.

11. A person to whom compensation has been paid in pursuance of this Act shall not be appointed to any position under the Commonwealth until he has, if so required by the authority making the appointment, paid or agreed to pay into the Treasury an amount equal to the compensation so paid to him, or such proportionate amount as that authority determines.

Application of
Act to
temporary
employees
who have
passed
examination.
Substituted by
No. 36, 1924,
s. 2.

12.—(1.) The provisions of this Act in relation to the payment of compensation to officers shall, in the same manner as they apply to officers, apply to—

(a) temporary employees who are returned soliders, as defined in the *Commonwealth Public Service Act 1922*,^(b) and who have passed the examination prescribed under that Act, but whose appointments to the Commonwealth Service have not been made or confirmed; and

(b) temporary employees who—

- (i) are returned soldiers as defined in that Act;
- (ii) were in the employ of the Taxation Branch on the first day of July One thousand nine hundred and twenty-three and have been or are retired after that date; and
- (iii) are certified by the Board of Commissioners appointed under that Act to have passed a special examination which the Board shall hold for the sole purpose of conferring eligibility for compensation under this Act.

(2.) For the purpose of ascertaining the amount of compensation payable—

(a) See now the *Repatriation Act 1920-1950*, *infra*.

(b) See now the *Public Service Act 1922-1950*, *infra*.

- (a) to a temporary employee to whom paragraph (a) of the last preceding sub-section applies—his period of service shall be deemed to have commenced on a date certified by the Board of Commissioners as that upon which his service would have commenced if his appointment had been made and confirmed prior to the commencement of this Act; and
- (b) to a temporary employee to whom paragraph (b) of the last preceding sub-section applies—his period of service shall be deemed to have commenced on the date of the commencement of his temporary employment in the Taxation Branch, followed by continuous employment in that Branch up to the date of his retirement in accordance with this Act.

* * * * *

Section 12A
inserted by
No. 36, 1924,
s. 2 and repealed
by No. 45, 1934,
s. 2 and 4th
Schedule.

13. This Act shall not apply to any officer whose retirement has been in the nature of a penalty, or on account of unsatisfactory service or inefficiency or medical unfitness.

Non-
application
of Act.

14. Compensation payable under this Act shall not be claimable or recoverable by any person as a matter of right, but shall be deemed to be a free gift by the Commonwealth.

Compensation
not payable
as a right.

15. Where any person entitled to payment of compensation under this Act dies before payment is made, the amount of the compensation so payable shall not form part of the estate of the deceased, and shall not be claimable by the executor or administrator of the estate, but may be paid to the dependants of the deceased in such proportions and under such conditions as the Minister approves.

Provision for
payment where
officer dies
before
payment.

16.—(1.) For the purposes of this Act there shall be established in the books of the Treasury a Trust Account which shall be known as the Taxation and Other Officers' Compensation Account, and that account shall be a Trust Account for the purposes of section sixty-two A of the *Audit Act* 1901-1920.

Establishment
of Trust
Account and
payment of
compensation.

(2.) There shall be payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, such amount as is necessary to pay compensation in accordance with this Act, and the amount so payable shall be placed to the credit of the Taxation and Other Officers' Trust Account.

(3.) Any compensation payable under this Act shall be paid out of moneys for the time being standing to the credit of the Taxation and Other Officers' Trust Account.

Deduction of
tax from
salaries of
officers.

Inserted by
No. 23, 1938,
s. 2.

Sub-section (1.)
substituted by
No. 40, 1940,
s. 3.*

16A.—(1.) The Commonwealth may enter into an agreement with any State for the deduction, subject to such conditions and exceptions as are specified in the agreement, from periodical payments of wages, salaries or allowances paid to any officer—

- (a) of any tax imposed under the law of that State on those wages, salaries or allowances ; and
- (b) of amounts calculated at such rates as are specified in the agreement for or on account of any tax payable by that officer under the law of that State.

(2.) Any deductions made in pursuance of any such agreement, and any deductions which, prior to the commencement of this section, have been made from the wages, salaries or allowances of any officer as and for tax imposed on those wages, salaries or allowances under the law of any State, are hereby authorized and approved.

(3.) Any amount deducted in pursuance of an agreement made under this section shall be paid to the State in such manner and at such times as are provided by the agreement.

(4.) For the purposes of this section, “ officer ” means any person employed by the Commonwealth or by any authority under the Commonwealth.

Regulations.

17. 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.

* Section 4 of the *Income Tax Collection Act 1940* reads as follows :—

“ Any agreement entered into in pursuance of the power conferred by section sixteen A of the *Income Tax Collection Act 1923-1938* which was in force immediately prior to the commencement of this Act shall continue in force as if this Act had not been enacted.”

INCOME TAX (WAR-TIME ARRANGEMENTS) ACT 1942-1946.^(a)

An Act to make provision relating to the collection of taxes during the present war, and for other purposes.^(b)

WHEREAS, with a view to the public safety and defence of the Commonwealth and of the several States and for the more effectual prosecution of the war in which His Majesty is engaged, it is necessary or convenient to provide for the matters hereinafter set out :

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 *Income Tax (War-time Arrangements) Act 1942-1946*.^(a)

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

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Commence-
ment.

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

Definitions.

“ State service ” means any employment by the Crown in the right of a State, whether permanent or temporary, and whether an employment to which the Act of that State relating to the Public Service applies or not ;

“ transferred officer ” means any officer of a State Service who is transferred to the Public Service of the Commonwealth under this Act.

* * * * *

Section 4
repealed by
No. 3, 1946,
s. 3.

(a) The *Income Tax (War-time Arrangements) Act 1942-1946* comprises the Acts set out in the following table :—

Act	Year and Number	Date of Assent	Date of Commencement
<i>Income Tax (War-time Arrangements) Act 1942</i>	1942, No. 21 ..	7th June, 1942 ..	7th June, 1942
<i>Income Tax (War-time Arrangements) Act 1943</i>	1943, No. 34 ..	3rd July, 1943 ..	3rd July, 1943
<i>Income Tax (War-time Arrangements) Act 1944</i>	1944, No. 32 ..	6th October, 1944 ..	6th October, 1944
<i>Income Tax (War-time Arrangements) Act 1946</i>	1946, No. 3 ..	13th April, 1946 ..	1st July, 1946*

* Sections 1, 2 and 4 commenced on the date of assent.

(b) This Act is a valid exercise of the power of the Commonwealth Parliament to make laws with respect to the naval and military defence of the Commonwealth and the several States. So held by Rich, McTiernan and Williams JJ. (Latham C.J. and Starke J. dissenting) in *State of South Australia and others v. Commonwealth*, (1942) 65 C.L.R. 373 ; 48 A.L.R. 186 ; 16 A.L.J. 109 ; 7 A.T.D.1.

Retransfer
of officers
to State.

Sub-section (1.)
substituted by
No. 3, 1946,
s. 4.

5.—(1.) Where any transferred officer who is employed as such by the Commonwealth at the commencement of this sub-section gives to the Treasurer of the State from the service of which he was so transferred notice in writing, before the thirtieth day of June, One thousand nine hundred and forty-six, that he desires to be reinstated in that service, the officer shall, by force of this section, be re-transferred, as from the thirtieth day of June, One thousand nine hundred and forty-six, to the State service.

(2.) Any State to the service of which a transferred officer is retransferred in accordance with this section, shall reinstate that transferred officer to a position in the State service upon such terms and conditions and with such existing and accruing rights as are not less favorable than the terms, conditions and rights to which he would have been entitled if this Act had not been passed and his service as a transferred officer were service with the State.

(3.) Nothing in the last preceding sub-section shall confer on any transferred officer who is dismissed from the Public Service of the Commonwealth a right to be re-employed in the State service, or on any transferred officer who is reduced in status in consequence of inefficiency or misconduct a right to be employed in the State service with a status or right of remuneration greater than that to which he is so reduced.

Sections 6 and 7
repealed by
No. 3, 1946, s. 5.

* * * * *

Section 7A
inserted by
No. 32, 1944,
s. 3; repealed
by No. 3, 1946,
s. 5.

* * * * *

Section 8
amended by
No. 34, 1943,
s. 3†; repealed
by No. 3, 1946,
s. 6.*

* * * * *

Section 9
amended by
No. 32, 1944,
s. 4; repealed
by No. 3, 1946,
s. 6.*

* * * * *

Section 10
amended by
No. 32, 1944,
s. 5; repealed
by No. 3, 1946,
s. 7.

* * * * *

† Section 4 of the *Income Tax (War-time Arrangements) Act 1943* reads as follows:—

“(1.) The provisions of section three of this Act shall, in relation to any officer who, before the commencement of this Act, has made contributions, or has paid any amount to a State as or for contributions, or elected to contribute, to a State Fund for any excess benefits specified in sub-section (3.) of section eight of the Principal Act as amended by that section, be deemed to have come into operation on the seventh day of June, One thousand nine hundred and forty-two, and, in relation to any such officer, notice shall be deemed to have been duly given by the Treasurer of the State in accordance with that sub-section.

(2.) Subject to sub-section (1.) of this section, for the purposes of the exercise of any right of election, any increase in salary granted and paid to a transferred officer by the Commonwealth before the commencement of this Act shall be deemed to be received by him as from the first pay-day after the commencement of this Act.”

* Section 6 (2) of the *Income Tax (War-time Arrangements) Act 1946* reads as follows:—

“Notwithstanding the repeal effected by this section, the Commonwealth shall be liable to make any payments which it would have become liable to make under the repealed sections if this Act had not been passed.”

11.—(1.) The Treasurer may at any time and from time to time, by notice in writing addressed to the Treasurer of any State, notify him that, as from the date specified in the notice, it is, in his opinion, necessary for the efficient collection of revenue required for the prosecution of the war, for the effective use of manpower, or otherwise for the defence of the Commonwealth, that the Commonwealth should, during the operation of this Act, have the possession and use of any office accommodation, furniture and equipment specified in the notice (whether specified particularly or in general terms) and the Commonwealth shall have the possession and exclusive use of that office accommodation, furniture and equipment accordingly as from that date.

Transfer of
office
accommoda-
tion, &c.

(2.) The compensation to be paid by the Commonwealth in respect of its possession and use of any such office accommodation, furniture and equipment, and the extent of the obligations of the Commonwealth with respect to that office accommodation, furniture and equipment, whether as to keeping it in good order and repair or otherwise, shall be as agreed between the Commonwealth and the State, or, failing agreement, as determined by an arbitrator appointed by the Governor-General.

(3.) Any arbitration under the last preceding sub-section shall be conducted in accordance with the law of the State concerned.

12. All agreements between the Commonwealth and any State—

Suspension
of existing
agreements.

(a) made under the *Income Tax Collection Act 1923* (or under that Act as amended and in force at any time) relating to the collection of taxes by the Commonwealth on behalf of any State or by any State on behalf of the Commonwealth ; or

(b) under section two hundred and twenty-one P of the *Income Tax Assessment Act 1936-1940*, or under that Act as amended and in force at any time,

shall, notwithstanding any provision contained in any such agreement, be suspended as from a date fixed by proclamation until this Act ceases to operate.

13. Where any returns or records relating either wholly or partly to the assessment or collection of any tax imposed upon incomes by the Parliament of the Commonwealth are in the possession of a State, those returns and records shall, as from the date of commencement of this Act, be transferred to the possession of the Commonwealth :

Transfer of
records.

Provided that any persons authorized by the Treasurer of a State shall, at all reasonable times, have access to, and may make and take away copies of, any such returns and records which relate to the assessment or collection of any tax imposed upon incomes by or under any law of that State.

Persons not to
hinder
Commonwealth.

14. Where any returns or records are transferred to the possession of the Commonwealth in accordance with the last preceding section, or the Commonwealth becomes entitled to the possession and use of any office accommodation, furniture or equipment in accordance with section eleven of this Act, a person shall not in any way hinder or obstruct the Commonwealth in taking possession of or using those returns or records, or that office accommodation, furniture or equipment.

Penalty : One hundred pounds or imprisonment for six months or both.

Regulations.

15. 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.

Duration of
Act.

16. This Act shall continue in operation until the last day of the first financial year to commence after the date on which His Majesty ceases to be engaged in the present war, and no longer.

INSURANCE ACT 1932-1937.^(a)An Act relating to Insurance.^(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 *Insurance Act 1932-1937*.^(a) Short title.
Short title
amended,
No. 32, 1918,
s. 2,
Commence-
ment.
2. This Act shall commence on a date to be fixed by Proclamation.^(a)
- 3.—(1.) In this Act, unless the contrary intention appears— Definitions.
 - “Accident insurance business” means the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents (whether fatal or not) disease or sickness, or any class of personal accidents, disease or sickness ;
 - “Actuary” means a Fellow or Associate of the Institute of Actuaries of Great Britain and Ireland or of the Faculty of Actuaries of Scotland and includes a Fellow or Associate of an Institute of Actuaries of Australia which is approved by the Governor-General ;
 - “Approved securities” means—
 - (a) Government securities of the Commonwealth or of any State or of the United Kingdom or of any other part of the King's Dominions ;
 - (b) Municipal securities which have been approved by the Treasurer ;
 - (c) Debentures of any corporation (whether public or private) formed or constituted in the Common-

(a) The *Insurance Act 1932-1937* comprises the *Insurance Act 1932* 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>Insurance Act 1932</i> ..	1932, No. 4 ..	12th March, 1932 ..	23rd March, 1932 (<i>See Gazette 1932, p. 387</i>)
<i>Insurance Act (No. 2) 1932</i>	1932, No. 29 ..	30th May, 1932 ..	23rd March, 1932 (<i>See Act No. 29, 1932, s. 2</i>)
<i>Judiciary Act 1937</i> ...	1937, No. 5 ..	3rd July, 1937 ..	3rd July, 1937

(b) Section 7 (1) of the *Life Insurance Act 1945* (*infra*) reads as follows :—

“The *Insurance Act 1932-1937* shall cease to apply in relation to life insurance business as defined in this Act.”

wealth, which have been approved by the Treasurer ;

- (d) Fixed deposits in any bank, carrying on business in the Commonwealth, which has been approved by the Treasurer ;
- (e) Bank guarantees or undertakings which are in the prescribed form and which have been approved by the Treasurer ;
- (f) Unencumbered titles to freehold lands in the Commonwealth and first mortgages of freehold lands in which the sum secured does not exceed two-thirds, or such other proportion as the Treasurer determines, of the improved value of the lands ; and
- (g) Any other securities specified by regulation as approved securities ;

“ Foreign company ” means a company which is incorporated, or the head office of which is, outside the Commonwealth ;

Amended by
No. 29, 1932,
s. 3.

“ Insurance business ” means life insurance business and includes workers’ compensation insurance and the business of undertaking liability to make good any loss or damage, contingent upon the happening of a specified event and any business in relation thereto, but does not include—

- (a) any scheme or arrangement whereby staff superannuation benefits are provided by an employer or his employees or by an employer and his employees ;
- (b) the business carried on by any religious organization, or by any person on its behalf, which business consists solely of the undertaking of liability for the insurance of property belonging to, or held under lease by, that organization, or in which that organization has any legal or equitable estate or interest ; or
- (c) any scheme whereby superannuation or insurance benefits are provided by any Friendly Society registered under any State Act, or by any trade union or association of employees registered under any Act or State Act, for the members of that society, union or association ;

“ Life insurance business ”^(a) means that class of insurance business which involves the issue of, or the undertaking

(a) See footnote (b) to the title of the Act, *supra*.

of liability under, life policies and any business in relation thereto ;

“ Life policy ” means a policy insuring payment of money on death (not being death by accident or specified sickness only) or the happening of any contingency dependent on the termination or continuance of human life, and includes an instrument evidencing a contract which is subject to the payment of a premium or to the payment of premiums for a term dependent on the termination or continuance of human life and an instrument securing the grant of an annuity upon human life ;

“ Owner ” in relation to any policy, means the person who for the time being is the legal holder of the policy ;

“ Policy ” means a policy of insurance in any class of insurance business ;

“ Premium income ” means income derived from premiums after deducting reinsurances, returned premiums and cancellations ;

“ The Court ” means the High Court or the Supreme Court of the State or Territory in which the subject-matter in question arises.

(2.) For the purposes of this Act, life insurance business shall be deemed to be a class of insurance business and all other insurance business shall be deemed to be one class of insurance business :

Provided that, where the insurance business carried on by any person consists only of life insurance business and accident insurance business, that person shall, for the purposes of this Act, be deemed to carry on one class of insurance business.

(3.) Subject to this Act, a person shall not be deemed, for the purposes of this Act, to carry on insurance business by reason merely of his collecting premiums in respect of life insurance contracts entered into outside the Commonwealth or making payments due under such contracts.

4. This Act shall extend to the Territories of the Commonwealth. Application to Territories.

5. This Act shall not be deemed to apply to State insurance State Insurance. within the limits of the State concerned.

6.—(1.) Any person granting cover or receiving premiums, proposals or requests in respect of insurance business on behalf of or for transmission to any company, person or association of persons outside the Commonwealth (in this section referred to as the insurers) shall be deemed for the purposes of this Act to be carrying on in the Commonwealth the insurance business to which the cover, premiums, proposals or requests relate, and the first mentioned person shall, subject to this section, make deposits in accordance with this Act. Insurance business done on behalf of associations outside Commonwealth.

(2.) If several persons act in association in the Commonwealth in respect of the granting of cover, or in the doing of any of the acts specified in the last preceding sub-section through a person outside the Commonwealth on account of one insurer or on account of a group of insurers (no member of which is a company or is acting on behalf of a company), the business carried on in the Commonwealth by the persons so acting shall, for the purposes of this Act, if the Treasurer so directs, be regarded as business carried on by one person, and the amount of any deposit required to be made under this Act shall be calculated accordingly.

Deposits under
State Acts.

7.—(1.) After the commencement of this Act, no State Act, whether passed before or after the commencement of this Act, to the extent to which it requires a person carrying on or proposing to carry on insurance business to make any deposit or to make any payment by way of licence fee or to make, as a condition upon which that person may carry on insurance business, any other payment, shall, subject to this Act, have any force or effect :

Provided that this sub-section shall not affect the operation of any State Act, in force on the first day of February, One thousand nine hundred and thirty-two, in so far as the State Act imposes stamp duty upon licences issued to persons engaged in insurance business.

(2.) Where, at the commencement of this Act, any amount or security is, in pursuance of any enactment which upon such commencement ceases to have effect, held by a State or by any authority of a State by way of deposit on account of any person carrying on insurance business, the State or authority shall, when so required by the Treasurer, return the amount or security to the person by whom the deposit was lodged.

(3.) So much of any amount or security as is in the form of money or approved securities and is returned to any person under the last preceding sub-section shall, if that person continues to carry on insurance business after the commencement of this Act, to the extent of the deposit required to be lodged by that person under this Act, be lodged by that person with the Treasurer forthwith as, or as part of, the deposit so required.

(4.) Any person failing to comply with the requirements of the last preceding sub-section shall be deemed to have committed an offence against section nine of this Act.

Deposits with
States
continued in
certain cases.

8. Where under any State Act in force on the first day of February One thousand nine hundred and thirty-two, any amount or security is held by any State or authority of a State by way of deposit by any person carrying on insurance business—

(a) the amount or security may, until the Treasurer requires the return thereof under the last preceding section,

- remain deposited with that State or authority subject to the conditions contained in the State Act ;
- (b) the depositor shall, to the extent of the amount or security deposited, be exempt from liability to make deposits under this Act ; and
 - (c) the provisions of the State Act relating to the liability of the State or authority in respect of the amount or security deposited, and the conditions upon which the amount or security is held shall remain in force so long as the amount or security is held by the State or authority.

9. A person shall not carry on insurance business in the Commonwealth or in any Territory unless he has lodged a deposit with the Treasurer as required by this Act. Penalty for not lodging deposit.

Penalty : Two thousand pounds, and, in addition, Five hundred pounds per day for each day on which business is unlawfully carried on.

10.—(1.) Subject to this Act, a person carrying on life insurance business^(a) in the Commonwealth at the commencement of this Act shall, within six months after such commencement, deposit with the Treasurer money or approved securities to the value of Fifty thousand pounds. Deposits in respect of life insurance business.

(2.) Where a person carrying on life insurance business in the Commonwealth at the commencement of this Act satisfies the Treasurer that his net liability, as ascertained at the last actuarial valuation, in respect of that business is less than Two hundred and fifty thousand pounds, the person shall, within six months after such commencement, deposit with the Treasurer money or approved securities to the value of One thousand pounds for every Five thousand pounds of that net liability.

(3.) Where the deposit lodged under the last preceding subsection is less than Fifty thousand pounds, the amount deposited shall be increased by One thousand pounds in respect of every Five thousand pounds by which the net liability of the depositor increases beyond the amount of his net liability taken into account in fixing the amount of his initial deposit under this Act until the amount deposited reaches Fifty thousand pounds.

11. A person carrying on insurance business (other than life insurance business) at the commencement of this Act shall, from time to time as prescribed, deposit with the Treasurer money or approved securities to the value of One thousand pounds in respect of each Five thousand pounds of his annual premium income, but Deposits in respect of insurance business other than life insurance. Amended by No. 29, 1932, s. 4.

(a) See footnote (b) to the title of the Act, *supra*.

the deposit required to be made under this section by any such person shall not, in any case, be less than One thousand pounds or more than Forty thousand pounds.

Deposits in case
of foreign
company.

12. A foreign company not carrying on insurance business in the Commonwealth at the commencement of this Act shall, before carrying on that business in the Commonwealth, deposit with the Treasurer, in respect of each class of insurance business proposed to be carried on by the company, money or approved securities or both to the value of Fifty thousand pounds :

Provided that, in the case of a foreign company incorporated or having its head office outside the British Empire, the deposit under this section shall be Sixty thousand pounds in respect of each class of insurance business proposed to be carried on by that company in the Commonwealth.

Deposits in case
of new
insurance
businesses.

13.—(1.) Any person (not being a company to which the last preceding section applies) not carrying on insurance business in the Commonwealth at the commencement of this Act shall, before carrying on insurance business in the Commonwealth, deposit with the Treasurer money or approved securities or both to the value of Five thousand pounds in respect of each class of insurance business proposed to be carried on.

(2.) The person, in respect of life insurance business carried on by him, shall thereafter deposit annually with the Treasurer money or approved securities or both to the value of Five thousand pounds, until the deposit in respect of that business reaches the value of Fifty thousand pounds :

Provided that in the case of an organization having no shareholders and carrying on life insurance business, the annual deposit under this sub-section in respect of that business shall be One thousand pounds until the maximum deposit of Fifty thousand pounds is reached.

(3.) Any person who has made a deposit in accordance with sub-section (1.) of this section in respect of insurance business (other than life insurance business) carried on by him, shall thereafter from time to time as prescribed deposit with the Treasurer money or approved securities to the value of One thousand pounds for every Five thousand pounds by which his annual premium income exceeds Twenty-five thousand pounds, until the deposit in respect of that business reaches the value of Forty thousand pounds.

Deposits by
companies
acquiring
share
capital of
other
companies.

14. If it is proved to the satisfaction of the Treasurer that any company has acquired the share capital or the business of any other company, a deposit by the acquiring company to the extent which would be required by this Act of that company if it carried on the business of that other company in addition to its own business shall, if the Treasurer so certifies, be a sufficient compliance with the

requirements of the Act and no deposit shall be required to be made by that other company.

15. The Treasurer may exempt from the requirement to make any deposit under this Act any body of persons which satisfies him that it carries on or proposes to carry on insurance business wholly for the purpose of insuring its members or the employees of its members or persons engaged in a particular trade or industry, against liability, loss or damage contingent upon the happening of any event. Exemption.

16.—(1.) The initial deposit made to the Treasurer under this Act shall be accompanied— Returns, &c.,
to be
furnished.

- (a) by a return certified as correct under the hand of the principal officer of the company or of the chief representative of the company in the Commonwealth, shewing for the last annual business or trading period of the company the amount insured under life insurance business of the company or the premium income of the company in respect of other insurance business, as the case may be ;
- (b) by a copy of the last revenue account and balance-sheet of the company, or if no revenue account and balance-sheet have been issued, by a copy of any prospectus issued by the company ;
- (c) by a copy of the memorandum and articles of association of the company (if any) ; and
- (d) in the case of an individual, by such returns, balance-sheets and information as are prescribed.

(2.) A company or individual person having made an initial deposit with the Treasurer under this Act shall in any year within three months after notice given by the Treasurer or within such further time as is specified in the notice make to the Treasurer a return under the hand of the individual, or in the case of a company of the principal officer of the company, or the chief representative of the company in the Commonwealth, shewing the net liability under life insurance business of the company or the premium income for the last annual business or trading period of the company in respect of other insurance business, as the case may be.

(3.) The Treasurer may, at the expense of the company or individual, require returns under this Act to be certified as correct by a qualified public accountant or actuary, approved by the Treasurer.

(3A.) In addition to the returns, balance-sheets or other information referred to in this section, a person carrying on insurance business shall furnish such other returns, balance-sheets or information, and at such times, as are prescribed. Inserted by
No. 29, 1932,
s. 5.

Inserted by
No. 29, 1932,
s. 5.

(3B.) Any person carrying on insurance business who refuses or fails to furnish any return, balance-sheet or other information required by or under this section shall be guilty of an offence.

Penalty : Two hundred pounds.

(4.) Any person who wilfully or knowingly makes any return under this Act which is false in any material particular shall be guilty of an offence.

Penalty : Imprisonment for two years.

Question to be
decided by
Treasurer.

17.—(1.) Where any question arises under this Act as to the net liability or premium income of any person carrying on insurance business, the question shall, for the purposes of this Act, be decided by the Treasurer.

(2.) A person may appeal to the Court against any decision of the Treasurer under this section and the decision of the Court upon such appeal shall be final and conclusive.

Provisions as to
sums deposited.

18.—(1.) Every sum of money deposited in accordance with the requirements of this Act shall be invested by the Treasurer in such of the securities prescribed for the purposes of this section as the depositor selects or, in default of such selection within fourteen days after the deposit has been made, in such prescribed securities as the Treasurer determines.

(2.) All deposits made in accordance with the requirements of this Act shall be deemed to form part of the assets of the depositor, and all interest accruing due on the deposits or the securities in which they are for the time being invested shall be paid to him.

(3.) In the event of the winding-up of the business of any person carrying on business outside the Commonwealth who has made any deposit under this Act, the Court may, notwithstanding anything in this Act, order the deposit or any part thereof to be transferred by the Treasurer to any liquidator outside the Commonwealth on such terms and conditions, if any, as the Court directs; and application for an order under this sub-section may be made to the Court by or on behalf of the liquidator or by or on behalf of any person who satisfies the Court that he represents a majority of the policy owners resident within the Commonwealth.

(4.) In this section, the expression "winding-up" includes any method of dissolution or proceedings analogous to the winding-up of a company, and the expression "liquidator" includes any person occupying the position of a liquidator.

Certificate of
deposits.

19. Every person who makes any deposit with the Treasurer in pursuance of this Act shall be entitled to obtain from the Secretary to the Treasury or other proper officer a certificate in writing of the deposit made and a receipt therefor.

20.—(1.) If the Treasurer is satisfied that by reason of depreciation in the value of securities or other cause the value of money and approved securities deposited by any person with the Treasurer falls short of the value required by this Act, he may, by notice in writing, require the person to deposit with the Treasurer money or approved securities or both to a value deemed by the Treasurer to be sufficient to bring the amount of the deposit to the value required by this Act. Increase of deposit where securities have depreciated.

(2.) A notice under this section shall not be issued until after the Treasurer has given an opportunity to the person to be heard in connexion with the matter.

(3.) A person may appeal to the Court against any requirement of the Treasurer under this section and the decision of the Court upon such appeal shall be final and conclusive.

(4.) Any person who fails to deposit with the Treasurer money or approved securities or both as required by the Treasurer under this section or as decided by the Court on appeal shall be guilty of an offence.

Penalty : Five hundred pounds, and in addition One hundred pounds for each day during which the failure continues.

21. All moneys and securities for the time being deposited by any person with the Treasurer under this Act shall, subject to this Act, be and remain as a security for the payment of liability under the policies issued by that person and shall not be liable for any debts or contracts of the person other than to or with his policy owners, in respect of their policies, until payment in full of the liability under such policies has been made. Deposits to be security to policy owners.

22.—(1.) The moneys and securities deposited with the Treasurer under this Act shall be available to satisfy any final judgment obtained in the Commonwealth by a policy owner against the insurer in respect of any policy, and the Treasurer may satisfy any such judgment out of such moneys or securities accordingly, and thereupon the deposit shall be deemed to be reduced by the amount of the payment so made. Deposits available to satisfy judgments in respect of policies.

(2.) In the event of the winding-up of the business of any person carried on in the Commonwealth, the money and securities deposited by him with the Treasurer under this Act shall, subject to any order made under sub-section (3.) of section eighteen of this Act, be held by the Treasurer to meet the liabilities of the person under the policies issued by him in the Commonwealth, and when these have been met to the extent authorized in the winding-up, any surplus shall be paid to the liquidator.

23. If any money or securities deposited under this Act are, while so deposited, lost, stolen, destroyed or damaged, the injury occasioned to all persons interested therein shall be made good out of moneys to be appropriated by the Parliament for the purpose. Responsibility for lost securities.

Value of
securities.

24. In all matters relating to the value of securities deposited under this Act, the decision of the Treasurer shall, subject to appeal to the Court, be binding and conclusive.

Appeals.

25.—(1.) The Court shall have jurisdiction to hear and determine appeals under this Act.

Sub-sec. (2.)
omitted by
No. 5, 1937,
s. 4 and
Schedule.

* * * * *

Substitution of
deposits.

26.—(1.) A person may at any time substitute for any security deposited under this Act any equivalent approved security, and any security so substituted shall be subject to the same charge or liability as the security withdrawn.

(2.) Any person who makes any such substitution shall obtain from the Secretary to the Treasury or other proper officer a certificate in writing of the transfer so made.

(3.) In the case of any person ceasing to carry on insurance business in the Commonwealth, the Treasurer may permit the withdrawal of the whole of the amount deposited under this Act or such portion thereof as he considers reasonable having regard to the liabilities of the person to policy owners in the Commonwealth.

Regulations.

27. 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.

INTERIM FORCES BENEFITS ACT 1947-1950.^(a)

An Act to provide certain Benefits for members of the Interim Forces by reason of their service with such Forces, 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 *Interim Forces Benefits Act* 1947-1950.^(a)

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

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Commence-
ment.

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

Definitions.

“ discharge ” includes termination of appointment ;

Amended by
No. 79, 1950,
s. 3.

“ member of the Interim Forces ” means a person who, after the thirtieth day of June, One thousand nine hundred and forty-seven, and prior to a date fixed by the Minister by notice in the *Gazette*,^(b) enlists or re-engages in, or is appointed or re-appointed to, the Naval, Military or Air Forces of the Commonwealth for continuous service for a term not exceeding two years.

4. In addition to the rights derived by members of the Naval, Military or Air Forces of the Commonwealth, who enlist or re-engage in, or are appointed or re-appointed to, those Forces after the thirtieth day of June, One thousand nine hundred and forty-seven, as the conditions directly governing their service in any of those Forces under any law regulating that service, the benefits, advantages and assistance which shall accrue to, or in relation to, those members by reason of their service after the date of that enlistment, re-engagement, appointment or re-appointment, as the

Benefits of
members of
the Forces.
Amended by
No. 79, 1950,
s. 4.

(a) The *Interim Forces Benefits Act* 1947-1950 comprises the Acts set out in the following table :—

Act	Year and Number	Date of Assent	Date of Commencement
<i>Interim Forces Benefits Act</i> 1947	1947, No. 46 ..	12th June, 1947 ..	12th June, 1947
<i>Interim Forces Benefits Act</i> 1950	1950, No. 79 ..	16th December, 1950	12th June, 1947, See Act No. 79, 1950, s.2.

(b) The date so fixed was 1st July, 1949. See *Gazette*, 1949, p. 1765 and Commonwealth Statutory Rules 1949-1950, p. 912.

case may be, shall be those which are provided for or in respect of those members by this Act and the regulations made under this Act and shall be no others.

Leave on
discharge.

5.—(1.) A member of the Interim Forces shall, immediately prior to his discharge, unless his discharge is, in the opinion of the prescribed authority, other than an honorable discharge, be entitled to leave of absence—

(a) where the member has been engaged in those Forces for a period of not less than six months—for a period of thirty days ; and

(b) in any other case—for a period of fifteen days.

(2.) Leave under this section in respect of service as a member of the Interim Forces shall, subject to the next succeeding sub-section, be calculated independently of any prior period of service with the Naval, Military or Air Forces of the Commonwealth commenced before the first day of July, One thousand nine hundred and forty-seven.

(3.) Where the service of a member of the Interim Forces is continuous with a prior period of service with the Naval, Military or Air Forces of the Commonwealth commenced before the first day of July, One thousand nine hundred and forty-seven, one period of leave may be granted under this section in respect of the sum of both periods of service, and the right to leave provided by this sub-section in respect of any period of service shall be in substitution for any right to leave in respect of that period under any other Act.

War pensions
for male
members of
the Interim
Forces.

6.—(1.) Subject to the provisions of this section, the provisions of Divisions 1 to 4 (inclusive) (other than section twenty-four) of Part III. of the *Australian Soldiers' Repatriation Act 1920-1947*,^(a) of sections one hundred and one and one hundred and three of that Act and of the Schedules to that Act, shall extend to, and in relation to, male members of the Interim Forces and to the dependants of such members.

(2.) For the purposes of the extension of the provisions of Divisions 1 to 4 (inclusive) of Part III. of the *Australian Soldiers' Repatriation Act 1920-1947*^(a) and of sections one hundred and one and one hundred and three of, and of the Schedules to, that Act as provided in the last preceding sub-section—

(a) any reference to a member of the Forces shall be read as a reference to a male member of the Interim Forces ;

(b) any reference in those Divisions, sections or Schedules or in any Act affecting those Divisions, sections or Schedules, to dependants shall, except where otherwise expressly provided, be read in the same manner as is

^(a) See now the *Repatriation Act 1920-1950*, *infra*.

provided in paragraph (b) of sub-section (2.) of section ninety-nine of the *Australian Soldiers' Repatriation Act 1920-1947*^(a) ;

- (c) paragraph (a) of sub-section (1.) of section one hundred and one of that Act shall be read as if the words " service outside Australia " were substituted for the words " active service " and as if the words " or the termination of the war whichever first happens " were inserted after the word " enlistment " (second occurring) ;
- (d) paragraph (d) of the proviso to sub-section (1.) of section one hundred and one of that Act shall be deemed to be omitted ;
- (e) sub-section (2.) of section one hundred and one of that Act shall be read as if the words " service outside Australia " were substituted for the words " active service " ; and
- (f) sub-section (4.) of section one hundred and one of that Act shall be deemed to be omitted.

7.—(1.) Subject to the provisions of this section the provisions of Divisions 1 to 4 (inclusive) (other than section twenty-four) of Part III. of the *Australian Soldiers' Repatriation Act 1920-1947*,^(a) sections one hundred and one, one hundred and three and one hundred and six of, and of the Schedules to that Act, shall extend to and in relation to, female members of the Interim Forces and to the dependants of such members.

War pensions
for female
members of
the Interim
Forces.

(2.) For the purposes of the extension of the provisions of Divisions 1 to 4 (inclusive) of Part III. of the *Australian Soldiers' Repatriation Act 1920-1947*,^(a) of sections one hundred and one, one hundred and three and one hundred and six of, and of the Schedules to, that Act as provided in the last preceding sub-section—

- (a) any reference to a member of the Forces shall be read as a reference to a female member of the Interim Forces ;
- (b) any reference in those Divisions, sections or Schedules or in any Act affecting those Divisions, sections or Schedules, to dependants shall, except where otherwise expressly provided, be read in the same manner as is provided in paragraph (b) of sub-section (2.) of section one hundred and four of the *Australian Soldiers' Repatriation Act 1920-1947* ;^(a)
- (c) paragraph (a) of sub-section (1.) of section one hundred and one of that Act shall be read as if the words " service outside Australia " were substituted for the words " active service " and the words " or the termination of the war whichever first happens " were inserted after the word " enlistment " (second occurring) ;

(a) See now the *Repatriation Act 1920-1950*, *infra*.

- (d) paragraph (d) of the proviso to sub-section (1.) of section one hundred and one of that Act shall be deemed to be omitted ; .
- (e) sub-section (2.) of section one hundred and one of that Act shall be read as if the words "service outside Australia" were substituted for the words "active service" ; and
- (f) sub-section (4.) of section one hundred and one of that Act shall be deemed to be omitted.

Legal
assistance.

8. The legal service bureaux established by the Attorney-General for the purpose of furnishing legal advice to members of the Forces, discharged members of the Forces and the dependants of such members and discharged members, shall be available to members of the Naval, Military or Air Forces of the Commonwealth who enlist or re-engage in, or are appointed or re-appointed to, those Forces after the thirtieth day of June, One thousand nine hundred and forty-seven, to discharged members who had so enlisted or re-engaged or had been so appointed or re-appointed and to the dependants of such members and discharged members.

Regulations.

9. 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, in particular—

- (a) for providing for the granting of assistance and benefits to members of the Interim Forces and to the wives, widows and children of such members ;
 - (b) for specifying the persons who shall, for the purposes of the regulations, be deemed to be the wives, widows or children of such members ; and
 - (c) for prescribing a penalty of a fine not exceeding Twenty-five pounds or of imprisonment not exceeding three months for any offence against the regulations.
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INTERNATIONAL LABOUR ORGANISATION ACT 1947.^(a)

An Act to approve the amended Constitution of
the International Labour Organisation.

WHEREAS by Part XIII. of the Treaty of Peace between Preamble.
the Allied and Associated Powers and Germany, concluded
at Versailles on the twenty-eighth of June, One thousand nine
hundred and nineteen, there was established a permanent organisa-
tion known as the International Labour Organisation of which
Australia is an original member :

AND WHEREAS Part XIII. of the said Treaty of Peace contained
the original Constitution of the International Labour Organisation :

AND WHEREAS by instruments of amendment adopted by the
General Conference of the International Labour Organisation on the
second day of November, One thousand nine hundred and twenty-
two, the fifth day of November, One thousand nine hundred and
forty-five and the ninth day of October, One thousand nine hundred
and forty-six, the provisions of the Constitution of the International
Labour Organisation were, in accordance with Article thirty-six of
that Constitution, amended in various respects :

AND WHEREAS it is expedient that the Constitution of the
Organisation, as now amended, should be approved by the Parlia-
ment :

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

1. This Act may be cited as the *International Labour Organisation* Short title.
Act 1947.^(a)

2. The Constitution of the International Labour Organisation Approval of
Constitution
of I.L.O.
(a copy of which is set out in the Schedule to this Act) is approved.

(a) No. 91, 1947 ; assented to on 11th December, 1947 ; commenced on 8th January, 1948.

THE SCHEDULE.

THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION.

PREAMBLE

Whereas universal and lasting peace can be established only if it is based upon social justice ;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled ; and an improvement of those conditions is urgently required : as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures ;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries ;

The HIGH CONTRACTING PARTIES, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organisation :

CHAPTER I.—ORGANISATION

Article 1

1. A permanent organisation is hereby established for the promotion of the objects set forth in the Preamble to this Constitution and in the Declaration concerning the aims and purposes of the International Labour Organisation adopted at Philadelphia on 10 May 1944 the text of which is annexed to this Constitution.

2. The Members of the International Labour Organisation shall be the States which were Members of the Organisation on 1 November 1945, and such other States as may become Members in pursuance of the provisions of paragraphs 3 and 4 of this Article.

3. Any original Member of the United Nations and any State admitted to membership of the United Nations by a decision of the General Assembly in accordance with the provisions of the Charter may become a Member of the International Labour Organisation by communicating to the Director-General of the International Labour Office its formal acceptance of the obligations of the Constitution of the International Labour Organisation.

4. The General Conference of the International Labour Organisation may also admit Members to the Organisation by a vote concurred in by two thirds of the delegates attending the session, including two thirds of the Government delegates present and voting. Such admission shall take effect on the communication to the Director-General of the International Labour Office by the Government of the new Member of its formal acceptance of the obligations of the Constitution of the Organisation.

5. No Member of the International Labour Organisation may withdraw from the Organisation without giving notice of its intention so to do to the Director-General of the International Labour Office. Such notice shall take effect two years after the date of its reception by the Director-General, subject to the Member having at that time fulfilled all financial obligations arising out of its membership. When a Member has ratified any International Labour Convention, such withdrawal shall not affect the continued validity for the period provided for in the Convention of all obligations arising thereunder or relating thereto.

6. In the event of any State having ceased to be a Member of the Organisation, its readmission to membership shall be governed by the provisions of paragraph 3 or paragraph 4 of this Article as the case may be.

THE SCHEDULE—*continued.*

Article 2

The permanent organisation shall consist of:

- (a) a General Conference of representatives of the Members ;
- (b) a Governing Body composed as described in Article 7 ; and
- (c) an International Labour Office controlled by the Governing Body.

Article 3

1. The meetings of the General Conference of representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members.

2. Each delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

3. Each Member which is responsible for the international relations of non-metropolitan territories may appoint as additional advisers to each of its delegates :

- (a) persons nominated by it as representatives of any such territory in regard to matters within the self-governing powers of that territory ; and
- (b) persons nominated by it to advise its delegates in regard to matters concerning non-self-governing territories.

4. In the case of a territory under the joint authority of two or more Members, persons may be nominated to advise the delegates of such Members.

5. The Members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

6. Advisers shall not speak except on a request made by the delegate whom they accompany and by the special authorisation of the President of the Conference, and may not vote.

7. A delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

8. The names of the delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members.

9. The credentials of delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with this Article.

Article 4

1. Every delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

2. If one of the Members fails to nominate one of the non-Government delegates whom it is entitled to nominate, the other non-Government delegate shall be allowed to sit and speak at the Conference, but not to vote.

3. If in accordance with Article 3 the Conference refuses admission to a delegate of one of the Members, the provisions of the present Article shall apply as if that delegate had not been nominated.

Article 5

The meetings of the Conference shall, subject to any decisions which may have been taken by the Conference itself at a previous meeting, be held at such place as may be decided by the Governing Body.

Article 6

Any change in the seat of the International Labour Office shall be decided by the Conference by a two-thirds majority of the votes cast by the delegates present.

THE SCHEDULE—*continued.**Article 7*

1. The Governing Body shall consist of thirty-two persons :

Sixteen representing Governments,
Eight representing the employers, and
Eight representing the workers.

2. Of the sixteen persons representing Governments, eight shall be appointed by the Members of chief industrial importance, and eight shall be appointed by the Members selected for that purpose by the Government delegates to the Conference, excluding the delegates of the eight Members mentioned above. Of the sixteen Members represented, six shall be non-European States.

3. The Governing Body shall as occasion requires determine which are the Members of the Organisation of chief industrial importance and shall make rules to ensure that all questions relating to the selection of the Members of chief industrial importance are considered by an impartial committee before being decided by the Governing Body. Any appeal made by a Member from the declaration of the Governing Body as to which are the Members of chief industrial importance shall be decided by the Conference, but an appeal to the Conference shall not suspend the application of the declaration until such time as the Conference decides the appeal.

4. The persons representing the employers and the persons representing the workers shall be elected respectively by the employers' delegates and the workers' delegates to the Conference. Two employers' representatives and two workers' representatives shall belong to non-European States.

5. The period of office of the Governing Body shall be three years. If for any reason the Governing Body elections do not take place on the expiry of this period, the Governing Body shall remain in office until such elections are held.

6. The method of filling vacancies and of appointing substitutes and other similar questions may be decided by the Governing Body subject to the approval of the Conference.

7. The Governing Body shall, from time to time, elect from its number a Chairman and two Vice-Chairmen, of whom one shall be a person representing a Government, one a person representing the employers, and one a person representing the workers.

8. The Governing Body shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least twelve of the representatives on the Governing Body.

Article 8

1. There shall be a Director-General of the International Labour Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

2. The Director-General or his deputy shall attend all meetings of the Governing Body.

Article 9

1. The staff of the International Labour Office shall be appointed by the Director-General under regulations approved by the Governing Body.

2. So far as is possible with due regard to the efficiency of the work of the Office, the Director-General shall select persons of different nationalities.

3. A certain number of these persons shall be women.

4. The responsibilities of the Director-General and the staff shall be exclusively international in character. In the performance of their duties, the Director-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organisation.

5. Each Member of the Organisation undertakes to respect the exclusively international character of the responsibilities of the Director-General and the staff and not to seek to influence them in the discharge of their responsibilities.

THE SCHEDULE—*continued.**Article 10*

1. The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body.

2. Subject to such directions as the Governing Body may give, the Office will—

- (a) prepare the documents on the various items of the agenda for the meetings of the Conference ;
- (b) accord to Governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection ;
- (c) carry out the duties required of it by the provisions of this Constitution in connection with the effective observance of Conventions ;
- (d) edit and issue, in such languages as the Governing Body may think desirable, publications dealing with problems of industry and employment of international interest.

3. Generally, it shall have such other powers and duties as may be assigned to it by the Conference or by the Governing Body.

Article 11

The Government departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director-General through the representative of their Government on the Governing Body of the International Labour Office or, failing any such representative, through such other qualified official as the Government may nominate for the purpose.

Article 12

1. The International Labour Organisation shall co-operate within the terms of this Constitution with any general international organisation entrusted with the co-ordination of the activities of public international organisations having specialised responsibilities and with public international organisations having specialised responsibilities in related fields.

2. The International Labour Organisation may make appropriate arrangements for the representatives of public international organisations to participate without vote in its deliberations.

3. The International Labour Organisation may make suitable arrangements for such consultation as it may think desirable with recognised non-governmental international organisations, including international organisations of employers, workers, agriculturists and co-operators.

Article 13

1. The International Labour Organisation may make such financial and budgetary arrangements with the United Nations as may appear appropriate.

2. Pending the conclusion of such arrangements or if at any time no such arrangements are in force—

- (a) each of the Members will pay the travelling and subsistence expenses of its delegates and their advisers and of its representatives attending the meetings of the Conference or the Governing Body, as the case may be ;
- (b) all other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid by the Director-General of the International Labour Office out of the general funds of the International Labour Organisation ;
- (c) the arrangements for the approval, allocation and collection of the budget of the International Labour Organisation shall be determined by the Conference by a two-thirds majority of the votes cast by the delegates present, and shall provide for the approval of the budget and of the arrangements for the allocation of expenses among the Members of the Organisation by a committee of Government representatives.

THE SCHEDULE—*continued.*

3. The expenses of the International Labour Organisation shall be borne by the Members in accordance with the arrangements in force in virtue of paragraph 1 or paragraph 2 (c) of this Article.

4. A Member of the Organisation which is in arrears in the payment of its financial contribution to the Organisation shall have no vote in the Conference, in the Governing Body, in any committee, or in the elections of members of the Governing Body, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years: Provided that the Conference may by a two-thirds majority of the votes cast by the delegates present permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

5. The Director-General of the International Labour Office shall be responsible to the Governing Body for the proper expenditure of the funds of the International Labour Organisation.

CHAPTER II—PROCEDURE

Article 14

1. The agenda for all meetings of the Conference will be settled by the Governing Body, which shall consider any suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organisation recognised for the purpose of Article 3, or by any public international organisation.

2. The Governing Body shall make rules to ensure thorough technical preparation and adequate consultation of the Members primarily concerned, by means of a preparatory Conference or otherwise, prior to the adoption of a Convention or Recommendation by the Conference.

Article 15

1. The Director-General shall act as the Secretary-General of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government delegates when appointed.

2. The reports on each item of the agenda shall be despatched so as to reach the Members in time to permit adequate consideration before the meeting of the Conference. The Governing Body shall make rules for the application of this provision.

Article 16

1. Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a statement addressed to the Director-General who shall circulate it to all the Members of the Organisation.

2. Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two thirds of the votes cast by the delegates present is in favour of considering them.

3. If the Conference decides (otherwise than under the preceding paragraph) by two thirds of the votes cast by the delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

Article 17

1. The Conference shall elect a President and three Vice-Presidents. One of the Vice-Presidents shall be a Government delegate, one an employers' delegate and one a workers' delegate. The Conference shall regulate its own procedure and may appoint committees to consider and report on any matter.

2. Except as otherwise expressly provided in this Constitution or by the terms of any Convention or other instrument conferring powers on the Conference or of the financial and budgetary arrangements adopted in virtue of Article 13, all matters shall be decided by a simple majority of the votes cast by the delegates present.

3. The voting is void unless the total number of votes cast is equal to half the number of the delegates attending the Conference.

THE SCHEDULE—*continued.*

Article 18

The Conference may add to any committees which it appoints technical experts without power to vote.

Article 19

1. When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of an international Convention, or (b) of a Recommendation to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention.

2. In either case a majority of two thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the Convention or Recommendation, as the case may be, by the Conference.

3. In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

4. Two copies of the Convention or Recommendation shall be authenticated by the signatures of the President of the Conference and of the Director-General. Of these copies one shall be deposited in the archives of the International Labour Office and the other with the Secretary-General of the United Nations. The Director-General will communicate a certified copy of the Convention or Recommendation to each of the Members.

5. In the case of a Convention—

- (a) the Convention will be communicated to all Members for ratification;
- (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;
- (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this Article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- (d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention;
- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

6. In the case of a Recommendation—

- (a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;
- (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no

THE SCHEDULE—*continued.*

case later than eighteen months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action ;

- (c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them ;
 - (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.
7. In the case of a federal State, the following provisions shall apply :
- (a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States ;
 - (b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, provinces, or cantons rather than for federal action, the federal Government shall—
 - (i) make, in accordance with its Constitution and the Constitutions of the States, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than eighteen months from the closing of the session of the Conference to the appropriate federal, State, provincial or cantonal authorities for the enactment of legislation or other action ;
 - (ii) arrange, subject to the concurrence of the State, provincial or cantonal Governments concerned, for periodical consultations between the federal and the State, provincial or cantonal authorities with a view to promoting within the federal State co-ordinated action to give effect to the provisions of such Conventions and Recommendations ;
 - (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal, State, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them ;
 - (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent States, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise ;
 - (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent States, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be

THE SCHEDULE—continued.

given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

8. In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

Article 20

Any Convention so ratified shall be communicated by the Director-General of the International Labour Office to the Secretary-General of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations but shall only be binding upon the Members which ratify it.

Article 21

1. If any Convention coming before the Conference for final consideration fails to secure the support of two thirds of the votes cast by the delegates present, it shall nevertheless be within the right of any of the Members of the Organisation to agree to such Convention among themselves.

2. Any Convention so agreed to shall be communicated by the Governments concerned to the Director-General of the International Labour Office and to the Secretary-General of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations.

Article 22

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.

Article 23

1. The Director-General shall lay before the next meeting of the Conference a summary of the information and reports communicated to him by Members in pursuance of Articles 19 and 22.

2. Each Member shall communicate to the representative organisations recognised for the purpose of Article 3 copies of the information and reports communicated to the Director-General in pursuance of Articles 19 and 22.

Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made, and may invite that Government to make such statement on the subject as it may think fit.

Article 25

If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

Article 26

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing Articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Article 24.

THE SCHEDULE—continued.

3. If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Enquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of Articles 25 or 26 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

Article 27

The Members agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 26, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject matter of the complaint.

Article 28

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

Article 29

1. The Director-General of the International Labour Office shall communicate the report of the Commission of Enquiry to the Governing Body and to each of the Governments concerned in the complaint, and shall cause it to be published.

2. Each of these Governments shall within three months inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the International Court of Justice.

Article 30

In the event of any Member failing to take the action required by paragraphs 5 (b), 6 (b) or 7 (b) (i) of Article 19 with regard to a Convention or Recommendation, any other Member shall be entitled to refer the matter to the Governing Body. In the event of the Governing Body finding that there has been such a failure, it shall report the matter to the Conference.

Article 31

The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 29 shall be final.

Article 32

The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any.

Article 33

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

Article 34

The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Com-

THE SCHEDULE—*continued.*

mission of Enquiry or with those in the decision of the International Court of Justice, as the case may be, and may request it to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Enquiry or the decision of the International Court of Justice is in favour of the defaulting Government, the Governing Body shall forthwith recommend the discontinuance of any action taken in pursuance of Article 33.

CHAPTER III—GENERAL

Article 35

1. The Members undertake that Conventions which they have ratified in accordance with the provisions of this Constitution shall be applied to the non-metropolitan territories for whose international relations they are responsible, including any trust territories for which they are the administering authority, except where the subject matter of the Convention is within the self-governing powers of the territory or the Convention is inapplicable owing to the local conditions or subject to such modifications as may be necessary to adapt the Convention to local conditions.

2. Each Member which ratifies a Convention shall as soon as possible after ratification communicate to the Director-General of the International Labour Office a declaration stating in respect of the territories other than those referred to in paragraphs 4 and 5 below the extent to which it undertakes that the provisions of the Convention shall be applied and giving such particulars as may be prescribed by the Convention.

3. Each Member which has communicated a declaration in virtue of the preceding paragraph may from time to time, in accordance with the terms of the Convention, communicate a further declaration modifying the terms of any former declaration and stating the present position in respect of such territories.

4. Where the subject matter of the Convention is within the self-governing powers of any non-metropolitan territory the Member responsible for the international relations of that territory shall bring the Convention to the notice of the Government of the territory as soon as possible with a view to the enactment of legislation or other action by such Government. Thereafter the Member, in agreement with the Government of the territory, may communicate to the Director-General of the International Labour Office a declaration accepting the obligations of the Convention on behalf of such territory.

5. A declaration accepting the obligations of any Convention may be communicated to the Director-General of the International Labour Office—

- (a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
- (b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

6. Acceptance of the obligations of a Convention in virtue of paragraph 4 or paragraph 5 shall involve the acceptance on behalf of the territory concerned of the obligations stipulated by the terms of the Convention and the obligations under the Constitution of the Organisation which apply to ratified Conventions. A declaration of acceptance may specify such modifications of the provisions of the Convention as may be necessary to adapt the Convention to local conditions.

7. Each Member or international authority which has communicated a declaration in virtue of paragraph 4 or paragraph 5 of this Article may from time to time, in accordance with the terms of the Convention, communicate a further declaration modifying the terms of any former declaration or terminating the acceptance of the obligations of the Convention on behalf of the territory concerned.

8. If the obligations of a Convention are not accepted on behalf of a territory to which paragraph 4 or paragraph 5 of this Article relates, the Member or Members or international authority concerned shall report to the Director-General of the International Labour Office the position of the law and practice of that territory in regard to the matters dealt with in the Convention and the report shall show the extent to which effect has been given, or is proposed to be given, to any of the

THE SCHEDULE—*continued.*

provisions of the Convention by legislation, administrative action, collective agreement or otherwise and shall state the difficulties which prevent or delay the acceptance of such Convention.

Article 36

Amendments to this Constitution which are adopted by the Conference by a majority of two thirds of the votes cast by the delegates present shall take effect when ratified or accepted by two thirds of the Members of the Organisation including five of the eight Members which are represented on the Governing Body as Members of chief industrial importance in accordance with the provisions of paragraph 3 of Article 7 of this Constitution.

Article 37

1. Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.

2. Notwithstanding the provisions of paragraph 1 of this Article the Governing Body may make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention. Any applicable judgment or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph. Any award made by such a tribunal shall be circulated to the Members of the Organisation and any observations which they may make thereon shall be brought before the Conference.

Article 38

1. The International Labour Organisation may convene such regional conferences and establish such regional agencies as may be desirable to promote the aims and purposes of the Organisation.

2. The powers, functions and procedure of regional conferences shall be governed by rules drawn up by the Governing Body and submitted to the General Conference for confirmation.

CHAPTER IV—MISCELLANEOUS PROVISIONS

Article 39

The International Labour Organisation shall possess full juridical personality and in particular the capacity—

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings.

Article 40

1. The International Labour Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Delegates to the Conference, members of the Governing Body and the Director-General and officials of the Office shall likewise enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation.

3. Such privileges and immunities shall be defined in a separate agreement to be prepared by the Organisation with a view to its acceptance by the Members.

ANNEX.

DECLARATION CONCERNING THE AIMS AND PURPOSES OF THE INTERNATIONAL LABOUR ORGANISATION.

The General Conference of the International Labour Organisation, meeting in its Twenty-sixth Session in Philadelphia, hereby adopts, this tenth day of May in the year nineteen hundred and forty-four, the present Declaration of the aims and purposes of the International Labour Organisation and of the principles which should inspire the policy of its Members.

THE SCHEDULE—*continued.*

ANNEX—*continued.*

I

The Conference reaffirms the fundamental principles on which the Organisation is based and, in particular, that:

- (a) labour is not a commodity;
- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere;
- (d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of Governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

II

Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organisation that lasting peace can be established only if it is based on social justice, the Conference affirms that:

- (a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;
- (b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- (c) all national and international policies and measures, in particular those of an economical and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;
- (d) it is a responsibility of the International Labour Organisation to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;
- (e) in discharging the tasks entrusted to it the International Labour Organisation, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

III

The Conference recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve:

- (a) full employment and the raising of standards of living;
- (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;
- (d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
- (e) the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
- (f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;

THE SCHEDULE—*continued.*ANNEX—*continued.*

- (g) adequate protection for the life and health of workers in all occupations ;
- (h) provision for child welfare and maternity protection ;
- (i) the provision of adequate nutrition, housing and facilities for recreation and culture ;
- (j) the assurance of equality of educational and vocational opportunity.

IV

Confident that the fuller and broader utilisation of the world's productive resources necessary for the achievement of the objectives set forth in this Declaration can be secured by effective international and national action, including measures to expand production and consumption, to avoid severe economic fluctuations, to promote the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade, the Conference pledges the full co-operation of the International Labour Organisation with such international bodies as may be entrusted with a share of the responsibility for this great task and for the promotion of the health, education and well-being of all peoples.

V

The Conference affirms that the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilised world.

INTERNATIONAL MONETARY AGREEMENTS ACT 1947.^(a)

An Act to approve of Australia becoming a Member of the International Monetary Fund and of the International Bank for Reconstruction and Development and to make such provisions as are necessary or expedient by reason of the Membership of Australia of the Fund and of the Bank.

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 *International Monetary Agreements Act 1947*.^(a) Short title.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. In this Act—

Definitions.

“ the Fund Agreement ” means the Articles of Agreement set out in the First Schedule to this Act providing for the establishment and operation of the International Monetary Fund ;

“ the Fund ” means the International Monetary Fund established under the Fund Agreement ;

“ the Bank Agreement ” means the Articles of Agreement set out in the Second Schedule to this Act providing for the establishment and operation of the International Bank for Reconstruction and Development ;

“ the Bank ” means the International Bank for Reconstruction and Development established under the Bank Agreement.

4. Approval is given to Australia becoming a member of the Fund and of the Bank. Membership of Australia of the Fund and the Bank.

5. The Commonwealth Bank of Australia, being the central bank of the Commonwealth of Australia, is hereby designated as the depository in Australia for all the holdings of Australian currency of the Fund and of the Bank. Commonwealth Bank to be depository.

6.—(1.) The Treasurer may, from time to time, borrow, under the provisions of the *Commonwealth Inscribed Stock Act 1911-1946* or under the provisions of any Act authorizing the issue of Treasury Bills, such amounts as are required to be paid by Australia (not Authority to borrow.

(a) No. 5, 1947; assented to and commenced on 2nd April, 1947. See s. 2.

being amounts referred to in section eight of this Act) by reason of its membership of the Fund and of the Bank.

(2.) Moneys so borrowed may be issued and applied for the purposes of making the payments specified in the last preceding sub-section, and of making payments in redemption of securities issued under the next succeeding section.

(3.) The provisions of the *National Debt Sinking Fund Act 1923-1945* shall not apply in relation to moneys borrowed under this section.

Issue of securities.

7.—(1.) To the extent to which the Fund or the Bank is prepared to accept from Australia, in place of any payment which Australia is required to make to the Fund or to the Bank, or in substitution for any Australian currency held by the Fund or by the Bank, notes or similar obligations issued by Australia, the Governor-General may authorize the issue of securities.

(2.) Securities so issued—

(a) shall be payable to the Fund or the Bank, as the case may be ;

(b) shall be non-negotiable and non-interest bearing ; and

(c) shall be payable at their par value on demand.

(3.) Sums payable under any security issued under this section shall be a charge on the Consolidated Revenue Fund.

(4.) Where, upon the redemption of any such security, the moneys necessary to redeem the security are not paid out of the proceeds of any loan raised under this Act, the moneys shall be paid out of the Consolidated Revenue Fund, which is, to the necessary extent, hereby appropriated accordingly.

Payment of charges.

8. There shall be payable out of the Consolidated Revenue Fund, which is, to the necessary extent, hereby appropriated accordingly, such amounts as Australia is, from time to time, required to pay to the Fund in pursuance of paragraph (c) or (d) of section eight of Article V of the Fund Agreement.

Receipt of net income.

9. Any payment made to Australia by the Fund or by the Bank as a distribution of net income shall be paid into the Consolidated Revenue Fund.

Annual report.

10. As soon as practicable after the end of each financial year the Treasurer shall prepare and cause to be laid before each House of the Parliament a report on the operations of this Act and of the operations, in so far as they relate to Australia, of the Fund Agreement and of the Bank Agreement, during that financial year.

Regulations.

11. The Governor-General may make regulations not inconsistent with this Act prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, the Fund Agreement and the Bank Agreement.

THE SCHEDULES.

Section 3.

FIRST SCHEDULE.

ARTICLES OF AGREEMENT OF THE INTERNATIONAL
MONETARY FUND

The Governments on whose behalf the present Agreement is signed agree as follows :

INTRODUCTORY ARTICLE

The International Monetary Fund is established and shall operate in accordance with the following provisions :

ARTICLE I
PURPOSES

The purposes of the International Monetary Fund are :

- (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
- (ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
- (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
- (iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
- (v) To give confidence to members by making the Fund's resources available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.
- (vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its decisions by the purposes set forth in this Article.

ARTICLE II
MEMBERSHIPSection 1. *Original Members*

The original members of the Fund shall be those of the countries represented at the United Nations Monetary and Financial Conference whose governments accept membership before the date specified in Article XX, Section 2 (e).

Section 2. *Other Members*

Membership shall be open to the governments of other countries at such times and in accordance with such terms as may be prescribed by the Fund.

ARTICLE III
QUOTAS AND SUBSCRIPTIONSSection 1. *Quotas*

Each member shall be assigned a quota. The quotas of the members represented at the United Nations Monetary and Financial Conference which accept membership before the date specified in Article XX, Section 2 (e), shall be those set forth in Schedule A. The quotas of other members shall be determined by the Fund.

FIRST SCHEDULE—*continued*.Section 2. *Adjustment of quotas*

The Fund shall at intervals of five years review, and if it deems it appropriate propose an adjustment of, the quotas of the members. It may also, if it thinks fit, consider at any other time the adjustment of any particular quota at the request of the member concerned. A four-fifths majority of the total voting power shall be required for any change in quotas and no quota shall be changed without the consent of the member concerned.

Section 3. *Subscriptions: time, place, and form of payment*

(a) The subscription of each member shall be equal to its quota and shall be paid in full to the Fund at the appropriate depository on or before the date when the member becomes eligible under Article XX, Section 4 (c) or (d), to buy currencies from the Fund.

(b) Each member shall pay in gold, as a minimum, the smaller of

- (i) twenty-five percent of its quota; or
- (ii) ten percent of its net official holdings of gold and United States dollars as at the date when the Fund notifies members under Article XX, Section 4 (a) that it will shortly be in a position to begin exchange transactions.

Each member shall furnish to the Fund the data necessary to determine its net official holdings of gold and United States dollars.

(c) Each member shall pay the balance of its quota in its own currency.

(d) If the net official holdings of gold and United States dollars of any member as at the date referred to in (b) (ii) above are not ascertainable because its territories have been occupied by the enemy, the Fund shall fix an appropriate alternative date for determining such holdings. If such date is later than that on which the country becomes eligible under Article XX, Section 4 (c) or (d), to buy currencies from the Fund, the Fund and the member shall agree on a provisional gold payment to be made under (b) above, and the balance of the member's subscription shall be paid in the member's currency, subject to appropriate adjustment between the member and the Fund when the net official holdings have been ascertained.

Section 4. *Payments when quotas are changed*

(a) Each member which consents to an increase in its quota shall, within thirty days after the date of its consent, pay to the Fund twenty-five percent of the increase in gold and the balance in its own currency. If, however, on the date when the member consents to an increase, its monetary reserves are less than its new quota, the Fund may reduce the proportion of the increase to be paid in gold.

(b) If a member consents to a reduction in its quota, the Fund shall, within thirty days after the date of the consent, pay to the member an amount equal to the reduction. The payment shall be made in the member's currency and in such amount of gold as may be necessary to prevent reducing the Fund's holdings of the currency below seventy-five percent of the new quota.

Section 5. *Substitution of securities for currency*

The Fund shall accept from any member in place of any part of the member's currency which in the judgment of the Fund is not needed for its operations, notes or similar obligations issued by the member or the depository designated by the member under Article XIII, Section 2, which shall be non-negotiable, non-interest bearing and payable at their par value on demand by crediting the account of the Fund in the designated depository. This Section shall apply not only to currency subscribed by members but also to any currency otherwise due to, or acquired by, the Fund.

ARTICLE IV

PAR VALUES OF CURRENCIES

Section 1. *Expression of par values*

(a) The par value of the currency of each member shall be expressed in terms of gold as a common denominator or in terms of the United States dollar of the weight and fineness in effect on July 1, 1944.

(b) All computations relating to currencies of members for the purpose of applying the provisions of this Agreement shall be on the basis of their par values.

FIRST SCHEDULE—*continued*.Section 2. *Gold purchases based on par values.*

The Fund shall prescribe a margin above and below par value for transactions in gold by members, and no member shall buy gold at a price above par value plus the prescribed margin, or sell gold at a price below par value minus the prescribed margin.

Section 3. *Foreign exchange dealings based on parity*

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity

- (i) in the case of spot exchange transactions, by more than one percent; and
- (ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability*

(a) Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. A member whose monetary authorities, for the settlement of international transactions, in fact freely buy and sell gold within the limits prescribed by the Fund under Section 2 of this Article shall be deemed to be fulfilling this undertaking.

Section 5. *Changes in par values*

(a) A member shall not propose a change in the par value of its currency except to correct a fundamental disequilibrium.

(b) A change in the par value of a member's currency may be made only on the proposal of the member and only after consultation with the Fund.

(c) When a change is proposed, the Fund shall first take into account the changes, if any, which have already taken place in the initial par value of the member's currency as determined under Article XX, Section 4. If the proposed change, together with all previous changes, whether increases or decreases,

- (i) does not exceed ten percent of the initial par value, the Fund shall raise no objection
- (ii) does not exceed a further ten percent of the initial par value, the Fund may either concur or object, but shall declare its attitude within seventy-two hours if the member so requests
- (iii) is not within (i) or (ii) above, the Fund may either concur or object, but shall be entitled to a longer period in which to declare its attitude.

(d) Uniform changes in par values made under Section 7 of this Article shall not be taken into account in determining whether a proposed change falls within (i), (ii), or (iii) of (c) above.

(e) A member may change the par value of its currency without the concurrence of the Fund if the change does not affect the international transactions of members of the Fund.

(f) The Fund shall concur in a proposed change which is within the terms of (c) (ii) or (c) (iii) above if it is satisfied that the change is necessary to correct a fundamental disequilibrium. In particular, provided it is so satisfied, it shall not object to a proposed change because of the domestic social or political policies of the member proposing the change.

Section 6. *Effect of unauthorized changes*

If a member changes the par value of its currency despite the objection of the Fund, in cases where the Fund is entitled to object, the member shall be ineligible to use the resources of the Fund unless the Fund otherwise determines; and if, after the expiration of a reasonable period, the difference between the member and the Fund continues, the matter shall be subject to the provisions of Article XV, Section 2 (b).

FIRST SCHEDULE—continued.

Section 7. *Uniform changes in par values*

Notwithstanding the provisions of Section 5 (b) of this Article, the Fund by a majority of the total voting power may make uniform proportionate changes in the par values of the currencies of all members, provided each such change is approved by every member which has ten percent or more of the total of the quotas. The par value of a member's currency shall, however, not be changed under this provision if, within seventy-two hours of the Fund's action, the member informs the Fund that it does not wish the par value of its currency to be changed by such action.

Section 8. *Maintenance of gold value of the Fund's assets*

(a) The gold value of the Fund's assets shall be maintained notwithstanding changes in the par or foreign exchange value of the currency of any member.

(b) Whenever (i) the par value of a member's currency is reduced, or (ii) the foreign exchange value of a member's currency has, in the opinion of the Fund, depreciated to a significant extent within that member's territories, the member shall pay to the Fund within a reasonable time an amount of its own currency equal to the reduction in the gold value of its currency held by the Fund.

(c) Whenever the par value of a member's currency is increased, the Fund shall return to such member within a reasonable time an amount in its currency equal to the increase in the gold value of its currency held by the Fund.

(d) The provisions of this Section shall apply to a uniform proportionate change in the par values of the currencies of all members, unless at the time when such a change is proposed the Fund decides otherwise.

Section 9. *Separate currencies within a member's territories*

A member proposing a change in the par value of its currency shall be deemed, unless it declares otherwise, to be proposing a corresponding change in the par value of the separate currencies of all territories in respect of which it has accepted this Agreement under Article XX, Section 2 (g). It shall, however, be open to a member to declare that its proposal relates either to the metropolitan currency alone, or only to one or more specified separate currencies, or to the metropolitan currency and one or more specified separate currencies.

ARTICLE V

TRANSACTIONS WITH THE FUND

Section 1. *Agencies dealing with the Fund*

Each member shall deal with the Fund only through its Treasury, central bank, stabilization fund or other similar fiscal agency and the Fund shall deal only with or through the same agencies.

Section 2. *Limitation on the Fund's operations*

Except as otherwise provided in this Agreement, operations on the account of the Fund shall be limited to transactions for the purpose of supplying a member, on the initiative of such member, with the currency of another member in exchange for gold or for the currency of the member desiring to make the purchase.

Section 3. *Conditions governing use of the Fund's resources*

(a) A member shall be entitled to buy the currency of another member from the Fund in exchange for its own currency subject to the following conditions:

- (i) The member desiring to purchase the currency represents that it is presently needed for making in that currency payments which are consistent with the provisions of this Agreement;
- (ii) The Fund has not given notice under Article VII, Section 3, that its holdings of the currency desired have become scarce;
- (iii) The proposed purchase would not cause the Fund's holdings of the purchasing member's currency to increase by more than twenty-five percent of its quota during the period of twelve months ending on the date of the purchase nor to exceed two hundred percent of its quota, but the twenty-five percent limitation shall apply only to the extent that the Fund's holdings of the member's currency have been brought above seventy-five percent of its quota if they had been below that amount;

FIRST SCHEDULE—*continued.*

- (iv) The Fund has not previously declared under Section 5 of this Article, Article IV, Section 6, Article VI, Section 1, or Article XV, Section 2 (a), that the member desiring to purchase is ineligible to use the resources of the Fund.

(b) A member shall not be entitled without the permission of the Fund to use the Fund's resources to acquire currency to hold against forward exchange transactions.

Section 4. *Waiver of conditions*

The Fund may in its discretion, and on terms which safeguard its interest, waive any of the conditions prescribed in Section 3 (a) of this Article, especially in the case of members with a record of avoiding large or continuous use of the Fund's resources. In making a waiver it shall take into consideration periodic or exceptional requirements of the member requesting the waiver. The Fund shall also take into consideration a member's willingness to pledge as collateral security gold, silver, securities, or other acceptable assets having a value sufficient in the opinion of the Fund to protect its interests and may require as a condition of waiver the pledge of such collateral security.

Section 5. *Ineligibility to use the Fund's resources*

Whenever the Fund is of the opinion that any member is using the resources of the Fund in a manner contrary to the purposes of the Fund, it shall present to the member a report setting forth the views of the Fund and prescribing a suitable time for reply. After presenting such a report to a member, the Fund may limit the use of its resources by the member. If no reply to the report is received from the member within the prescribed time, or if the reply received is unsatisfactory, the Fund may continue to limit the member's use of the Fund's resources or may, after giving reasonable notice to the member, declare it ineligible to use the resources of the Fund.

Section 6. *Purchases of currencies from the Fund for gold*

(a) Any member desiring to obtain, directly or indirectly, the currency of another member for gold shall, provided that it can do so with equal advantage, acquire it by the sale of gold to the Fund.

(b) Nothing in this Section shall be deemed to preclude any member from selling in any market gold newly produced from mines located within its territories.

Section 7. *Repurchase by a member of its currency held by the Fund*

(a) A member may repurchase from the Fund and the Fund shall sell for gold any part of the Fund's holdings of its currency in excess of its quota.

(b) At the end of each financial year of the Fund, a member shall repurchase from the Fund with gold or convertible currencies, as determined in accordance with Schedule B, part of the Fund's holdings of its currency under the following conditions:

- (i) Each member shall use in repurchases of its own currency from the Fund an amount of its monetary reserves equal in value to one-half of any increase that has occurred during the year in the Fund's holdings of its currency plus one-half of any increase, or minus one-half of any decrease, that has occurred during the year in the member's monetary reserves. This rule shall not apply when a member's monetary reserves have decreased during the year by more than the Fund's holdings of its currency have increased.
- (ii) If after the repurchase described in (i) above (if required) has been made, a member's holdings of another member's currency (or of gold acquired from that member) are found to have increased by reason of transactions in terms of that currency with other members or persons in their territories, the member whose holdings of such currency (or gold) have thus increased shall use the increase to repurchase its own currency from the Fund.

(c) None of the adjustments described in (b) above shall be carried to a point at which

- (i) the member's monetary reserves are below its quota, or

FIRST SCHEDULE—*continued*.

- (ii) the Fund's holdings of its currency are below seventy-five percent of its quota, or
- (iii) the Fund's holdings of any currency required to be used are above seventy-five percent of the quota of the member concerned.

Section 8. *Charges*

(a) Any member buying the currency of another member from the Fund in exchange for its own currency shall pay a service charge uniform for all members of three-fourths percent in addition to the parity price. The Fund in its discretion may increase this service charge to not more than one percent or reduce it to not less than one-half percent.

(b) The Fund may levy a reasonable handling charge on any member buying gold from the Fund or selling gold to the Fund.

(c) The Fund shall levy charges uniform for all members which shall be payable by any member on the average daily balances of its currency held by the Fund in excess of its quota. These charges shall be at the following rates:

- (i) *On amounts not more than twenty-five percent in excess of the quota*: no charge for the first three months; one-half percent per annum for the next nine months; and thereafter an increase in the charge of one-half percent for each subsequent year.
- (ii) *On amounts more than twenty-five percent and not more than fifty percent in excess of the quota*: an additional one-half percent for the first year; and an additional one-half percent for each subsequent year.
- (iii) *On each additional bracket of twenty-five percent in excess of the quota*: an additional one-half percent for the first year; and an additional one-half percent for each subsequent year.

(d) Whenever the Fund's holdings of a member's currency are such that the charge applicable to any bracket for any period has reached the rate of four percent per annum, the Fund and the member shall consider means by which the Fund's holdings of the currency can be reduced. Thereafter, the charges shall rise in accordance with the provisions of (c) above until they reach five percent and failing agreement, the Fund may then impose such charges as it deems appropriate.

(e) The rates referred to in (c) and (d) above may be changed by a three-fourths majority of the total voting power.

(f) All charges shall be paid in gold. If, however, the member's monetary reserves are less than one-half of its quota, it shall pay in gold only that proportion of the charges due which such reserves bear to one-half of its quota, and shall pay the balance in its own currency.

ARTICLE VI

CAPITAL TRANSFERS

Section 1. *Use of the Fund's resources for capital transfers*

(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

(b) Nothing in this section shall be deemed

- (i) to prevent the use of the resources of the Fund for capital transactions of reasonable amount required for the expansion of exports or in the ordinary course of trade, banking or other business, or
- (ii) to affect capital movements which are met out of a member's own resources of gold and foreign exchange, but members undertake that such capital movements will be in accordance with the purposes of the Fund.

Section 2. *Special provisions for capital transfers*

If the Fund's holdings of the currency of a member have remained below seventy-five percent of its quota for an immediately preceding period of not less than six months, such member, if it has not been declared ineligible to use the resources of the Fund under Section 1 of this Article, Article IV, Section 6, Article

FIRST SCHEDULE—*continued*.

V, Section 5, or Article XV, Section 2 (a), shall be entitled, notwithstanding the provisions of Section 1 (a) of this Article, to buy the currency of another member from the Fund with its own currency for any purpose, including capital transfers. Purchases for capital transfers under this section shall not, however, be permitted if they have the effect of raising the Fund's holdings of the currency of the member desiring to purchase above seventy-five percent of its quota, or of reducing the Fund's holdings of the currency desired below seventy-five percent of the quota of the member whose currency is desired.

Section 3. *Controls of capital transfers*

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (b) and in Article XIV, Section 2.

ARTICLE VII

SCARCE CURRENCIES

Section 1. *General scarcity of currency*

If the Fund finds that a general scarcity of a particular currency is developing, the Fund may so inform members and may issue a report setting forth the causes of the scarcity and containing recommendations designed to bring it to an end. A representative of the member whose currency is involved shall participate in the preparation of the report.

Section 2. *Measures to replenish the Fund's holdings of scarce currencies*

The Fund may, if it deems such action appropriate to replenish its holdings of any member's currency, take either or both of the following steps:

- (i) Propose to the member that, on terms and conditions agreed between the Fund and the member, the latter lend its currency to the Fund or that, with the approval of the member, the Fund borrow such currency from some other source either within or outside the territories of the member, but no member shall be under any obligation to make such loans to the Fund or to approve the borrowing of its currency by the Fund from any other source.
- (ii) Require the member to sell its currency to the Fund for gold.

Section 3. *Scarcity of the Fund's holdings*

(a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund, whether or not it has issued a report under Section 1 of this Article, shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency with due regard to the relative needs of members, the general international economic situation and any other pertinent considerations. The Fund shall also issue a report concerning its action.

(b) A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV, Sections 3 and 4, the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question; and they shall be relaxed and removed as rapidly as conditions permit.

(c) The authorization under (b) above shall expire whenever the Fund formally declares the currency in question to be no longer scarce.

Section 4. *Administration of restrictions*

Any member imposing restrictions in respect of the currency of any other member pursuant to the provisions of Section 3 (b) of this Article shall give sympathetic consideration to any representations by the other member regarding the administration of such restrictions.

Section 5. *Effect of other international agreements on restrictions*

Members agree not to invoke the obligations of any engagements entered into with other members prior to this Agreement in such a manner as will prevent the operation of the provisions of this Article.

FIRST SCHEDULE—*continued*.

ARTICLE VIII

GENERAL OBLIGATIONS OF MEMBERS

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3 (b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Section 3. *Avoidance of discriminatory currency practices*

No member shall engage in, or permit any of its fiscal agencies referred to in Article V, Section 1, to engage in, any discriminatory currency arrangements or multiple currency practices except as authorized under this Agreement or approved by the Fund. If such arrangements and practices are engaged in at the date when this Agreement enters into force the member concerned shall consult with the Fund as to their progressive removal unless they are maintained or imposed under Article XIV, Section 2, in which case the provisions of Section 4 of that Article shall apply.

Section 4. *Convertibility of foreign held balances*

(a) Each member shall buy balances of its currency held by another member if the latter, in requesting the purchase, represents

- (i) that the balances to be bought have been recently acquired as a result of current transactions; or
- (ii) that their conversion is needed for making payments for current transactions.

The buying member shall have the option to pay either in the currency of the member making the request or in gold.

(b) The obligation in (a) above shall not apply

- (i) when the convertibility of the balances has been restricted consistently with Section 2 of this Article, or Article VI, Section 3; or
- (ii) when the balances have accumulated as a result of transactions effected before the removal by a member of restrictions maintained or imposed under Article XIV, Section 2; or
- (iii) When the balances have been acquired contrary to the exchange regulations of the member which is asked to buy them; or
- (iv) When the currency of the member requesting the purchase has been declared scarce under Article VII, Section 3 (a); or
- (v) When the member requested to make the purchase is for any reason not entitled to buy currencies of other members from the Fund for its own currency.

Section 5. *Furnishing of information*

(a) The Fund may require members to furnish it with such information as it deems necessary for its operations, including, as the minimum necessary for the effective discharge of the Fund's duties, national data on the following matters:

- (i) Official holdings at home and abroad, of (1) gold, (2) foreign exchange.
- (ii) Holdings at home and abroad by banking and financial agencies, other than official agencies, of (1) gold, (2) foreign exchange.
- (iii) Production of gold.
- (iv) Gold exports and imports according to countries of destination and origin.
- (v) Total exports and imports of merchandise, in terms of local currency values, according to countries of destination and origin.

FIRST SCHEDULE—*continued*.

- (vi) International balance of payments, including (1) trade in goods and services, (2) gold transactions, (3) known capital transactions, and (4) other items.
- (vii) International investment position, *i.e.*, investments within the territories of the member owned abroad and investments abroad owned by persons in its territories so far as it is possible to furnish this information.
- (viii) National income.
- (ix) Price indices, *i.e.*, indices of commodity prices in wholesale and retail markets and of export and import prices.
- (x) Buying and selling rates for foreign currencies.
- (xi) Exchange controls, *i.e.*, a comprehensive statement of exchange controls in effect at the time of assuming membership in the Fund and details of subsequent changes as they occur.
- (xii) Where official clearing arrangements exist, details of amounts awaiting clearance in respect of commercial and financial transactions, and of the length of time during which such arrears have been outstanding.

(b) In requesting information the Fund shall take into consideration the varying ability of members to furnish the data requested. Members shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed. Members undertake, however, to furnish the desired information in as detailed and accurate a manner as is practicable, and, so far as possible, to avoid mere estimates.

(c) The Fund may arrange to obtain further information by agreement with members. It shall act as a centre for the collection and exchange of information on monetary and financial problems, thus facilitating the preparation of studies designed to assist members in developing policies which further the purposes of the Fund.

Section 6. *Consultation between members regarding existing international agreements*

Where under this Agreement a member is authorized in the special or temporary circumstances specified in the Agreement to maintain or establish restrictions on exchange transactions, and there are other engagements between members entered into prior to this Agreement which conflict with the application of such restrictions, the parties to such engagements will consult with one another with a view to making such mutually acceptable adjustments as may be necessary. The provisions of this Article shall be without prejudice to the operation of Article VII, Section 5.

ARTICLE IX

STATUS, IMMUNITIES AND PRIVILEGES

Section 1. *Purposes of Article*

To enable the Fund to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Fund in the territories of each member.

Section 2. *Status of the Fund*

The Fund shall possess full juridical personality, and, in particular, the capacity :

- (i) to contract ;
- (ii) to acquire and dispose of immovable and movable property ;
- (iii) to institute legal proceedings.

Section 3. *Immunity from judicial process*

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

Section 4. *Immunity from other action*

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. *Immunity of archives*

The archives of the Fund shall be inviolable.

FIRST SCHEDULE—*continued.*Section 6. *Freedom of assets from restrictions*

To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. *Privilege for communications*

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

Section 8. *Immunities and privileges of officers and employees*

All governors, executive directors, alternates, officers and employees of the Fund

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity.
- (ii) Not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members.
- (iii) shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. *Immunities from taxation*

(a) The Fund, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to executive directors, alternates, officers or employees of the Fund who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held

- (i) which discriminates against such obligation or security solely because of its origin; or
- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

Section 10. *Application of Article*

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken.

ARTICLE X

RELATIONS WITH OTHER INTERNATIONAL ORGANIZATIONS

The Fund shall cooperate within the terms of this Agreement with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article XVII.

ARTICLE XI

RELATIONS WITH NON-MEMBER COUNTRIES

Section 1. *Undertakings regarding relations with non-member countries*

Each member undertakes:

- (i) Not to engage in, nor to permit any of its fiscal agencies referred to in Article V, Section 1, to engage in, any transactions with a non-member or with persons in a non-member's territories which would be contrary to the provisions of this Agreement or the purposes of the Fund;
- (ii) Not to cooperate with a non-member or with persons in a non-member's territories in practices which would be contrary to the provisions of this Agreement or the purposes of the Fund; and

FIRST SCHEDULE—*continued*.

- (iii) To cooperate with the Fund with a view to the application in its territories of appropriate measures to prevent transactions with non-members or with persons in their territories which would be contrary to the provisions of this Agreement or the purposes of the Fund.

Section 2. *Restrictions on transactions with non-member countries*

Nothing in this Agreement shall affect the right of any member to impose restrictions on exchange transactions with non-members or with persons in their territories unless the Fund finds that such restrictions prejudice the interests of members and are contrary to the purposes of the Fund.

ARTICLE XII

ORGANIZATION AND MANAGEMENT

Section 1. *Structure of the Fund*

The Fund shall have a Board of Governors, Executive Directors, a Managing Director and a staff.

Section 2. *Board of Governors*

(a) All powers of the Fund shall be vested in the Board of Governors, consisting of one governor and one alternate appointed by each member in such manner as it may determine. Each governor and each alternate shall serve for five years, subject to the pleasure of the member appointing him, and may be reappointed. No alternate may vote except in the absence of his principal. The Board shall select one of the governors as chairman.

(b) The Board of Governors may delegate to the Executive Directors authority to exercise any powers of the Board, except the power to :

- (i) Admit new members and determine the conditions of their admission.
- (ii) Approve a revision of quotas.
- (iii) Approve a uniform change in the par value of the currencies of all members.
- (iv) Make arrangements to cooperate with other international organizations (other than informal arrangements of a temporary or administrative character).
- (v) Determine the distribution of the net income of the Fund.
- (vi) Require a member to withdraw.
- (vii) Decide to liquidate the Fund.
- (viii) Decide appeals from interpretations of this Agreement given by the Executive Directors.

(c) The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Executive Directors. Meetings of the Board shall be called by the Directors whenever requested by five members or by members having one quarter of the total voting power.

(d) A quorum for any meeting of the Board of Governors shall be a majority of the governors exercising not less than two-thirds of the total voting power.

(e) Each governor shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him.

(f) The Board of Governors may by regulation establish a procedure whereby the Executive Directors, when they deem such action to be in the best interests of the Fund, may obtain a vote of the governors on a specific question without calling a meeting of the Board.

(g) The Board of Governors, and the Executive Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Fund.

(h) Governors and alternates shall serve as such without compensation from the Fund, but the Fund shall pay them reasonable expenses incurred in attending meetings.

(i) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and the salary and terms of the contract of service of the Managing Director.

FIRST SCHEDULE—*continued.*Section 3. *Executive Directors*

(a) The Executive Directors shall be responsible for the conduct of the general operations of the Fund, and for this purpose shall exercise all the powers delegated to them by the Board of Governors.

(b) There shall be not less than twelve directors who need not be governors, and of whom

- (i) Five shall be appointed by the five members having the largest quotas ;
- (ii) Not more than two shall be appointed when the provisions of (c) below apply ;
- (iii) Five shall be elected by the members not entitled to appoint directors, other than the American Republics ; and
- (iv) Two shall be elected by the American Republics not entitled to appoint directors.

For the purposes of this paragraph, members means governments of countries whose names are set forth in Schedule A, whether they become members in accordance with Article XX or in accordance with Article II, Sections 2. When governments of other countries become members, the Board of Governors may, by a four-fifths majority of the total voting power, increase the number of directors to be elected.

(c) If, at the second regular election of directors and thereafter, the members entitled to appoint directors under (b) (i) above do not include the two members, the holdings of whose currencies by the Fund have been, on the average over the preceding two years, reduced below their quotas by the largest absolute amounts in terms of gold as a common denominator, either one or both of such members, as the case may be, shall be entitled to appoint a director.

(d) Subject to Article XX, Section 3 (b) elections of elective directors shall be conducted at intervals of two years in accordance with the provisions of Schedule C, supplemented by such regulations as the Fund deems appropriate. Whenever the Board of Governors increases the number of directors to be elected under (b) above, it shall issue regulations making appropriate changes in the proportion of votes required to elect directors under the provisions of Schedule C.

(e) Each director shall appoint an alternate with full power to act for him when he is not present. When the directors appointing them are present, alternates may participate in meetings but may not vote.

(f) Directors shall continue in office until their successors are appointed or elected. If the office of an elected director becomes vacant more than ninety days before the end of his term, another director shall be elected for the remainder of the term by the members who elected the former director. A majority of the votes cast shall be required for election. While the office remains vacant, the alternate of the former director shall exercise his powers, except that of appointing an alternate.

(g) The Executive Directors shall function in continuous session at the principal office of the Fund and shall meet as often as the business of the Fund may require.

(h) A quorum for any meeting of the Executive Directors shall be a majority of the directors representing not less than one-half of the voting power.

(i) Each appointed director shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him. Each elected director shall be entitled to cast the number of votes which counted towards his election. When the provisions of Section 5 (b) of this Article are applicable, the votes which a director would otherwise be entitled to cast shall be increased or decreased correspondingly. All the votes which a director is entitled to cast shall be cast as a unit.

(j) The Board of Governors shall adopt regulations under which a member not entitled to appoint a director under (b) above may send a representative to attend any meeting of the Executive Directors when a request made by, or a matter particularly affecting, that member is under consideration.

(k) The Executive Directors may appoint such committees as they deem advisable. Membership of committees need not be limited to governors or directors or their alternates.

FIRST SCHEDULE—*continued.*

Section 4. *Managing Director and staff*

(a) The Executive Directors shall select a Managing Director who shall not be a governor or an executive director. The Managing Director shall be chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The Managing Director shall cease to hold office when the Executive Directors so decide.

(b) The Managing Director shall be chief of the operating staff of the Fund and shall conduct, under the direction of the Executive Directors, the ordinary business of the Fund. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the staff of the Fund.

(c) The Managing Director and the staff of the Fund, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each member of the Fund shall respect the international character of this duty and shall refrain from all attempts to influence any of the staff in the discharge of his functions.

(d) In appointing the staff the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

Section 5. *Voting*

(a) Each member shall have two hundred and fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand United States dollars.

(b) Whenever voting is required under Article V, Section 4 or 5, each member shall have the number of votes to which it is entitled under (a) above, adjusted :

(i) by the addition of one vote for the equivalent of each four hundred thousand United States dollars of net sales of its currency up to the date when the vote is taken, or

(ii) by the subtraction of one vote for the equivalent of each four hundred thousand United States dollars of its net purchases of the currencies of other members up to the date when the vote is taken

provided, that neither net purchases nor net sales shall be deemed at any time to exceed an amount equal to the quota of the member involved.

(c) For the purpose of all computations under this Section, United States dollars shall be deemed to be of the weight and fineness in effect on July 1, 1944, adjusted for any uniform change under Article IV, Section 7, if a waiver is made under Section 8 (d) of that Article.

(d) Except as otherwise specifically provided, all decisions of the Fund shall be made by a majority of the votes cast.

Section 6. *Distribution of net income*

(a) The Board of Governors shall determine annually what part of the Fund's net income shall be placed to reserve and what part, if any, shall be distributed.

(b) If any distribution is made, there shall first be distributed a two percent non-cumulative payment to each member on the amount by which seventy-five percent of its quota exceeded the Fund's average holdings of its currency during that year. The balance shall be paid to all members in proportion to their quotas. Payments to each member shall be made in its own currency.

Section 7. *Publication of reports*

(a) The Fund shall publish an annual report containing an audited statement of its accounts, and shall issue, at intervals of three months or less, a summary statement of its transactions and its holdings of gold and currencies of members.

(b) The Fund may publish such other reports as it deems desirable for carrying out its purposes.

Section 8. *Communication of views to members*

The Fund shall at all times have the right to communicate its views informally to any member on any matter arising under this Agreement. The Fund may, by

FIRST SCHEDULE—*continued*.

a two-thirds majority of the total voting power, decide to publish a report made to a member regarding its monetary or economic conditions and developments which directly tend to produce a serious disequilibrium in the international balance of payments of members. If the member is not entitled to appoint an executive director, it shall be entitled to representation in accordance with Section 3 (j) of this Article. The Fund shall not publish a report involving changes in the fundamental structure of the economic organization of members.

ARTICLE XIII

OFFICES AND DEPOSITORIES

Section 1. *Location of offices*

The principal office of the Fund shall be located in the territory of the member having the largest quota, and agencies or branch offices may be established in the territories of other members.

Section 2. *Depositories*

(a) Each member country shall designate its central bank as a depository for all the Fund's holdings of its currency, or if it has no central bank it shall designate such other institution as may be acceptable to the Fund.

(b) The Fund may hold other assets, including gold, in the depositories designated by the five members having the largest quotas and in such other designated depositories as the Fund may select. Initially, at least one-half of the holdings of the Fund shall be held in the depository designated by the member in whose territories the Fund has its principal office and at least forty percent shall be held in the depositories designated by the remaining four members referred to above. However, all transfers of gold by the Fund shall be made with due regard to the costs of transport and anticipated requirements of the Fund. In an emergency the Executive Directors may transfer all or any part of the Fund's gold holdings to any place where they can be adequately protected.

Section 3. *Guarantee of the Fund's assets*

Each member guarantees all assets of the Fund against loss resulting from failure or default on the part of the depository designated by it.

ARTICLE XIV

TRANSITIONAL PERIOD

Section 1. *Introduction*

The Fund is not intended to provide facilities for relief or reconstruction or to deal with international indebtedness arising out of the war.

Section 2. *Exchange restrictions*

In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund.

Section 3. *Notification to the Fund*

Each member shall notify the Fund before it becomes eligible under Article XX, Section 4 (c) or (d), to buy currency from the Fund, whether it intends to avail itself of the transitional arrangements in Section 2 of this Article, or whether it is prepared to accept the obligations of Article VIII, Sections 2, 3, and 4. A member availing itself of the transitional arrangements shall notify the Fund as soon thereafter as it is prepared to accept the above-mentioned obligations.

FIRST SCHEDULE—*continued.*

Section 4. *Action of the Fund relating to restrictions*

Not later than three years after the date on which the Fund begins operations and in each year thereafter, the Fund shall report on the restrictions still in force under Section 2 of this Article. Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4, shall consult the Fund as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other articles of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XV, Section 2 (a).

Section 5. *Nature of transitional period*

In its relations with members, the Fund shall recognize that the post-war transitional period will be one of change and adjustment and in making decisions on requests occasioned thereby which are presented by any member it shall give the member the benefit of any reasonable doubt.

ARTICLE XV

WITHDRAWAL FROM MEMBERSHIP

Section 1. *Right of members to withdraw*

Any member may withdraw from the Fund at any time by transmitting a notice in writing to the Fund at its principal office. Withdrawal shall become effective on the date such notice is received.

Section 2. *Compulsory withdrawal*

(a) If a member fails to fulfil any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article IV, Section 6, Article V, Section 5, or Article VI, Section 1.

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfil any of its obligations under this Agreement, or a difference between a member and the Fund under Article IV, Section 6, continues, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the governors representing a majority of the total voting power.

(c) Regulations shall be adopted to ensure that before action is taken against any member under (a) or (b) above, the member shall be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing.

Section 3. *Settlement of accounts with members withdrawing*

When a member withdraws from the Fund, normal transactions of the Fund in its currency shall cease and settlement of all accounts between it and the Fund shall be made with reasonable despatch by agreement between it and the Fund. If agreement is not reached promptly, the provisions of Schedule D shall apply to the settlement of accounts.

ARTICLE XVI

EMERGENCY PROVISIONS

Section 1. *Temporary suspension*

(a) In the event of an emergency or the development of unforeseen circumstances threatening the operations of the Fund, the Executive Directors by unanimous vote may suspend for a period of not more than one hundred twenty days the operation of any of the following provisions:

- (i) Article IV, Sections 3 and 4 (b)
- (ii) Article V, Sections 2, 3, 7, 8 (a) and (f)
- (iii) Article VI, Section 2
- (iv) Article XI, Section 1

(b) Simultaneously with any decision to suspend the operation of any of the foregoing provisions, the Executive Directors shall call a meeting of the Board of Governors for the earliest practicable date.

FIRST SCHEDULE—*continued*.

(c) The Executive Directors may not extend any suspension beyond one hundred twenty days. Such suspension may be extended, however, for an additional period of not more than two hundred forty days, if the Board of Governors by a four-fifths majority of the total voting power so decides, but it may not be further extended except by amendment of this Agreement pursuant to Article XVII.

(d) The Executive Directors may, by a majority of the total voting power, terminate such suspension at any time.

Section 2. *Liquidation of the Fund*

(a) The Fund may not be liquidated except by decision of the Board of Governors. In an emergency, if the Executive Directors decide that liquidation of the Fund may be necessary, they may temporarily suspend all transactions, pending decision by the Board.

(b) If the Board of Governors decides to liquidate the Fund, the Fund shall forthwith cease to engage in any activities except those incidental to the orderly collection and liquidation of its assets and the settlement of its liabilities, and all obligations of members under this Agreement shall cease except those set out in this Article, in Article XVIII, paragraph (c), in Schedule D, paragraph 7, and in Schedule E.

(c) Liquidation shall be administered in accordance with the provisions of Schedule E.

ARTICLE XVII

AMENDMENTS

(a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a governor or the Executive Directors, shall be communicated to the chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Fund shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having four-fifths of the total voting power, have accepted the proposed amendment, the Fund shall certify the fact by a formal communication addressed to all members.

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying

- (i) the right to withdraw from the Fund (Article XV, Section 1);
- (ii) the provision that no change in a member's quota shall be made without its consent (Article III, Section 2);
- (iii) the provision that no change may be made in the par value of a member's currency except on the proposal of that member (Article IV, Section 5 (b)).

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

ARTICLE XVIII

INTERPRETATION

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an executive director it shall be entitled to representation in accordance with Article XII, Section 3 (j).

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

(c) Whenever a disagreement arises between the Fund and a member which has withdrawn, or between the Fund and any member during liquidation of the Fund, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Fund, another by the member or withdrawing member and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted by the Fund. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

FIRST SCHEDULE—*continued.*

ARTICLE XIX
EXPLANATION OF TERMS

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following :

(a) A member's monetary reserves means its net official holdings of gold, of convertible currencies of other members, and of the currencies of such non-members as the Fund may specify.

(b) The official holdings of a member means central holdings (that is, the holdings of its Treasury, central bank, stabilization fund, or similar fiscal agency).

(c) The holdings of other official institutions or other banks within its territories may, in any particular case, be deemed by the Fund, after consultation with the member, to be official holdings to the extent that they are substantially in excess of working balances ; provided that for the purpose of determining whether, in a particular case, holdings are in excess of working balances, there shall be deducted from such holdings amounts of currency due to official institutions and banks in the territories of members or non-members specified under (d) below.

(d) A member's holdings of convertible currencies means its holdings of the currencies of other members which are not availing themselves of the transitional arrangements under Article XIV, Section 2, together with its holdings of the currencies of such non-members as the Fund may from time to time specify. The term currency for this purpose includes without limitation coins, paper money, bank balances, bank acceptances, and government obligations issued with a maturity not exceeding twelve months.

(e) A member's monetary reserves shall be calculated by deducting from its central holdings the currency liabilities to the Treasuries, central banks, stabilization funds, or similar fiscal agencies of other members or non-members specified under (d) above, together with similar liabilities to other official institutions and other banks in the territories of members, or non-members specified under (d) above. To these net holdings shall be added the sums deemed to be official holdings of other official institutions and other banks under (c) above.

(f) The Fund's holdings of the currency of a member shall include any securities accepted by the Fund under Article III, Section 5.

(g) The Fund, after consultation with a member which is availing itself of the transitional arrangements under Article XIV, Section 2, may deem holdings of the currency of that member which carry specified rights of conversion into another currency or into gold to be holdings of convertible currency for the purpose of the calculation of monetary reserves.

(h) For the purpose of calculating gold subscriptions under Article III, Section 3, a member's net official holdings of gold and United States dollars shall consist of its official holdings of gold and United States currency after deducting central holdings of its currency by other countries and holdings of its currency by other official institutions and other banks if these holdings carry specified rights of conversion into gold or United States currency.

(i) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation :

- (1) All payments due in connexion with foreign trade, other current business, including services, and normal short-term banking and credit facilities ;
- (2) Payments due as interest on loans and as net income from other investments ;
- (3) Payments of moderate amount for amortization of loans or for depreciation of direct investments ;
- (4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

ARTICLE XX
FINAL PROVISIONS

Section 1. *Entry into force*

This Agreement shall enter into force when it has been signed on behalf of governments having sixty-five percent of the total of the quotas set forth in Schedule A and when the instruments referred to in Section 2 (a) of this Article

FIRST SCHEDULE—*continued*.

have been deposited on their behalf, but in no event shall this Agreement enter into force before May 1, 1945.

Section 2. *Signature*

(a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.

(b) Each government shall become a member of the Fund as from the date of the deposit on its behalf of the instrument referred to in (a) above, except that no government shall become a member before this Agreement enters into force under Section 1 of this Article.

(c) The Government of the United States of America shall inform the governments of all countries whose names are set forth in Schedule A, and all governments whose membership is approved in accordance with Article II, Section 2, of all signatures of this Agreement and of the deposit of all instruments referred to in (a) above.

(d) At the time this Agreement is signed on its behalf, each government shall transmit to the Government of the United States of America one one-hundredth of one percent of its total subscription in gold or United States dollars for the purpose of meeting administrative expenses of the Fund. The Government of the United States of America shall hold such funds in a special deposit account and shall transmit them to the Board of Governors of the Fund when the initial meeting has been called under Section 3 of this Article. If this Agreement has not come into force by December 31, 1945, the Government of the United States of America shall return such funds to the governments that transmitted them.

(e) This Agreement shall remain open for signature at Washington on behalf of the governments of the countries whose names are set forth in Schedule A until December 31, 1945.

(f) After December 31, 1945, this Agreement shall be open for signature on behalf of the government of any country whose membership has been approved in accordance with Article II, Section 2.

(g) By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate.

(h) In the case of governments whose metropolitan territories have been under enemy occupation, the deposit of the instrument referred to in (a) above may be delayed until one hundred eighty days after the date on which these territories have been liberated. If, however, it is not deposited by any such government before the expiration of this period the signature affixed on behalf of that government shall become void and the portion of its subscription paid under (d) above shall be returned to it.

(i) Paragraphs (d) and (h) shall come into force with regard to each signatory government as from the date of its signature.

Section 3. *Inauguration of the Fund*

(a) As soon as this Agreement enters into force under Section 1 of this Article, each member shall appoint a governor and the member having the largest quota shall call the first meeting of the Board of Governors.

(b) At the first meeting of the Board of Governors, arrangements shall be made for the selection of provisional executive directors. The governments of the five countries for which the largest quotas are set forth in Schedule A shall appoint provisional executive directors. If one or more of such governments have not become members, the executive directorships they would be entitled to fill shall remain vacant until they become members, or until January 1, 1946, whichever is the earlier. Seven provisional executive directors shall be elected in accordance with the provisions of Schedule C and shall remain in office until the date of the first regular election of executive directors which shall be held as soon as practicable after January 1, 1946.

(c) The Board of Governors may delegate to the provisional executive directors any powers except those which may not be delegated to the Executive Directors.

Section 4. *Initial determination of par values*

(a) When the Fund is of the opinion that it will shortly be in a position to begin exchange transactions, it shall so notify the members and shall request each member to communicate within thirty days the par value of its currency based on

FIRST SCHEDULE—*continued.*

the rates of exchange prevailing on the sixtieth day before the entry into force of this Agreement. No member whose metropolitan territory has been occupied by the enemy shall be required to make such a communication while that territory is a theater of major hostilities or for such period thereafter as the Fund may determine. When such a member communicates the par value of its currency the provisions of (d) below shall apply.

(b) The par value communicated by a member whose metropolitan territory has not been occupied by the enemy shall be the par value of that member's currency for the purposes of this Agreement unless, within ninety days after the request referred to in (a) above has been received, (i) the member notifies the Fund that it regards the par value as unsatisfactory, or (ii) the Fund notifies the member that in its opinion the par value cannot be maintained without causing recourse to the Fund on the part of that member or others on a scale prejudicial to the Fund and to members. When notification is given under (i) or (ii) above, the Fund and the member shall, within a period determined by the Fund in the light of all relevant circumstances, agree upon a suitable par value for that currency. If the Fund and the member do not agree within the period so determined, the member shall be deemed to have withdrawn from the Fund on the date when the period expires.

(c) When the par value of a member's currency has been established under (b) above, either by the expiration of ninety days without notification, or by agreement after notification, the member shall be eligible to buy from the Fund the currencies of other members to the full extent permitted in this Agreement, provided that the Fund has begun exchange transactions.

(d) In the case of a member whose metropolitan territory has been occupied by the enemy, the provisions of (b) above shall apply, subject to the following modifications:

- (i) The period of ninety days shall be extended so as to end on a date to be fixed by agreement between the Fund and the member.
- (ii) Within the extended period the member may, if the Fund has begun exchange transactions, buy from the Fund with its currency the currencies of other members, but only under such conditions and in such amounts as may be prescribed by the Fund.
- (iii) At any time before the date fixed under (i) above, changes may be made by agreement with the Fund in the par value communicated under (a) above.

(e) If a member whose metropolitan territory has been occupied by the enemy adopts a new monetary unit before the date to be fixed under (d) (i) above, the par value fixed by that member for the new unit shall be communicated to the Fund and the provisions of (d) above shall apply.

(f) Changes in par values agreed with the Fund under this Section shall not be taken into account in determining whether a proposed change falls within (i), (ii), or (iii) of Article IV, Section 5 (c).

(g) A member communicating to the Fund a par value for the currency of its metropolitan territory shall simultaneously communicate a value, in terms of that currency, for each separate currency, where such exists, in the territories in respect of which it has accepted this Agreement under Section 2 (g) of this Article, but no member shall be required to make a communication for the separate currency of a territory which has been occupied by the enemy while that territory is a theater of major hostilities or for such period thereafter as the Fund may determine. On the basis of the par value so communicated, the Fund shall compute the par value of each separate currency. A communication or notification to the Fund under (a), (b) or (d) above regarding the par value of a currency, shall also be deemed, unless the contrary is stated, to be a communication or notification regarding the par value of all the separate currencies referred to above. Any member may, however, make a communication or notification relating to the metropolitan or any of the separate currencies alone. If the member does so, the provisions of the preceding paragraphs (including (d) above, if a territory where a separate currency exists has been occupied by the enemy) shall apply to each of these currencies separately.

(h) The Fund shall begin exchange transactions at such date as it may determine after members having sixty-five percent of the total of the quotas set forth in Schedule A have become eligible, in accordance with the preceding paragraphs of this Section, to purchase the currencies of other members, but in no event until after major hostilities in Europe have ceased.

FIRST SCHEDULE—*continued*.

(i) The Fund may postpone exchange transactions with any member if its circumstances are such that, in the opinion of the Fund, they would lead to use of the resources of the Fund in a manner contrary to the purposes of this Agreement or prejudicial to the Fund or the members.

(j) The par values of the currencies of governments which indicate their desire to become members after December 31, 1945, shall be determined in accordance with the provisions of Article II, Section 2.

DONE at Washington, in a single copy which shall remain deposited in the archives of the Government of the United States of America, which shall transmit certified copies to all governments whose names are set forth in Schedule A and to all governments whose membership is approved in accordance with Article II, Section 2.

SCHEDULE A

QUOTAS

	(In millions of United States dollars)							
Australia	200							
Belgium	225							
Bolivia	10							
Brazil	150							
Canada	300							
Chile	50							
China	550							
Columbia	50							
Costa Rica	5							
Cuba	50							
Czechoslovakia	125							
Denmark*	*							
Dominican Republic	5							
Ecuador	5							
Egypt	45							
El Salvador	2.5							
Ethiopia	6							
France	450							
Greece	40							
Guatemala	5							
Haiti	5							
Honduras	2.5							
Iceland	1							
India	400							
Iran	25							
Iraq	8							
Liberia .. .. .	.5							
Luxembourg	10							
Mexico	90							
Netherlands	275							
New Zealand	50							
Nicaragua	2							
Norway	50							
Panama .. .. .	.5							
Paraguay	2							
Peru	25							
Philippine Commonwealth	15							
Poland	125							
Union of South Africa	100							
Union of Soviet Socialist Republics	1200							
United Kingdom	1300							
United States	2750							
Uruguay	15							
Venezuela	15							
Yugoslavia	60							

* The quota of Denmark shall be determined by the Fund after the Danish Government has declared its readiness to sign this Agreement but before signature takes place.

FIRST SCHEDULE—*continued*.

SCHEDULE B

PROVISIONS WITH RESPECT TO REPURCHASE BY A MEMBER OF
ITS CURRENCY HELD BY THE FUND

1. In determining the extent to which repurchase of a member's currency from the Fund under Article V, Section 7 (*b*) shall be made with each type of monetary reserve, that is, with gold and with each convertible currency, the following rule, subject to 2 below, shall apply:

- (a) If the member's monetary reserves have not increased during the year, the amount payable to the Fund shall be distributed among all types of reserves in proportion to the member's holdings thereof at the end of the year.
- (b) If the member's monetary reserves have increased during the year, a part of the amount payable to the Fund equal to one-half of the increase shall be distributed among those types of reserves which have increased in proportion to the amount by which each of them has increased. The remainder of the sum payable to the Fund shall be distributed among all types of reserves in proportion to the member's remaining holdings thereof.
- (c) If after all the repurchases required under Article V, Section 7 (*b*), had been made, the result would exceed any of the limits specified in Article V, Section 7 (*c*), the Fund shall require such repurchases to be made by the members proportionately in such manner that the limits will not be exceeded.

2. The Fund shall not acquire the currency of any non-member under Article V, Section 7 (*b*) and (*c*).

3. In calculating monetary reserves and the increase in monetary reserves during any year for the purpose of Article V, Section 7 (*b*) and (*c*), no account shall be taken, unless deductions have otherwise been made by the member for such holdings, of any increase in those monetary reserves which is due to currency previously inconvertible having become convertible during the year; or to holdings which are the proceeds of a long-term or medium-term loan contracted during the year; or to holdings which have been transferred or set aside for repayment of a loan during the subsequent year.

4. In the case of members whose metropolitan territories have been occupied by the enemy, gold newly produced during the five years after the entry into force of this Agreement from mines located within their metropolitan territories shall not be included in computations of their monetary reserves or of increases in their monetary reserves.

SCHEDULE C

ELECTION OF EXECUTIVE DIRECTORS

1. The election of the elective executive directors shall be by ballot of the governors eligible to vote under Article XII, Section 3 (*b*) (iii) and (iv).

2. In balloting for the five directors to be elected under Article XII, Section 3 (*b*) (iii), each of the governors eligible to vote shall cast for one person all of the votes to which he is entitled under Article XII, Section 5 (*a*). The five persons receiving the greatest number of votes shall be directors, provided that no person who received less than nineteen percent of the total number of votes that can be cast (eligible votes) shall be considered elected.

3. When five persons are not elected in the first ballot, a second ballot shall be held in which the person who received the lowest number of votes shall be ineligible for election and in which there shall vote only (*a*) those governors who voted in the first ballot for a person not elected, and (*b*) those governors whose votes for a person elected are deemed under 4 below to have raised the votes cast for that person above twenty percent of the eligible votes.

4. In determining whether the votes cast by a governor are to be deemed to have raised the total of any person above twenty percent of the eligible votes the twenty percent shall be deemed to include, first, the votes of the governor casting the largest number of votes for such person, then the votes of the governor casting the next largest number, and so on until twenty percent is reached.

FIRST SCHEDULE—*continued*.

5. Any governor part of whose votes must be counted in order to raise the total of any person above nineteen percent shall be considered as casting all of his votes for such person even if the total votes for such person thereby exceed twenty percent.

6. If, after the second ballot, five persons have not been elected, further ballots shall be held on the same principles until five persons have been elected, provided that after four persons are elected, the fifth may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.

7. The directors to be elected by the American Republics under Article XII, Section 3 (b) (iv) shall be elected as follows :

- (a) Each of the directors shall be elected separately.
- (b) In the election of the first director, each governor representing an American Republic eligible to participate in the election shall cast for one person all the votes to which he is entitled. The person receiving the largest number of votes shall be elected provided that he has received not less than forty-five percent of the total votes.
- (c) If no person is elected on the first ballot, further ballots shall be held, in each of which the person receiving the lowest number of votes shall be eliminated, until one person receives a number of votes sufficient for election under (b) above.
- (d) Governors whose votes contributed to the election of the first director shall take no part in the election of the second director.
- (e) Persons who did not succeed in the first election shall not be ineligible for election as the second director.
- (f) A majority of the votes which can be cast shall be required for election of the second director. If at the first ballot no person receives a majority, further ballots shall be held in each of which the person receiving the lowest number of votes shall be eliminated, until some person obtains a majority.
- (g) The second director shall be deemed to have been elected by all the votes which could have been cast in the ballot securing his election.

SCHEDULE D

SETTLEMENT OF ACCOUNTS WITH MEMBERS WITHDRAWING

1. The Fund shall be obligated to pay to a member withdrawing an amount equal to its quota, plus any other amounts due to it from the Fund, less any amounts due to the Fund, including charges accruing after the date of its withdrawal; but no payment shall be made until six months after the date of withdrawal. Payments shall be made in the currency of the withdrawing member.

2. If the Fund's holdings of the currency of the withdrawing member are not sufficient to pay the net amount due from the Fund, the balance shall be paid in gold, or in such other manner as may be agreed. If the Fund and the withdrawing member do not reach agreement within six months of the date of withdrawal, the currency in question held by the Fund shall be paid forthwith to the withdrawing member. Any balance due shall be paid in ten half-yearly instalments during the ensuing five years. Each such instalment shall be paid, at the option of the Fund, either in the currency of the withdrawing member acquired after its withdrawal or by the delivery of gold.

3. If the Fund fails to meet any installment which is due in accordance with the preceding paragraphs, the withdrawing member shall be entitled to require the Fund to pay the installment in any currency held by the Fund with the exception of any currency which has been declared scarce under Article VII, Section 3.

4. If the Fund's holdings of the currency of a withdrawing member exceed the amount due to it, and if agreement on the method of settling accounts is not reached within six months of the date of withdrawal, the former member shall be obligated to redeem such excess currency in gold or, at its option, in the currencies of members which at the time of redemption are convertible. Redemption shall be made at the parity existing at the time of withdrawal from the Fund. The withdrawing member shall complete redemption within five years of the date of withdrawal, or within such longer period as may be fixed by the Fund, but shall

FIRST SCHEDULE—*continued.*

not be required to redeem in any half-yearly period more than one-tenth of the Fund's excess holdings of its currency at the date of withdrawal plus further acquisitions of the currency during such half-yearly period. If the withdrawing member does not fulfill this obligation, the Fund may in an orderly manner liquidate in any market the amount of currency which should have been redeemed.

5. Any member desiring to obtain the currency of a member which has withdrawn shall acquire it by purchase from the Fund, to the extent that such member has access to the resources of the Fund and that such currency is available under 4 above.

6. The withdrawing member guarantees the unrestricted use at all times of the currency disposed of under 4 and 5 above for the purchase of goods or for payment of sums due to it or to persons within its territories. It shall compensate the Fund for any loss resulting from the difference between the par value of its currency on the date of withdrawal and the value realized by the Fund on disposal under 4 and 5 above.

7. In the event of the Fund going into liquidation under Article XVI, Section 2, within six months of the date on which the member withdraws, the account between the Fund and that government shall be settled in accordance with Article XVI, Section 2, and Schedule E.

SCHEDULE E

ADMINISTRATION OF LIQUIDATION

1. In the event of liquidation the liabilities of the Fund other than the repayment of subscriptions shall have priority in the distribution of the assets of the Fund. In meeting each such liability the Fund shall use its assets in the following order :

- (a) the currency in which the liability is payable ;
- (b) gold ;
- (c) all other currencies in proportion, so far as may be practicable, to the quotas of the members.

2. After the discharge of the Fund's liabilities in accordance with 1 above, the balance of the Fund's assets shall be distributed and apportioned as follows :

- (a) The Fund shall distribute its holdings of gold among the members whose currencies are held by the Fund in amounts less than their quotas. These members shall share the gold so distributed in the proportions of the amounts by which their quotas exceed the Fund's holdings of their currencies.
- (b) The Fund shall distribute to each member one-half the Fund's holdings of its currency but such distribution shall not exceed fifty percent of its quota.
- (c) The Fund shall apportion the remainder of its holdings of each currency among all the members in proportion to the amounts due to each member after the distributions under (a) and (b) above.

3. Each member shall redeem the holdings of its currency apportioned to other members under 2 (c) above, and shall agree with the Fund within three months after a decision to liquidate upon an orderly procedure for such redemption.

4. If a member has not reached agreement with the Fund within the three-month period referred to in 3 above, the Fund shall use the currencies of other members apportioned to that member under 2 (c) above to redeem the currency of that member apportioned to other members. Each currency apportioned to a member which has not reached agreement shall be used, so far as possible, to redeem its currency apportioned to the members which have made agreements with the Fund under 3 above.

5. If a member has reached agreement with the Fund in accordance with 3 above, the Fund shall use the currencies of other members apportioned to that member under 2 (c) above to redeem the currency of that member apportioned to other members which have made agreements with the Fund under 3 above. Each amount so redeemed shall be redeemed in the currency of the member to which it was apportioned.

FIRST SCHEDULE—*continued.*

6. After carrying out the preceding paragraphs, the Fund shall pay to each member the remaining currencies held for its account.

7. Each member whose currency has been distributed to other members under 6 above shall redeem such currency in gold or, at its option, in the currency of the member requesting redemption, or in such other manner as may be agreed between them. If the members involved do not otherwise agree, the member obligated to redeem shall complete redemption within five years of the date of distribution, but shall not be required to redeem in any half-yearly period more than one-tenth of the amount distributed to each other member. If the member does not fulfill this obligation, the amount of currency which should have been redeemed may be liquidated in an orderly manner in any market.

8. Each member whose currency has been distributed to other members under 6 above guarantees the unrestricted use of such currency at all times for the purchase of goods or for payment of sums due to it or to persons in its territories. Each member so obligated agrees to compensate other members for any loss resulting from the difference between the par value of its currency on the date of the decision to liquidate the Fund and the value realized by such members on disposal of its currency.

Section 3.

SECOND SCHEDULE

ARTICLES OF AGREEMENT OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

The Governments on whose behalf the present Agreement is signed agree as follows :

INTRODUCTORY ARTICLE

The International Bank for Reconstruction and Development is established and shall operate in accordance with the following provisions :

ARTICLE I
PURPOSES

The purposes of the Bank are :

- (i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.
- (ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
- (iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.
- (iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
- (v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate post-war years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above.

SECOND SCHEDULE—*continued.*

ARTICLE II

MEMBERSHIP IN AND CAPITAL OF THE BANK

Section 1. *Membership*

(a) The original members of the Bank shall be those members of the International Monetary Fund which accept membership in the Bank before the date specified in Article XI, Section 2 (e).

(b) Membership shall be open to other members of the Fund, at such times and in accordance with such terms as may be prescribed by the Bank.

Section 2. *Authorized capital*

(a) The authorized capital stock of the Bank shall be \$10,000,000,000, in terms of United States dollars of the weight and fineness in effect on July 1, 1944. The capital stock shall be divided into 100,000 shares having a par value of \$100,000 each, which shall be available for subscription only by members.

(b) The capital stock may be increased when the Bank deems it advisable by a three-fourths majority of the total voting power.

Section 3. *Subscription of shares*

(a) Each member shall subscribe shares of the capital stock of the Bank. The minimum number of shares to be subscribed by the original members shall be those set forth in Schedule A. The minimum number of shares to be subscribed by other members shall be determined by the Bank, which shall reserve a sufficient portion of its capital stock for subscription by such members.

(b) The Bank shall prescribe rules laying down the conditions under which members may subscribe shares of the authorized capital stock of the Bank in addition to their minimum subscriptions.

(c) If the authorized capital stock of the Bank is increased, each member shall have a reasonable opportunity to subscribe, under such conditions as the Bank shall decide, a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank, but no member shall be obligated to subscribe any part of the increased capital.

Section 4. *Issue price of shares*

Shares included in the minimum subscriptions of original members shall be issued at par. Other shares shall be issued at par unless the Bank by a majority of the total voting power decides in special circumstances to issue them on other terms.

Section 5. *Division and calls of subscribed capital*

The subscription of each member shall be divided into two parts as follows :

- (i) twenty percent shall be paid or subject to call under Section 7 (i) of this Article as needed by the Bank for its operations ;
- (ii) the remaining eighty percent shall be subject to call by the Bank only when required to meet obligations of the Bank created under Article IV, Sections 1 (a) (ii) and (iii).

Calls on unpaid subscriptions shall be uniform on all shares.

Section 6. *Limitation on liability*

Liability on shares shall be limited to the unpaid portion of the issue price of the shares.

Section 7. *Method of payment of subscriptions for shares*

Payment of subscriptions for shares shall be made in gold or United States dollars and in the currencies of the members as follows :

- (i) under Section 5 (i) of this Article, two percent of the price of each share shall be payable in gold or United States dollars, and, when calls are made, the remaining eighteen percent shall be paid in the currency of the member ;

SECOND SCHEDULE—*continued*.

- (ii) when a call is made under Section 5 (ii) of this Article, payment may be made at the option of the member either in gold, in United States dollars or in the currency required to discharge the obligations of the Bank for the purpose for which the call is made;
- (iii) when a member makes payments in any currency under (i) and (ii) above, such payments shall be made in amounts equal in value to the member's liability under the call. This liability shall be a proportionate part of the subscribed capital stock of the Bank as authorized and defined in Section 2 of this Article.

Section 8. *Time of payment of subscriptions*

(a) The two percent payable on each share in gold or United States dollars under Section 7 (i) of this Article, shall be paid within sixty days of the date on which the Bank begins operations, provided that

- (i) any original member of the Bank whose metropolitan territory has suffered from enemy occupation or hostilities during the present war shall be granted the right to postpone payment of one-half percent until five years after that date;
- (ii) an original member who cannot make such a payment because it has not recovered possession of its gold reserves which are still seized or immobilized as a result of the war may postpone all payment until such date as the Bank shall decide.

(b) The remainder of the price of each share payable under Section 7 (i) of this Article shall be paid as and when called by the Bank, provided that

- (i) the Bank shall, within one year of its beginning operations, call not less than eight percent of the price of the share in addition to the payment of two percent referred to in (a) above;
- (ii) not more than five percent of the price of the share shall be called in any period of three months.

Section 9. *Maintenance of value of certain currency holdings of the Bank*

(a) Whenever (i) the par value of a member's currency is reduced, or (ii) the foreign exchange value of a member's currency has, in the opinion of the Bank, depreciated to a significant extent within that member's territories, the member shall pay to the Bank within a reasonable time an additional amount of its own currency sufficient to maintain the value, as of the time of initial subscription, of the amount of the currency of such member which is held by the Bank and derived from currency originally paid in to the Bank by the member under Article II, Section 7 (i), from currency referred to in Article IV, Section 2 (b), or from any additional currency furnished under the provisions of the present paragraph, and which has not been repurchased by the member for gold or for the currency of any member which is acceptable to the Bank.

(b) Whenever the par value of a member's currency is increased, the Bank shall return to such member within a reasonable time an amount of that member's currency equal to the increase in the value of the amount of such currency described in (a) above.

(c) The provisions of the preceding paragraphs may be waived by the Bank when a uniform proportionate change in the par values of the currencies of all its members is made by the International Monetary Fund.

Section 10. *Restriction on disposal of shares*

Shares shall not be pledged or encumbered in any manner whatever and they shall be transferable only to the Bank.

ARTICLE III

GENERAL PROVISIONS RELATING TO LOANS AND GUARANTEES

Section 1. *Use of resources*

(a) The resources and the facilities of the Bank shall be used exclusively for the benefit of members with equitable consideration to projects for development and projects for reconstruction alike.

SECOND SCHEDULE—*continued.*

(b) For the purpose of facilitating the restoration and reconstruction of the economy of members whose metropolitan territories have suffered great devastation from enemy occupation or hostilities, the Bank, in determining the conditions and terms of loans made to such members, shall pay special regard to lightening the financial burden and expediting the completion of such restoration and reconstruction.

Section 2. *Dealings between members and the Bank*

Each member shall deal with the Bank only through its Treasury, central bank, stabilization fund or other similar fiscal agency, and the Bank shall deal with members only by or through the same agencies.

Section 3. *Limitations on guarantees and borrowings of the Bank*

The total amount outstanding of guarantees, participations in loans and direct loans made by the Bank shall not be increased at any time, if by such increase the total would exceed one hundred per cent of the unimpaired subscribed capital, reserves and surplus of the Bank.

Section 4. *Conditions on which the Bank may guarantee or make loans*

The Bank may guarantee, participate in, or make loans to any member or any political sub-division thereof and any business, industrial, and agricultural enterprise in the territories of a member, subject to the following conditions:

- (i) When the member in whose territories the project is located is not itself the borrower, the member or the central bank or some comparable agency of the member which is acceptable to the Bank, fully guarantees the repayment of the principal and the payment of interest and other charges on the loan.
- (ii) The Bank is satisfied that in the prevailing market conditions the borrower would be unable otherwise to obtain the loan under conditions which in the opinion of the Bank are reasonable for the borrower.
- (iii) A competent committee, as provided for in Article V, Section 7, has submitted a written report recommending the project after a careful study of the merits of the proposal.
- (iv) In the opinion of the Bank the rate of interest and other charges are reasonable and such rate, charges and the schedule for repayment of principal are appropriate to the project.
- (v) In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower, and, if the borrower is not a member, that the guarantor, will be in position to meet its obligations under the loan; and the Bank shall act prudently in the interests both of the particular member in whose territories the project is located and of the members as a whole.
- (vi) In guaranteeing a loan made by other investors, the Bank receives suitable compensation for its risk.
- (vii) Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development.

Section 5. *Use of loans guaranteed, participated in or made by the Bank*

(a) The Bank shall impose no conditions that the proceeds of a loan shall be spent in the territories of any particular member or members.

(b) The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

(c) In the case of loans made by the Bank, it shall open an account in the name of the borrower and the amount of the loan shall be credited to this account in the currency or currencies in which the loan is made. The borrower shall be permitted by the Bank to draw on this account only to meet expenses in connexion with the project as they are actually incurred.

SECOND SCHEDULE—*continued*.ARTICLE IV
OPERATIONSSection 1. *Methods of making or facilitating loans*

(a) The Bank may make or facilitate loans which satisfy the general conditions of Article III in any of the following ways :

- (i) By making or participating in direct loans out of its own funds corresponding to its unimpaired paid-up capital and surplus and, subject to Section 6 of this Article, to its reserves.
- (ii) By making or participating in direct loans out of funds raised in the market of a member, or otherwise borrowed by the Bank.
- (iii) By guaranteeing in whole or in part loans made by private investors through the usual investment channels.

(b) The Bank may borrow funds under (a) (ii) above or guarantee loans under (a) (iii) above only with the approval of the member in whose markets the funds are raised and the member in whose currency the loan is denominated, and only if those members agree that the proceeds may be exchanged for the currency of any other member without restriction.

Section 2. *Availability and transferability of currencies*

(a) Currencies paid into the Bank under Article II, Section 7 (i), shall be loaned only with the approval in each case of the member whose currency is involved ; provided, however, that if necessary, after the Bank's subscribed capital has been entirely called, such currencies shall, without restriction by the members whose currencies are offered, be used or exchanged for the currencies required to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to such contractual payments on loans guaranteed by the Bank.

(b) Currencies received by the Bank from borrowers or guarantors in payment on account of principal of direct loans made with currencies referred to in (a) above shall be exchanged for the currencies of other members or reloaned only with the approval in each case of the members whose currencies are involved ; provided, however, that if necessary, after the Bank's subscribed capital has been entirely called, such currencies shall, without restriction by the members whose currencies are offered, be used or exchanged for the currencies required to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to such contractual payments on loans guaranteed by the Bank.

(c) Currencies received by the Bank from borrowers or guarantors in payment on account of principal of direct loans made by the Bank under Section 1 (a) (ii) of this Article, shall be held and used, without restriction by the members, to make amortization payments, or to anticipate payment of or repurchase part or all of the Bank's own obligations.

(d) All other currencies available to the Bank, including those raised in the market or otherwise borrowed under Section 1 (a) (ii) of this Article, those obtained by the sale of gold, those received as payments of interest and other charges for direct loans made under Sections 1 (a) (i) and (ii), and those received as payments of commissions and other charges under Section 1 (a) (iii), shall be used or exchanged for other currencies or gold required in the operations of the Bank without restriction by the members whose currencies are offered.

(e) Currencies raised in the markets of members by borrowers on loans guaranteed by the Bank under Section 1 (a) (iii) of this Article, shall also be used or exchanged for other currencies without restriction by such members.

Section 3. *Provision of currencies for direct loans*

The following provisions shall apply to direct loans under Sections 1 (a) (i) and (ii) of this Article :

(a) The Bank shall furnish the borrower with such currencies of members, other than the member in whose territories the project is located, as are needed by the borrower for expenditures to be made in the territories of such other members to carry out the purposes of the loan.

SECOND SCHEDULE—*continued*.

(b) The Bank may, in exceptional circumstances when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, provide the borrower as part of the loan with an appropriate amount of that currency.

(c) The Bank, if the project gives rise indirectly to an increased need for foreign exchange by the member in whose territories the project is located, may in exceptional circumstances provide the borrower as part of the loan with an appropriate amount of gold or foreign exchange not in excess of the borrower's local expenditure in connexion with the purposes of the loan.

(d) The Bank may, in exceptional circumstances, at the request of a member in whose territories a portion of the loan is spent, repurchase with gold or foreign exchange a part of that member's currency thus spent but in no case shall the part so repurchased exceed the amount by which the expenditure of the loan in those territories gives rise to an increased need for foreign exchange.

Section 4. *Payment provisions for direct loans*

Loan contracts under Section 1 (a) (i) or (ii) of this Article shall be made in accordance with the following payment provisions :

(a) The terms and conditions of interest and amortization payments, maturity and dates of payment of each loan shall be determined by the Bank. The Bank shall also determine the rate and any other terms and conditions of commission to be charged in connexion with such loan.

In the case of loans made under Section 1 (a) (ii) of this Article during the first ten years of the Bank's operations, this rate of commission shall be not less than one percent per annum and not greater than one and one-half percent per annum, and shall be charged on the outstanding portion of any such loan. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already made and to future loans, if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.

(b) All loan contracts shall stipulate the currency or currencies in which payments under the contract shall be made to the Bank. At the option of the borrower, however, such payments may be made in gold, or subject to the agreement of the Bank, in the currency of a member other than that prescribed in the contract.

(i) In the case of loans made under Section 1 (a) (i) of this Article, the loan contracts shall provide that payments to the Bank of interest, other charges and amortization shall be made in the currency loaned, unless the member whose currency is loaned agrees that such payments shall be made in some other specified currency or currencies. These payments, subject to the provisions of Article II, Section 9 (c), shall be equivalent to the value of such contractual payments at the time the loans were made, in terms of a currency specified for the purpose by the Bank by a three-fourths majority of the total voting power.

(ii) In the case of loans made under Section 1 (a) (ii) of this Article, the total amount outstanding and payable to the Bank in any one currency shall at no time exceed the total amount of the outstanding borrowings made by the Bank under Section 1 (a) (ii) and payable in the same currency.

(c) If a member suffers from an acute exchange stringency, so that the service of any loan contracted by that member or guaranteed by it or by one of its agencies cannot be provided in the stipulated manner, the member concerned may apply to the Bank for a relaxation of the conditions of payment. If the Bank is satisfied that some relaxation is in the interests of the particular member and of the operations of the Bank and of its members as a whole, it may take action under either, or both, of the following paragraphs with respect to the whole, or part, of the annual service :

(i) The Bank may, in its discretion, make arrangements with the member concerned to accept service payments on the loan in the member's

SECOND SCHEDULE—*continued.*

currency for periods not to exceed three years upon appropriate terms regarding the use of such currency and the maintenance of its foreign exchange value; and for the repurchase of such currency on appropriate terms.

- (ii) The Bank may modify the terms of amortization or extend the life of the loan, or both.

Section 5. *Guarantees*

(a) In guaranteeing a loan placed through the usual investment channels, the Bank shall charge a guarantee commission payable periodically on the amount of the loan outstanding at a rate determined by the Bank. During the first ten years of the Bank's operations, this rate shall be not less than one percent per annum and not greater than one and one-half percent per annum. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already guaranteed and to future loans if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.

(b) Guarantee commissions shall be paid directly to the Bank by the borrower.

(c) Guarantees by the Bank shall provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and by the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.

(d) The Bank shall have power to determine any other terms and conditions of the guarantee.

Section 6. *Special reserve*

The amount of commissions received by the Bank under Sections 4 and 5 of this Article shall be set aside as a special reserve, which shall be kept available for meeting liabilities of the Bank in accordance with Section 7 of this Article. The special reserve shall be held in such liquid form, permitted under this Agreement, as the Executive Directors may decide.

Section 7. *Methods of meeting liabilities of the Bank in case of defaults*

In cases of default on loans made, participated in, or guaranteed by the Bank :

(a) The Bank shall make such arrangements as may be feasible to adjust the obligations under the loans, including arrangements under or analogous to those provided in Section 4 (c) of this Article.

(b) The payments in discharge of the Bank's liabilities on borrowings or guarantees under Sections 1 (a) (ii) and (iii) of this Article shall be charged :

- (i) first, against the special reserve provided in Section 6 of this Article.
- (ii) then, to the extent necessary and at the discretion of the Bank, against the other reserves, surplus and capital available to the Bank.

(c) Wherever necessary to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to similar payments on loans guaranteed by it, the Bank may call an appropriate amount of the unpaid subscriptions of members in accordance with Article II, Sections 5 and 7. Moreover, if it believes that a default may be of long duration, the Bank may call an additional amount of such unpaid subscriptions not to exceed in any one year one percent of the total subscriptions of the members for the following purposes :

- (i) To redeem prior to maturity, or otherwise discharge its liability on, all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default.
- (ii) To repurchase, or otherwise discharge its liability on, all or part of its own outstanding borrowings.

Section 8. *Miscellaneous operations*

In addition to the operations specified elsewhere in this Agreement, the Bank shall have the power :

SECOND SCHEDULE—*continued.*

- (i) To buy and sell securities it has issued and to buy and sell securities which it has guaranteed or in which it has invested, provided that the Bank shall obtain the approval of the member in whose territories the securities are to be bought or sold.
- (ii) To guarantee securities in which it has invested for the purpose of facilitating their sale.
- (iii) To borrow the currency of any member with the approval of that member.
- (iv) To buy and sell such other securities as the Directors by a three-fourths majority of the total voting power may deem proper for the investment of all or part of the special reserve under Section 6 of this Article.

In exercising the powers conferred by this Section, the Bank may deal with any person, partnership, association, corporation or other legal entity in the territories of any member.

Section 9. *Warning to be placed on securities*

Every security guaranteed or issued by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government unless expressly stated on the security.

Section 10. *Political activity prohibited*

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.

ARTICLE V

ORGANIZATION AND MANAGEMENT

Section 1. *Structure of the Bank*

The Bank shall have a Board of Governors, Executive Directors, a President and such other officers and staff to perform such duties as the Bank may determine.

Section 2. *Board of Governors*

(a) All the powers of the Bank shall be vested in the Board of Governors consisting of one governor and one alternate appointed by each member in such manner as it may determine. Each governor and each alternate shall serve for five years, subject to the pleasure of the member appointing him, and may be reappointed. No alternate may vote except in the absence of his principal. The Board shall select one of the governors as Chairman.

(b) The Board of Governors may delegate to the Executive Directors authority to exercise any powers of the Board, except the power to:

- (i) Admit new members and determine the conditions of their admission;
- (ii) Increase or decrease the capital stock;
- (iii) Suspend a member;
- (iv) Decide appeals from interpretations of this Agreement given by the Executive Directors;
- (v) Make arrangements to cooperate with other international organizations (other than informal arrangements of a temporary and administrative character);
- (vi) Decide to suspend permanently the operations of the Bank and to distribute its assets;
- (vii) Determine the distribution of the net income of the Bank.

(c) The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Executive Directors. Meetings of the Board shall be called by the Directors whenever requested by five members or by members having one-quarter of the total voting power.

(d) A quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two-thirds of the total voting power.

SECOND SCHEDULE—*continued*.

(e) The Board of Governors may by regulation establish a procedure whereby the Executive Directors, when they deem such action to be in the best interests of the Bank, may obtain a vote of the Governors on a specific question without calling a meeting of the Board.

(f) The Board of Governors, and the Executive Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank.

(g) Governors and alternates shall serve as such without compensation from the Bank, but the Bank shall pay them reasonable expenses incurred in attending meetings.

(h) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and the salary and terms of the contract of service of the President.

Section 3. *Voting*

(a) Each member shall have two hundred and fifty votes plus one additional vote for each share of stock held.

(b) Except as otherwise specifically provided, all matters before the Bank shall be decided by a majority of the votes cast.

Section 4. *Executive Directors*

(a) The Executive Directors shall be responsible for the conduct of the general operations of the Bank, and for this purpose, shall exercise all the powers delegated to them by the Board of Governors.

(b) There shall be twelve Executive Directors, who need not be governors, and of whom :

(i) five shall be appointed, one by each of the five members having the largest number of shares ;

(ii) seven shall be elected according to Schedule B by all the Governors other than those appointed by the five members referred to in (i) above.

For the purpose of this paragraph, "members" means governments of countries whose names are set forth in Schedule A, whether they are original members or become members in accordance with Article II, Section 1 (b). When governments of other countries become members, the Board of Governors may, by a four-fifths majority of the total voting power, increase the total number of directors by increasing the number of directors to be elected.

Executive directors shall be appointed or elected every two years.

(c) Each executive director shall appoint an alternate with full power to act for him when he is not present. When the executive directors appointing them are present, alternates may participate in meetings but shall not vote.

(d) Directors shall continue in office until their successors are appointed or elected. If the office of an elected director becomes vacant more than ninety days before the end of his term, another director shall be elected for the remainder of the term by the governors who elected the former director. A majority of the votes cast shall be required for election. While the office remains vacant, the alternate of the former director shall exercise his powers, except that of appointing an alternate.

(e) The Executive Directors shall function in continuous session at the principal office of the Bank and shall meet as often as the business of the Bank may require.

(f) A quorum for any meeting of the Executive Directors shall be a majority of the Directors, exercising not less than one-half of the total voting power.

(g) Each appointed director shall be entitled to cast the number of votes allotted under Section 3 of this Article to the member appointing him. Each elected director shall be entitled to cast the number of votes which counted toward his election. All the votes which a director is entitled to cast shall be cast as a unit.

(h) The Board of Governors shall adopt regulations under which a member not entitled to appoint a director under (b) above may send a representative to attend any meeting of the Executive Directors when a request made by, or a matter particularly affecting, that member is under consideration.

SECOND SCHEDULE—*continued.*

(i) The Executive Directors may appoint such committees as they deem advisable. Membership of such committees need not be limited to governors or directors or their alternates.

Section 5. *President and staff*

(a) The Executive Directors shall select a President who shall not be a governor or an executive director or an alternate for either. The President shall be Chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The President shall cease to hold office when the Executive Directors so decide.

(b) The President shall be chief of the operating staff of the Bank and shall conduct, under the direction of the Executive Directors, the ordinary business of the Bank. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the officers and staff.

(c) The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(d) In appointing the officers and staff the President shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

Section 6. *Advisory Council*

(a) There shall be an Advisory Council of not less than seven persons selected by the Board of Governors including representatives of banking, commercial, industrial, labour, and agricultural interests, and with as wide a national representation as possible. In those fields where specialized international organizations exist, the members of the Council representative of those fields shall be selected in agreement with such organizations. The Council shall advise the Bank on matters of general policy. The Council shall meet annually and on such other occasions as the Bank may request.

(b) Councillors shall serve for two years and may be reappointed. They shall be paid their reasonable expenses incurred on behalf of the Bank.

Section 7. *Loan committees*

The committees required to report on loans under Article III, Section 4, shall be appointed by the Bank. Each such committee shall include an expert selected by the governor representing the member in whose territories the project is located and one or more members of the technical staff of the Bank.

Section 8. *Relationship to other international organizations*

(a) The Bank, within the terms of this Agreement, shall cooperate with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article VIII.

(b) In making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization.

Section 9. *Location of offices*

(a) The principal office of the Bank shall be located in the territory of the member holding the greatest number of shares.

(b) The Bank may establish agencies or branch offices in the territories of any member of the Bank.

SECOND SCHEDULE—*continued.*Section 10. *Regional offices and councils*

(a) The Bank may establish regional offices and determine the location of, and the areas to be covered by, each regional office.

(b) Each regional office shall be advised by a regional council representative of the entire area and selected in such manner as the Bank may decide.

Section 11. *Depositories*

(a) Each member shall designate its central bank as a depository for all the Bank's holdings of its currency or, if it has no central bank, it shall designate such other institution as may be acceptable to the Bank.

(b) The Bank may hold other assets, including gold, in depositories designated by the five members having the largest number of shares and in such other designated depositories as the Bank may select. Initially, at least one-half of the gold holdings of the Bank shall be held in the depository designated by the member in whose territory the Bank has its principal office, and at least forty percent shall be held in the depositories designated by the remaining four members referred to above, each of such depositories to hold, initially, not less than the amount of gold paid on the shares of the member designating it. However, all transfers of gold by the Bank shall be made with due regard to the costs of transport and anticipated requirements of the Bank. In an emergency the Executive Directors may transfer all or any part of the Bank's gold holdings to any place where they can be adequately protected.

Section 12. *Form of holdings of currency*

The Bank shall accept from any member, in place of any part of the member's currency, paid in to the Bank under Article II, Section 7 (i), or to meet amortization payments on loans made with such currency, and not needed by the Bank in its operations, notes or similar obligations issued by the Government of the member or the depository designated by such member, which shall be non-negotiable, non-interest-bearing and payable at their par value on demand by credit to the account of the Bank in the designated depository.

Section 13. *Publication of reports and provision of information*

(a) The Bank shall publish an annual report containing an audited statement of its accounts and shall circulate to members at intervals of three months or less a summary statement of its financial position and a profit and loss statement showing the results of its operation.

(b) The Bank may publish such other reports as it deems desirable to carry out its purposes.

(c) Copies of all reports, statements and publications made under this section shall be distributed to members.

Section 14. *Allocation of net income*

(a) The Board of Governors shall determine annually what part of the Bank's net income, after making provision for reserves, shall be allocated to surplus and what part, if any, shall be distributed.

(b) If any part is distributed, up to two percent non-cumulative shall be paid, as a first charge against the distribution for any year, to each member on the basis of the average amount of the loans outstanding during the year made under Article IV, Section 1 (a) (i), out of currency corresponding to its subscription. If two percent is paid as a first charge, any balance remaining to be distributed shall be paid to all members in proportion to their shares. Payments to each member shall be made in its own currency, or if that currency is not available in other currency acceptable to the member. If such payments are made in currencies other than the member's own currency, the transfer of the currency and its use by the receiving member after payment shall be without restriction by the members.

ARTICLE VI

WITHDRAWAL AND SUSPENSION OF MEMBERSHIP :
SUSPENSION OF OPERATIONSSection 1. *Right of members to withdraw*

Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office. Withdrawal shall become effective on the date such notice is received.

SECOND SCHEDULE—*continued.*

Section 2. *Suspension of membership*

If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of the Governors, exercising a majority of the total voting power. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by the same majority to restore the member to good standing.

While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all obligations.

Section 3. *Cessation of membership in International Monetary Fund*

Any member which ceases to be a member of the International Monetary Fund shall automatically cease after three months to be a member of the Bank unless the Bank by three-fourths of the total voting power has agreed to allow it to remain a member.

Section 4. *Settlement of accounts with governments ceasing to be members*

(a) When a government ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased to be a member are outstanding; but it shall cease to incur liabilities with respect to loans and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.

(b) At the time a government ceases to be a member, the Bank shall arrange for the repurchase of its shares as a part of the settlement of accounts with such government in accordance with the provisions of (c) and (d) below. For this purpose the repurchase price of the shares shall be the value shown by the books of the Bank on the day the government ceases to be a member.

(c) The payment for shares repurchased by the Bank under this section shall be governed by the following conditions:

(i) Any amount due to the government for its shares shall be withheld so long as the government, its central bank or any of its agencies remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the liability of the government resulting from its subscription for shares under Article II, Section 5 (ii). In any event, no amount due to a member for its shares shall be paid until six months after the date upon which the government ceases to be a member.

(ii) Payments for shares may be made from time to time, upon their surrender by the government, to the extent by which the amount due as the repurchase price in (b) above exceeds the aggregate of liabilities on loans and guarantees in (c) (i) above until the former member has received the full repurchase price.

(iii) Payments shall be made in the currency of the country receiving payment or at the option of the Bank in gold.

(iv) If losses are sustained by the Bank on any guarantees, participations in loans, or loans which were outstanding on the date when the government ceased to be a member, and the amount of such losses exceeds the amount of the reserve provided against losses on the date when the government ceased to be a member, such government shall be obligated to repay upon demand the amount by which the repurchase price of its shares would have been reduced, if the losses had been taken into account when the repurchase price was determined. In addition, the former member government shall remain liable on any call for unpaid subscriptions under Article II, Section 5 (ii), to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

(d) If the Bank suspends permanently its operations under Section 5 (b) of this Article, within six months of the date upon which any government ceases

SECOND SCHEDULE—*continued*.

to be a member, all rights of such government shall be determined by the provisions of Section 5 of this Article.

Section 5. *Suspension of operations and settlement of obligations*

(a) In an emergency the Executive Directors may suspend temporarily operations in respect of new loans and guarantees pending an opportunity for further consideration and action by the Board of Governors.

(b) The Bank may suspend permanently its operations in respect of new loans and guarantees by vote of a majority of the Governors, exercising a majority of the total voting power. After such suspension of operations the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation, and preservation of its assets and settlement of its obligations.

(c) The liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their own currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.

(d) All creditors holding direct claims shall be paid out of the assets of the Bank, and then out of payments to the Bank on calls on unpaid subscriptions. Before making any payments to creditors holding direct claims, the Executive Directors shall make such arrangements as are necessary, in their judgment, to insure a distribution to holders of contingent claims ratably with creditors holding direct claims.

(e) No distribution shall be made to members on account of their subscriptions to the capital stock of the Bank until

- (i) all liabilities to creditors have been discharged or provided for, and
- (ii) a majority of the Governors, exercising a majority of the total voting power have decided to make a distribution.

(f) After a decision to make a distribution has been taken under (e) above, the Executive Directors may by a two-thirds majority vote make successive distributions of the assets of the Bank to members until all of the assets have been distributed. This distribution shall be subject to the prior settlement of all outstanding claims of the Bank against each member.

(g) Before any distribution of assets is made, the Executive Directors shall fix the proportionate share of each member according to the ratio of its shareholding to the total outstanding shares of the Bank.

(h) The Executive Directors shall value the assets to be distributed as at the date of distribution and then proceed to distribute in the following manner:

- (i) There shall be paid to each member in its own obligations or those of its official agencies or legal entities within its territories, insofar as they are available for distribution, an amount equivalent in value to its proportionate share of the total amount to be distributed.
- (ii) Any balance due to a member after payment has been made under (i) above shall be paid, in its own currency, insofar as it is held by the Bank, up to an amount equivalent in value to such balance.
- (iii) Any balance due to a member after payment has been made under (i) and (ii) above shall be paid in gold or currency acceptable to the member, insofar as they are held by the Bank, up to an amount equivalent in value to such balance.
- (iv) Any remaining assets held by the Bank after payments have been made to members under (i), (ii), and (iii) above shall be distributed *pro rata* among the members.
- (i) Any member receiving assets distributed by the Bank in accordance with (h) above, shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

ARTICLE VII

STATUS, IMMUNITIES AND PRIVILEGES

Section 1. *Purposes of Article*

To enable the Bank to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territories of each member.

SECOND SCHEDULE—*continued.*

Section 2. *Status of the Bank*

The Bank shall possess full juridical personality, and, in particular, the capacity :

- (i) to contract ;
- (ii) to acquire and dispose of immovable and movable property ;
- (iii) to institute legal proceedings.

Section 3. *Position of the Bank with regard to judicial process*

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Section 4. *Immunity of assets from seizure*

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. *Immunity of archives*

The archives of the Bank shall be inviolable.

Section 6. *Freedom of assets from restrictions*

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. *Privilege for communications*

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8. *Immunities and privileges of officers and employees*

All governors, executive directors, alternates, officers and employees of the Bank

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity ;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members ;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. *Immunities from taxation*

(a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held—

- (i) which discriminates against such obligation or security solely because it is issued by the Bank ; or
- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

SECOND SCHEDULE—*continued.*

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held—

- (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
- (ii) If the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Section 10. *Application of Article*

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Bank of the detailed action which it has taken.

ARTICLE VIII
AMENDMENTS

(a) Any proposal to introduce modifications in this agreement, whether emanating from a member, a governor or the Executive Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Bank shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having four-fifths of the total voting power, have accepted the proposed amendment, the Bank shall certify the fact by a formal communication addressed to all members.

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying

- (i) the right to withdraw from the Bank provided in Article VI, Section 1;
- (ii) the right secured by Article II, Section 3 (c);
- (iii) the limitation on liability provided in Article II, Section 6.

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

ARTICLE IX
INTERPRETATION

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an executive director, it shall be entitled to representation in accordance with Article V, Section 4 (b).

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board, the Bank may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

(c) Whenever a disagreement arises between the Bank and a country which has ceased to be a member, or between the Bank and any member during the permanent suspension of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Bank, another by the country involved and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted by the Bank. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

ARTICLE X
APPROVAL DEEMED GIVEN

Whenever the approval of any member is required before any act may be done by the Bank, except in Article VIII, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

SECOND SCHEDULE—*continued*.

ARTICLE XI

FINAL PROVISIONS

Section 1. *Entry into force*

This Agreement shall enter into force when it has been signed on behalf of governments whose minimum subscriptions comprise not less than sixty-five percent of the total subscriptions set forth in Schedule A and when the instruments referred to in Section 2 (a) of this Article have been deposited on their behalf, but in no event shall this Agreement enter into force before May 1, 1945.

Section 2. *Signature*

(a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.

(b) Each government shall become a member of the Bank as from the date of the deposit on its behalf of the instrument referred to in (a) above, except that no government shall become a member before this Agreement enters into force under Section 1 of this Article.

(c) The Government of the United States of America shall inform the governments of all countries whose names are set forth in Schedule A, and all governments whose membership is approved in accordance with Article II, Section 1 (b), of all signatures of this Agreement and of the deposit of all instruments referred to in (a) above.

(d) At the time this Agreement is signed on its behalf, each government shall transmit to the Government of the United States of America one one-hundredth of one percent of the price of each share in gold or United States dollars for the purpose of meeting administrative expenses of the Bank. This payment shall be credited on account of the payment to be made in accordance with Article II, Section 8 (a). The Government of the United States of America shall hold such funds in a special deposit account and shall transmit them to the Board of Governors of the Bank when the initial meeting has been called under Section 3 of this Article. If this Agreement has not come into force by December 31, 1945, the Government of the United States of America shall return such funds to the governments that transmitted them.

(e) This Agreement shall remain open for signature at Washington on behalf of the governments of the countries whose names are set forth in Schedule A until December 31, 1945.

(f) After December 31, 1945, this Agreement shall be open for signature on behalf of the government of any country whose membership has been approved in accordance with Article II, Section 1 (b).

(g) By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate.

(h) In the case of governments whose metropolitan territories have been under enemy occupation, the deposit of the instrument referred to in (a) above may be delayed until one hundred and eighty days after the date on which these territories have been liberated. If, however, it is not deposited by any such government before the expiration of this period, the signature affixed on behalf of that government shall become void and the portion of its subscription paid under (d) above shall be returned to it.

(i) Paragraphs (d) and (h) shall come into force with regard to each signatory government as from the date of its signature.

Section 3. *Inauguration of the Bank*

(a) As soon as this Agreement enters into force under Section 1 of this Article, each member shall appoint a governor and the member to whom the largest number of shares is allocated in Schedule A shall call the first meeting of the Board of Governors.

(b) At the first meeting of the Board of Governors, arrangements shall be made for the selection of provisional executive directors. The governments of the five countries, to which the largest number of shares are allocated in Schedule A, shall appoint provisional executive directors. If one or more of such governments have not become members, the executive directorships which they would be entitled to fill shall remain vacant until they become members, or until January 1, 1946,

SECOND SCHEDULE—*continued*.

whichever is the earlier. Seven provisional executive directors shall be elected in accordance with the provisions of Schedule B and shall remain in office until the date of the first regular election of executive directors which shall be held as soon as practicable after January 1, 1946.

(c) The Board of Governors may delegate to the provisional executive directors any powers except those which may not be delegated to the Executive Directors.

(d) The Bank shall notify members when it is ready to commence operations.

DONE at Washington, in a single copy which shall remain deposited in the archives of the Government of the United States of America, which shall transmit certified copies to all governments whose names are set forth in Schedule A and to all governments whose membership is approved in accordance with Article II, Section 1 (b).

SCHEDULE A
SUBSCRIPTIONS

									(millions of dollars)
Australia	..	..	..	..	..	..	..	..	200
Belgium	..	..	..	..	..	..	..	..	225
Bolivia	..	..	..	..	..	..	..	..	7
Brazil	..	..	..	..	..	..	..	..	105
Canada	..	..	..	..	..	..	..	..	325
Chile	..	..	..	..	..	..	..	..	35
China	..	..	..	..	..	..	..	..	600
Colombia	..	..	..	..	..	..	..	..	35
Costa Rica	..	..	..	..	..	..	..	..	2
Cuba	..	..	..	..	..	..	..	..	35
Czechoslovakia	..	..	..	..	..	..	..	..	125
*Denmark	..	..	..	..	..	..	..	..	..
Dominican Republic	..	..	..	..	..	..	..	..	2
Ecuador	..	..	..	..	..	..	..	..	3.2
Egypt	..	..	..	..	..	..	..	..	40
El Salvador	..	..	..	..	..	..	..	..	1
Ethiopia	..	..	..	..	..	..	..	..	3
France	..	..	..	..	..	..	..	..	450
Greece	..	..	..	..	..	..	..	..	25
Guatemala	..	..	..	..	..	..	..	..	2
Haiti	..	..	..	..	..	..	..	..	2
Honduras	..	..	..	..	..	..	..	..	1
Iceland	..	..	..	..	..	..	..	..	1
India	..	..	..	..	..	..	..	..	400
Iran	..	..	..	..	..	..	..	..	24
Iraq	..	..	..	..	..	..	..	..	6
Liberia	..	..	..	..	..	..	..	..	.5
Luxembourg	..	..	..	..	..	..	..	..	10
Mexico	..	..	..	..	..	..	..	..	65
Netherlands	..	..	..	..	..	..	..	..	275
New Zealand	..	..	..	..	..	..	..	..	50
Nicaragua	..	..	..	..	..	..	..	..	.8
Norway	..	..	..	..	..	..	..	..	50
Panama	..	..	..	..	..	..	..	..	.2
Paraguay	..	..	..	..	..	..	..	..	.8
Peru	..	..	..	..	..	..	..	..	17.5
Philippine Commonwealth	..	..	..	..	..	..	..	..	15
Poland	..	..	..	..	..	..	..	..	125
Union of South Africa	..	..	..	..	..	..	..	..	100
Union of Soviet Socialist Republics	..	..	..	..	..	..	..	..	1200
United Kingdom	..	..	..	..	..	..	..	..	1300
United States	..	..	..	..	..	..	..	..	3175
Uruguay	..	..	..	..	..	..	..	..	10.5
Venezuela	..	..	..	..	..	..	..	..	10.5
Yugoslavia	..	..	..	..	..	..	..	..	40
Total	..	..	..	..	..	..	..	..	9100

* The quota of Denmark shall be determined by the Bank after Denmark accepts membership in accordance with these Articles of Agreement.

SECOND SCHEDULE—*continued.*

SCHEDULE B

ELECTION OF EXECUTIVE DIRECTORS

1. The election of the elective executive directors shall be by ballot of the Governors eligible to vote under Article V, Section 4 (*b*).

2. In balloting for the elective executive directors, each governor eligible to vote shall cast for one person all of the votes to which the member appointing him is entitled under Section 3 of Article V. The seven persons receiving the greatest number of votes shall be executive directors, except that no person who receives less than fourteen percent of the total of the votes which can be cast (eligible votes) shall be considered elected.

3. When seven persons are not elected on the first ballot, a second ballot shall be held in which the person who received the lowest number of votes shall be ineligible for election and in which there shall vote only (*a*) those governors who voted in the first ballot for a person not elected and (*b*) those governors whose votes for a person elected are deemed under 4 below to have raised the votes cast for that person above fifteen percent of the eligible votes.

4. In determining whether the votes cast by a governor are to be deemed to have raised the total of any person above fifteen percent of the eligible votes, the fifteen percent shall be deemed to include, first, the votes of the governor casting the largest number of votes for such person, then the votes of the governor casting the next largest number, and so on until fifteen percent is reached.

5. Any governor, part of whose votes must be counted in order to raise the total of any person above fourteen percent, shall be considered as casting all of his votes for such person even if the total votes for such person thereby exceed fifteen percent.

6. If, after the second ballot, seven persons have not been elected, further ballots shall be held on the same principles until seven persons have been elected, provided that after six persons are elected, the seventh may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.

INTERNATIONAL ORGANIZATIONS
(PRIVILEGES AND IMMUNITIES) ACT 1948.^(a)

An Act relating to the Privileges and Immunities of the United Nations and other International Organizations, 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 *International Organizations (Privileges and Immunities) Act 1948.*^(a)

Definition. 2. In this Act, " the Convention " means the General Convention on the Privileges and Immunities of the United Nations which was adopted by the General Assembly of the United Nations on the thirteenth day of February, One thousand nine hundred and forty-six, and a copy of which is set out in the Schedule to this Act.

Accession to Convention. 3. Approval is hereby given to the accession by Australia to the Convention.

Protection of name, &c., of United Nations. 4.—(1.) Except with the consent in writing of the Minister, a person shall not assume or use in connexion with any trade, business, calling or profession the name, official seal or emblem of the United Nations or of any other prescribed international organization, or any seal or emblem so nearly resembling any such seal or emblem as to be likely to deceive.

Penalty : Twenty pounds.

(2.) A copy of each seal and emblem in relation to which the last preceding sub-section applies shall be published in the *Gazette*.

(3.) Evidence of any seal or emblem in relation to which sub-section (1.) of this section applies may be given by the production of the *Gazette* purporting to contain a copy of the seal or emblem.

Regulations. 5. 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 are necessary or convenient to be prescribed for giving effect to this Act, and in particular—

(a) for giving effect to the provisions of the Convention ; and

(b) for giving effect, in relation to any international organization, to the provisions of any convention on the privileges and immunities of that international organization to which Australia has acceded.

^(a) No. 72, 1948 ; assented to on 17th December, 1948 ; commenced on 14th January, 1949.

THE SCHEDULE.

Section 2.

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of the functions in connexion with the Organization :

Consequently the General Assembly by a resolution adopted on 13th February, 1946, approved the following convention and proposes it for accession by each Member of the United Nations.

ARTICLE I

Juridical Personality

Section 1. The United Nations shall possess juridical personality. It shall have the capacity :

- (a) to contract ;
- (b) to acquire and dispose of immovable and movable property ;
- (c) to institute legal proceedings.

ARTICLE II

Property, Funds and Assets

Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Section 5. Without being restricted by financial controls, regulations or moratoria of any kind,

- (a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency ;
- (b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6. In exercising its rights under section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7. The United Nations, its assets, income and other property shall be :

- (a) exempt from all direct taxes ; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services ;
- (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country ;
- (c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

THE SCHEDULE—*continued.*

Section 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless, when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE III

Facilities in respect of Communications

Section 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favorable than that accorded by the Government of that Member to any other Government, including its diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams radiograms, telephotos, telephone and other communications: and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10. The United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE IV

The Representatives of Members

Section 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
- (b) inviolability for all papers and documents;
- (c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;
- (g) such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12. In order to secure for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations

THE SCHEDULE—*continued.*

are present in a State for the discharge of their duties shall not be considered as periods of residence.

Section 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15. The provisions of sections 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.

Section 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE V

Officials

Section 17. The Secretary-General will specify the categories of officials to which the provisions of this article and article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18. Officials of the United Nations shall:

- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) be immune from national service obligations;
- (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the government concerned;
- (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.
- (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19. In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations, and prevent the occurrence of any abuse in connexion with the privileges, immunities and facilities mentioned in this article.

ARTICLE VI

Experts on Missions for the United Nations

Section 22. Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and

THE SCHEDULE—continued.

immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded :

- (a) immunity from personal arrest or detention and from seizure of their personal baggage ;
- (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations ;
- (c) inviolability for all papers and documents ;
- (d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags ;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions ;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

ARTICLE VII

United Nations Laissez-Passer

Section 24. The United Nations may issue United Nations *laissez-passer* to its officials. These *laissez-passer* shall be recognized and accepted as valid travel documents, by the authorities of Members, taking into account the provisions of section 25.

Section 25. Applications for visas (where required) from the holders of United Nations *laissez-passer*, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26. Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are travelling on the business of the United Nations.

Section 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations *laissez-passer* on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

ARTICLE VIII

Settlement of Disputes

Section 29. The United Nations shall make provisions for appropriate modes of settlement of :

- (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party ;
- (b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice,

THE SCHEDULE—*continued.*

unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

FINAL ARTICLE

Section 31. This convention is submitted to every Member of the United Nations for accession.

Section 32. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

Section 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

INTERNATIONAL TRADE ORGANIZATION ACT 1948.^(a)

An Act to approve Acceptance by Australia of the General Agreement on Tariffs and Trade and the Havana Charter for an International Trade Organization, 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 *International Trade Organization Act* 1948.^(a)

Commence- 2. This Act shall come into operation on the day on which it
ment, receives the Royal Assent.

Definitions. 3. In this Act—

“ the General Agreement on Tariffs and Trade ” means the General Agreement on Tariffs and Trade, the text of which was authenticated by the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, which Final Act was signed on behalf of Australia and other countries at Geneva on the thirtieth day of October, One thousand nine hundred and forty-seven ;

“ the Charter ” means the Havana Charter for an International Trade Organization, the text of which was authenticated by the Final Act of the United Nations Conference on Trade and Employment, which Final Act was signed on behalf of Australia and other countries at Havana on the twenty-fourth day of March, One thousand nine hundred and forty-eight.

Approval of 4.—(1.) Subject to this section, approval is hereby given to the
acceptance of depositing by Australia with the Secretary-General of the United
Agreement and Nations of instruments of acceptance of—
Charter,

(a) the General Agreement on Tariffs and Trade ; and

(b) the Charter,

in respect of Australia and all territories for which Australia has international responsibility.

(2.) The approval given by the last preceding sub-section shall not apply to the depositing of an instrument of acceptance referred

(a) No. 73, 1948 ; assented to, and commenced, on 17th December, 1948. See s. 2.

to in that sub-section unless and until a corresponding instrument of acceptance has been deposited by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America respectively.

5. Approval is hereby given to the signing effected on behalf of Australia of the following protocols which were signed on behalf of Australia and other countries at Havana on the twenty-fourth day of March, One thousand nine hundred and forty-eight, namely :—

Approval of
signing of
protocols at
Havana.

- (a) the protocol of rectifications to the General Agreement on Tariffs and Trade ;
- (b) the protocol modifying Articles XXV., XXXII. and XXXIII. of, and inserting Article XXXV. in, the General Agreement on Tariffs and Trade ; and
- (c) the protocol modifying Article XIV. of the General Agreement on Tariffs and Trade.

6. Approval is hereby given to the signing effected on behalf of Australia of the following protocols which were signed on behalf of Australia and other countries at Geneva on the fourteenth day of September, One thousand nine hundred and forty-eight, namely :—

Approval of
signing of
certain
protocols at
Geneva.

- (a) the second protocol of rectifications to the General Agreement on Tariffs and Trade ;
- (b) the protocol for the accession of signatories of the final act of the thirtieth day of October, One thousand nine hundred and forty-seven ;
- (c) the protocol modifying Part I. and Article XXIX. of the General Agreement on Tariffs and Trade.

7. Approval is hereby given to the depositing by Australia with the Secretary-General of the United Nations of an instrument of acceptance of the protocol modifying Part II. and Article XXVI. of the General Agreement on Tariffs and Trade, which protocol was signed on behalf of Australia and other countries at Geneva on the fourteenth day of September, One thousand nine hundred and forty-eight, but was signed on behalf of Australia with a reservation as to acceptance.

Approval of
acceptance of
certain
protocol.

INTERNATIONAL WHEAT AGREEMENT ACT 1949.^(a)

An Act to approve Acceptance by Australia of the International Wheat Agreement, 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>International Wheat Agreement Act 1949</i> . ^(a) |
| Commence-
ment. | 2. This Act shall come into operation on the day on which it receives the Royal Assent. |
| Repeal. | 3. The <i>International Wheat Agreement Act 1948</i> is repealed. |
| Definition. | 4. In this Act—
<div style="margin-left: 40px;">“ the International Wheat Agreement ” means the agree-
 ment signed at Washington in the United States of
 America on behalf of Australia and other countries, a
 copy of which agreement in the English language is
 set out in the Schedule to this Act.</div> |
| Approval of
acceptance. | 5. Approval is given to acceptance by Australia of the Inter-
national Wheat Agreement in accordance with Article XX. of that
Agreement. |

THE SCHEDULE.

Section 4.

INTERNATIONAL WHEAT AGREEMENT.

The Governments parties to this Agreement,

Intending to overcome the serious hardship caused to producers and consumers by burdensome surpluses and critical shortages of wheat, and

Having resolved that it is desirable to conclude an international wheat agree-
ment for this purpose,

Have agreed as follows :

^(a) No. 21, 1949 ; assented to, and commenced, on 30th June, 1949. See s. 2.

THE SCHEDULE—*continued.*

PART 1—GENERAL

ARTICLE I

Objectives

The objectives of this Agreement are to assure supplies of wheat to importing countries and markets for wheat to exporting countries at equitable and stable prices.

ARTICLE II

Definitions

I. For the purposes of this Agreement :

- “ Advisory Committee on Price Equivalents ” means the Committee established under Article XV.
- “ Bushel ” means sixty pounds avoirdupois.
- “ Carrying charges ” means the costs incurred for storage, interest and insurance in holding wheat.
- “ C. & f. ” means cost and freight.
- “ Council ” means the International Wheat Council established by Article XIII.
- “ Crop-year ” means the period from August 1 to July 31, except that in Article VII it means in respect of Australia and Uruguay the period from December 1 to November 30 and in respect of the United States of America the period from July 1 to June 30.
- “ Executive Committee ” means the Committee established under Article XIV.
- “ Exporting country ” means, as the context requires, either (i) the Government of a country listed in Annex B to Article III which has accepted or acceded to this Agreement and has not withdrawn therefrom, or (ii) that country itself and the territories in respect of which the rights and obligations of its Government apply under Article XXIII.
- “ F.a.q. ” means fair average quality.
- “ F.o.b. ” means free on board ocean vessel.
- “ Guaranteed quantity ” means in relation to an importing country its guaranteed purchases for a crop-year and in relation to an exporting country its guaranteed sales for a crop-year.
- “ Importing country ” means, as the context requires, either (i) the Government of a country listed in Annex A to Article III which has accepted or acceded to this Agreement and has not withdrawn therefrom, or (ii) that country itself and the territories in respect of which the rights and obligations of its Government apply under Article XXIII.
- “ International Trade Organization ” means the Organization provided for in the Havana Charter, dated March 24, 1948, or, pending the establishment of that Organization, the Interim Commission established by a resolution adopted by the United Nations Conference on Trade and Employment held in Havana from November 21, 1947 to March 24, 1948.
- “ Marketing costs ” means all usual charges incurred in procurement, marketing, chartering, and forwarding.
- “ Metric ton ” means 36.74371 bushels.
- “ Old crop wheat ” means wheat harvested more than two months prior to the beginning of the current crop-year of the exporting country concerned.
- “ Territory ” in relation to an exporting or importing country includes any territory in respect of which the rights and obligations under this Agreement of the Government of that country apply under Article XXIII.
- “ Transaction ” means a sale for import into an importing country of wheat exported or to be exported from an exporting country, or the quantity of such wheat so sold, as the context requires. Where reference is made in this Agreement to a transaction between an exporting country and an importing country, it shall be understood to refer not only to transactions between the government of an

THE SCHEDULE—*continued.*

exporting country and the government of an importing country but also to transactions between private traders and to transactions between a private trader and the government of an exporting or an importing country. In this definition 'government' shall be deemed to include the government of any territory in respect of which the rights and obligations of any Government accepting or acceding to this Agreement apply under Article XXIII.

"Unfulfilled guaranteed quantity" means the difference between the quantities entered in the Council's records in accordance with Article IV in respect of any exporting or importing country for a crop-year and that country's guaranteed quantity for that crop-year.

"Wheat" includes wheat grain and, except in Article VI, wheat-flour.

2. Seventy-two units by weight of wheat-flour shall be deemed to be equivalent to one hundred units by weight of wheat grain in all calculations relating to guaranteed purchases or guaranteed sales, unless the Council decides otherwise.

PART 2—RIGHTS AND OBLIGATIONS

ARTICLE III

Guaranteed Purchases and Guaranteed Sales

1. The quantities of wheat set out in Annex A to this Article for each importing country represent, subject to any increase or reduction made in accordance with the provisions of Part 3 of this Agreement, the guaranteed purchases of that country for each of the four crop-years covered by this Agreement.

2. The quantities of wheat set out in Annex B to this Article for each exporting country represent, subject to any increase or reduction made in accordance with the provisions of Part 3 of this Agreement, the guaranteed sales of that country for each of the four crop-years covered by this Agreement.

3. The guaranteed purchases of an importing country represent the maximum quantity of wheat which, subject to deduction of the amount of the transactions entered in the Council's records in accordance with Article IV against those guaranteed purchases,

(a) that importing country may be required by the Council, as provided in Article V, to purchase from the exporting countries at prices consistent with the minimum prices specified in or determined under Article VI, or

(b) the exporting countries may be required by the Council, as provided in Article V, to sell to that importing country at prices consistent with the maximum prices specified in or determined under Article VI.

4. The guaranteed sales of an exporting country represent the maximum quantity of wheat which, subject to deduction of the amount of the transactions entered in the Council's records in accordance with Article IV against those guaranteed sales,

(a) that exporting country may be required by the Council, as provided in Article V, to sell to the importing countries at prices consistent with the maximum prices specified in or determined under Article VI, or

(b) the importing countries may be required by the Council, as provided in Article V, to purchase from that exporting country at prices consistent with the minimum prices specified in or determined under Article VI.

5. If an importing country finds difficulty in exercising its right to purchase its unfulfilled guaranteed quantities at prices consistent with the maximum prices specified in or determined under Article VI or an exporting country finds difficulty in exercising its right to sell its unfulfilled guaranteed quantities at prices consistent with the minimum prices so specified or determined, it may have resort to the procedure in Article V.

6. Exporting countries are under no obligation to sell any wheat under this Agreement unless required to do so as provided in Article V at prices consistent with the maximum prices specified in or determined under Article VI. Importing countries are under no obligation to purchase any wheat under this Agreement unless required to do so as provided in Article V at prices consistent with the minimum prices specified in or determined under Article VI.

THE SCHEDULE—continued.

7. The quantity, if any, of wheat-flour to be supplied by the exporting country and accepted by the importing country against their respective guaranteed quantities shall, subject to the provisions of Article V, be determined by agreement between the buyer and seller in each transaction.

8. Exporting and importing countries shall be free to fulfill their guaranteed quantities through private trade channels or otherwise. Nothing in this Agreement shall be construed to exempt any private trader from any laws or regulations to which he is otherwise subject.

ANNEX A TO ARTICLE III

Guaranteed Purchases

Crop-year August 1 to July 31.	1949-50.	1950-51.	1951-52.	1952-53.	Equivalent in bushels for each crop-year.
	<i>Thousands of metric tons*</i>				
Austria	300	300	300	300	11,023,113
Belgium	550	550	550	550	20,209,040
Bolivia	75	75	75	75	2,755,778
Brazil	360	360	360	360	13,227,736
Ceylon	80	80	80	80	2,939,497
China	200	200	200	200	7,348,742
Colombia	20	20	20	20	734,874
Cuba	202	202	202	202	7,422,229
Denmark	44	44	44	44	1,616,723
Dominican Republic	20	20	20	20	734,874
Ecuador	30	30	30	30	1,102,311
Egypt	190	190	190	190	6,981,305
El Salvador	11	11	11	11	404,181
Greece	428	428	428	428	15,726,308
Guatemala	10	10	10	10	367,437
India	1,042	1,042	1,042	1,042	38,286,946
Ireland	275	275	275	275	10,104,520
Israel	100	100	100	100	3,674,371
Italy	1,100	1,100	1,100	1,100	40,418,081
Lebanon	65	65	65	65	2,388,341
Liberia	1	1	1	1	36,744
Mexico	170	170	170	170	6,246,431
Netherlands**	700	700	700	700	25,720,597
New Zealand	125	125	125	125	4,592,964
Nicaragua	8	8	8	8	293,950
Norway	210	210	210	210	7,716,179
Panama	17	17	17	17	624,643
Paraguay	60	60	60	60	2,204,623
Peru	200	200	200	200	7,348,742
Philippines	196	196	196	196	7,201,767
Portugal	120	120	120	120	4,409,245
Saudi Arabia	50	50	50	50	1,837,185
Sweden	75	75	75	75	2,755,778
Switzerland	175	175	175	175	6,430,149
Union of South Africa	300	300	300	300	11,023,113
United Kingdom	4,819	4,819	4,819	4,819	177,067,938
Venezuela	90	90	90	90	3,306,934
Total (37 Countries)	12,418	12,418	12,418	12,418	456,283,389

* Unless the Council decides otherwise, 72 metric tons of wheat-flour shall be deemed equivalent to 100 metric tons of wheat for the purpose of relating quantities of wheat-flour to the quantities specified in this Annex.

** Quantity listed for The Netherlands includes for each crop-year 75,000 metric tons or 2,755,778 bushels for Indonesia.

THE SCHEDULE—continued.

ANNEX B TO ARTICLE III

Guaranteed Sales

Crop-year August 1 to July 31.	1949-50.	1950-51.	1951-52.	1952-53.	Equivalent in bushels for each crop-year.
		<i>Thousands of metric tons*</i>			
Australia	2,177	2,177	2,177	2,177	80,000,000
Canada	5,527	5,527	5,527	5,527	203,069,635
France	90	90	90	90	3,306,934
United States of America**	4,574	4,574	4,574	4,574	168,069,635
Uruguay	50	50	50	50	1,837,185
Total	12,418	12,418	12,418	12,418	456,283,389

* Unless the Council decides otherwise, 72 metric tons of wheat-flour shall be deemed equivalent to 100 metric tons of wheat for the purpose of relating quantities of wheat-flour to the quantities specified in this Annex.

** In the event of the provisions of Article X being invoked by reason of a short crop it will be recognized that these guaranteed sales do not include the minimum requirements of wheat of any Occupied Area for which the United States of America has, or may assume, supply responsibility, and that the necessity of meeting these requirements will be one of the factors considered in determining the ability of the United States of America to deliver its guaranteed sales under this Agreement.

ARTICLE IV

Recording of Transactions against Guaranteed Quantities

1. The Council shall keep records for each crop-year of those transactions and parts of transactions in wheat which are part of the guaranteed quantities in Annexes A and B to Article III.

2. A transaction or part of a transaction in wheat grain between an exporting country and an importing country shall be entered in the Council's records against the guaranteed quantities of those countries for a crop-year:

- (a) provided that (i) it is at a price not higher than the maximum nor lower than the minimum specified in or determined under Article VI for that crop-year, and (ii) the exporting country and the importing country have not agreed that it shall not be entered against their guaranteed quantities; and
- (b) to the extent that (i) both the exporting and the importing country concerned have unfulfilled guaranteed quantities for that crop-year, and (ii) the loading period specified in the transaction falls within that crop-year.

3. If the exporting country and the importing country concerned so agree, a transaction or part of a transaction made under an agreement for the purchase and sale of wheat entered into prior to the entry into force of Part 2 of this Agreement shall, irrespective of price but subject to the conditions in (b) of paragraph 2 of this Article, also be entered in the Council's records against the guaranteed quantities of those countries.

4. If a commercial contract or governmental agreement on the sale and purchase of wheat-flour contains a statement, or if the exporting country and the importing country concerned inform the Council that they are agreed, that the price of such wheat-flour is consistent with the prices specified in or determined under Article VI, the wheat grain equivalent of such wheat-flour shall, subject to the conditions prescribed in (a) (ii) and (b) of paragraph 2 of this Article, be entered in the Council's records against the guaranteed quantities of those countries. If the commercial contract or governmental agreement does not contain a statement of the nature referred to above and the exporting country and the importing country concerned do not agree that the price of the wheat-flour is consistent with the prices specified in or determined under Article VI, either of those countries may, unless they have agreed that the wheat grain equivalent of that wheat-flour

THE SCHEDULE—*continued*.

shall not be entered in the Council's records against their guaranteed quantities, request the Council to decide the issue. Should the Council, on consideration of such a request, decide that the price of such wheat-flour is consistent with the prices specified in or determined under Article VI, the wheat grain equivalent of the wheat-flour shall be entered against the guaranteed quantities of the exporting and importing countries concerned, subject to the conditions prescribed in (b) of paragraph 2 of this Article. Should the Council, on consideration of such a request, decide that the price of such wheat-flour is inconsistent with the prices specified in or determined under Article VI, the wheat grain equivalent of the wheat-flour shall not be so entered.

5. The Council shall prescribe rules of procedure, in accordance with the following provisions, for the reporting and recording of transactions which are part of the guaranteed quantities :

- (a) Any transaction or part of a transaction, between an exporting country and an importing country, qualifying under paragraph 2, 3, or 4 of this Article to form part of the guaranteed quantities of those countries shall be reported to the Council within such period and in such detail and by one or both of those countries as the Council shall lay down in its rules of procedure.
- (b) Any transaction or part of a transaction reported in accordance with the provisions of subparagraph (a) shall be entered in the Council's records against the guaranteed quantities of the exporting country and the importing country between which the transaction is made.
- (c) The order in which transactions and parts of transactions shall be entered in the Council's records against the guaranteed quantities shall be prescribed by the Council in its rules of procedure.
- (d) The Council shall, within a time to be prescribed in its rules of procedure, notify each exporting country and each importing country of the entry of any transaction or part of a transaction in the Council's records against the guaranteed quantities of that country.
- (e) If, within a period which the Council shall prescribe in its rules of procedure, the importing country or the exporting country concerned objects in any respect to the entry of a transaction or part of a transaction in the Council's records against its guaranteed quantities, the Council shall review the matter and, if it decides that the objection is well-founded, shall amend its records accordingly.
- (f) If any exporting or importing country considers it probable that the full amount of wheat already entered in the Council's records against its guaranteed quantity for the current crop-year will not be loaded within that crop-year, that country may request the Council to make appropriate reductions in the amounts entered in its records. The Council shall consider the matter and, if it decides that the request is justified, shall amend its records accordingly.
- (g) Any wheat purchased by an importing country from an exporting country and resold to another importing country may, by agreement of the importing countries concerned, be entered against the unfulfilled guaranteed purchases of the importing country to which the wheat is finally resold provided that a corresponding reduction is made in the amount entered against the guaranteed purchases of the first importing country.
- (h) The Council shall send to all exporting and importing countries, weekly or at such other interval as the Council may prescribe in its rules of procedure, a statement of the amounts entered in its records against guaranteed quantities.
- (i) The Council shall notify all exporting and importing countries immediately when the guaranteed quantity of any exporting or importing country for any crop-year has been fulfilled.

6. Each exporting country and each importing country may be permitted, in the fulfillment of its guaranteed quantities, a degree of tolerance to be prescribed by the Council for that country on the basis of the size of its guaranteed quantities and other relevant factors.

THE SCHEDULE—*continued.*

ARTICLE V

Enforcement of Rights

1.—

- (a) Any importing country which finds difficulty in purchasing its unfulfilled guaranteed quantity for any crop-year at prices consistent with the maximum prices specified in or determined under Article VI may request the Council's help in making the desired purchases.
- (b) Within three days of the receipt of a request under subparagraph (a) the Secretary of the Council shall notify those exporting countries which have unfulfilled guaranteed quantities for the relevant crop-year of the amount of the unfulfilled guaranteed quantity of the importing country which has requested the Council's help and invite them to offer to sell wheat at prices consistent with the maximum prices specified in or determined under Article VI.
- (c) If within fourteen days of the notification by the Secretary of the Council under subparagraph (b) the whole of the unfulfilled guaranteed quantity of the importing country concerned, or such part thereof as in the opinion of the Council is reasonable at the time the request is made, has not been offered for sale, the Council, having regard to any circumstances which the exporting and the importing countries may wish to submit for consideration and in particular to the industrial programs of any country as well as to the normal traditional volume and ratio of imports of wheat-flour and wheat grain imported by the importing country concerned, shall, within seven days, decide the quantities, and also if requested to do so the quality and grade, of wheat grain and/or wheat-flour which it is appropriate for each or any of the exporting countries to sell to that importing country for loading during the relevant crop-year.
- (d) Each exporting country required by the Council's decision under subparagraph (c) to offer quantities of wheat grain and/or wheat-flour for sale to the importing country shall, within thirty days from the date of that decision, offer to sell those quantities to such importing country for loading during the relevant crop-year at prices consistent with the maximum prices specified in or determined under Article VI and, unless those countries agree otherwise, on the same conditions regarding the currency in which payment is to be made as prevail generally between them at that time. If no trade relations have hitherto existed between the exporting country and the importing country concerned and if those countries fail to agree on the currency in which payment is to be made, the Council shall decide the issue.
- (e) In case of disagreement between an exporting country and an importing country on the quantity of wheat-flour to be included in a particular transaction being negotiated in compliance with the Council's decision under subparagraph (c), or on the relation of the price of such wheat-flour to the maximum prices of wheat grain specified in or determined under Article VI, or on the conditions on which the wheat grain and/or wheat-flour shall be bought and sold, the matter shall be referred to the Council for decision.

2.—

- (a) Any exporting country which finds difficulty in selling its unfulfilled guaranteed quantity for any crop-year at prices consistent with the minimum prices specified in or determined under Article VI may request the Council's help in making the desired sales.
- (b) Within three days of the receipt of a request under subparagraph (a) the Secretary of the Council shall notify those importing countries which have unfulfilled guaranteed quantities for the relevant crop-year of the amount of the unfulfilled guaranteed quantity of the exporting country which has requested the Council's help and invite them to offer to purchase wheat at prices consistent with the minimum prices specified in or determined under Article VI.
- (c) If within fourteen days of the notification by the Secretary of the Council under subparagraph (b) the whole of the unfulfilled guaranteed

THE SCHEDULE—*continued.*

quantity of the exporting country concerned, or such part thereof as in the opinion of the Council is reasonable at the time the request is made, has not been purchased, the Council, having regard to any circumstances which the exporting and the importing countries may wish to submit for consideration and in particular to the industrial programs of any country as well as to the normal traditional volume and ratio of imports of wheat-flour and wheat grain imported by the importing countries concerned, shall, within seven days, decide the quantities, and also if requested to do so the quality and grade, of wheat grain and/or wheat-flour which it is appropriate for each or any of the importing countries to purchase from that exporting country for loading during the relevant crop-year.

- (d) Each importing country required by the Council's decision under subparagraph (c) to offer to purchase quantities of wheat grain and/or wheat-flour from the exporting country shall, within thirty days from the date of that decision, offer to purchase those quantities from such exporting country for loading during the relevant crop-year at prices consistent with the minimum prices specified in or determined under Article VI and, unless those countries agree otherwise, on the same conditions regarding the currency in which payment is to be made as prevail generally between them at that time. If no trade relations have hitherto existed between the exporting country and the importing country concerned and if those countries fail to agree on the currency in which payment is to be made, the Council shall decide the issue.
- (e) In case of disagreement between an exporting country and an importing country on the quantity of wheat-flour to be included in a particular transaction being negotiated in compliance with the Council's decision under subparagraph (c), or on the relation of the price of such wheat-flour to the minimum prices of wheat grain specified in or determined under Article VI, or on the conditions on which the wheat grain and/or wheat-flour shall be bought and sold, the matter shall be referred to the Council for decision.

ARTICLE VI

Prices

- 1. The basic minimum and maximum prices for the duration of this Agreement shall be :

Crop-year.						Minimum.	Maximum.
						\$	\$
1949-50	..	..	..	..	..	1.50	1.80
1950-51	..	..	..	..	..	1.40	1.80
1951-52	..	..	..	..	..	1.30	1.80
1952-53	..	..	..	..	..	1.20	1.80

Canadian currency per bushel at the parity for the Canadian dollar, determined for the purposes of the International Monetary Fund as at March 1, 1949 for No. 1 Manitoba Northern wheat in bulk in store Fort William/Port Arthur. The basic minimum and maximum prices, and the equivalents thereof hereafter referred to, shall exclude such carrying charges and marketing costs as may be agreed between the buyer and the seller.

- 2. The equivalent maximum prices for bulk wheat for :

- (a) No. 1 Manitoba Northern wheat in store Vancouver shall be the maximum price for No. 1 Manitoba Northern wheat in bulk in store Fort William/Port Arthur specified in paragraph 1 of this Article ;
- (b) f.a.q. wheat f.o.b. Australia, sample wheat of France (minimum natural weight seventy-six kilograms per hectolitre ; minimum protein content ten per cent. ; maximum dockage and moisture content

THE SCHEDULE—*continued.*

two per cent. and fifteen per cent. respectively) f.o.b. French ports, and f.a.q. top grade wheat f.o.b. Uruguay, shall be whichever is the lower of:

- (i) the maximum price for No. 1 Manitoba Northern wheat in bulk in store Fort William/Port Arthur specified in paragraph 1 of this Article converted into the currency of Australia, France, or Uruguay, as the case may be, at the prevailing rate of exchange, or
- (ii) the price f.o.b. Australia, France, or Uruguay, as the case may be, equivalent to the c. & f. price in the country of destination of the maximum price for No. 1 Manitoba Northern wheat in bulk in store Fort William/Port Arthur specified in paragraph 1 of this Article, computed by using currently prevailing transportation costs and exchange rates and, in those importing countries where a quality differential is recognized, by making such allowance for difference in quality as may be agreed between the exporting country and the importing country concerned;
- (c) No. 1 Hard Winter wheat f.o.b. Gulf/Atlantic ports of the United States of America shall be the price equivalent to the c. & f. price in the country of destination of the maximum price for No. 1 Manitoba Northern wheat in bulk in store Fort William/Port Arthur specified in paragraph 1 of this Article, computed by using currently prevailing transportation costs and exchange rates and by making such allowance for difference in quality as may be agreed between the exporting country and the importing country concerned; and
- (d) No. 1 Soft White wheat or No. 1 Hard Winter wheat in store Pacific ports of the United States of America shall be the maximum price for No. 1 Manitoba Northern wheat in bulk in store Fort William/Port Arthur specified in paragraph 1 of this Article, computed by using the prevailing rate of exchange and by making such allowance for difference in quality as may be agreed between the exporting country and the importing country concerned.

3. The equivalent minimum price for bulk wheat for:

- (a) No. 1 Manitoba Northern wheat f.o.b. Vancouver,
- (b) f.a.q. wheat f.o.b. Australia,
- (c) sample wheat of France (minimum natural weight seventy-six kilograms per hectolitre; minimum protein content ten per cent.; maximum dockage and moisture content two per cent. and fifteen per cent. respectively) f.o.b. French ports,
- (d) f.a.q. top grade wheat f.o.b. Uruguay,
- (e) No. 1 Hard Winter wheat f.o.b. Gulf/Atlantic ports of the United States of America, and
- (f) No. 1 Soft White wheat or No. 1 Hard Winter wheat f.o.b. Pacific ports of the United States of America,

shall be respectively:

the f.o.b. prices Vancouver, Australia, France, Uruguay, United States of America Gulf/Atlantic ports and the United States of America Pacific ports equivalent to the c. & f. prices in the United Kingdom of Great Britain and Northern Ireland of the minimum prices for No. 1 Manitoba Northern wheat in bulk in store Fort William/Port Arthur specified in paragraph 1 of this Article, computed by using currently prevailing transportation costs and exchange rates and, in those importing countries where a quality differential is recognized, by making such allowance for difference in quality as may be agreed between the exporting country and the importing country concerned.

4. The Executive Committee may, in consultation with the Advisory Committee on Price Equivalents, at any date subsequent to August 1, 1949 designate any description of wheat other than those specified in paragraphs 2 and 3 above and determine the minimum and maximum price equivalents thereof; provided

THE SCHEDULE—*continued.*

that in the case of any other description of wheat the price equivalent of which has not yet been determined, the minimum and maximum prices for the time being shall be derived from the minimum and maximum prices of the description of wheat specified in this Article, or subsequently designated by the Executive Committee in consultation with the Advisory Committee on Price Equivalents, which is most closely comparable to such other description, by the addition of an appropriate premium or by the deduction of an appropriate discount.

5. If any exporting or importing country represents to the Executive Committee that any price equivalent established under paragraph 2, 3, or 4 of this Article is, in the light of current transportation or exchange rates or market premiums or discounts, no longer fair, the Executive Committee shall consider the matter and may, in consultation with the Advisory Committee on Price Equivalents, make such adjustment as it considers desirable.

6. If a dispute arises as to what premium or discount is appropriate for the purposes of paragraphs 4 and 5 of this Article in respect of any description of wheat specified in paragraph 2 or 3 or designated under paragraph 4 of this Article, the Executive Committee, in consultation with the Advisory Committee on Price Equivalents, shall on the request of the exporting or importing country concerned decide the issue.

7. All decisions of the Executive Committee under paragraphs 4, 5, and 6 of this Article shall be binding on all exporting and importing countries, provided that any of those countries which considers that any such decision is disadvantageous to it may ask the Council to review that decision.

8. In order to encourage and expedite the conclusion of transactions in wheat between them at prices mutually acceptable in the light of all the circumstances, the exporting and importing countries, while reserving to themselves complete liberty of action in the determination and administration of their internal agricultural and price policies, shall endeavour not to operate those policies in such a way as to impede the free movement of prices between the maximum price and the minimum price in respect of transactions in wheat into which the exporting and importing countries are prepared to enter. Should any exporting or importing country consider that it is suffering hardship as the result of such policies, it may draw the attention of the Council to the matter and the Council shall inquire into and make a report on the complaint.

ARTICLE VII

Stocks

1. In order to assure supplies of wheat to importing countries, each exporting country shall endeavour to maintain stocks of old crop wheat at the end of its crop-year at a level adequate to ensure that it will fulfill its guaranteed sales under this Agreement in each subsequent crop-year.

2. In the event of a short crop being harvested by an exporting country, particular consideration shall be given by the Council to the efforts made by that exporting country to maintain adequate stocks as required by paragraph 1 of this Article before that country is relieved of any of its obligations under Article X.

3. In order to avoid disproportionate purchases of wheat at the beginning and end of a crop-year, which might prejudice the stabilization of prices under this Agreement and render difficult the fulfillment of the obligations of all exporting and importing countries, importing countries shall endeavour to maintain adequate stocks at all times.

4. In the event of an appeal by an importing country under Article XII, particular consideration shall be given by the Council to the efforts made by that importing country to maintain adequate stocks as required by paragraph 3 of this Article before it decides in favour of such an appeal.

ARTICLE VIII

Information to be Supplied to the Council

The exporting and importing countries shall report to the Council, within the time prescribed by it, such information as the Council may request in connection with the administration of this Agreement.

THE SCHEDULE—*continued*.

PART 3—ADJUSTMENT OF GUARANTEED QUANTITIES

ARTICLE IX

Adjustments in Case of Nonparticipation or Withdrawal of Countries

1. In the event of any difference occurring between the total of the guaranteed purchases in Annex A to Article III and the total of the guaranteed sales in Annex B to Article III as a result of any country or countries listed in Annex A or Annex B (a) not signing or (b) not depositing an instrument of acceptance of or (c) withdrawing under paragraph 5, 6, or 7 of Article XXII from or (d) being expelled under Article XIX from or (e) being found by the Council under Article XIX to be in default of the whole or part of its guaranteed quantities under this Agreement, the Council shall, without prejudice to the right of any country to withdraw from this Agreement under paragraph 6 of Article XXII, adjust the remaining guaranteed quantities so as to make the total in the one Annex equal to the total in the other Annex.

2. The adjustment under this Article shall, unless the Council decides otherwise by two-thirds of the votes cast by the exporting countries and two-thirds of the votes cast by the importing countries, be made by reducing pro rata the guaranteed quantities in Annex A or Annex B, as the case may be, by the amount necessary to make the total in the one Annex equal to the total in the other Annex.

3. In making adjustments under this Article, the Council shall keep in mind the general desirability of maintaining the total guaranteed purchases and the total guaranteed sales at the highest possible level.

ARTICLE X

Adjustment in Case of Short Crop or Necessity to Safeguard Balance of Payments or Monetary Reserves

1. Any exporting or importing country which fears that it may be prevented, by a short crop in the case of an exporting country or the necessity to safeguard its balance of payments or monetary reserves in the case of an importing country, from carrying out its obligations under this Agreement in respect of a particular crop-year shall report the matter to the Council.

2. If the matter reported relates to balance of payments or monetary reserves, the Council shall seek and take into account, together with all facts which it considers relevant, the opinion of the International Monetary Fund, as far as the matter concerns a country which is a member of the Fund, on the existence and extent of the necessity referred to in paragraph 1 of this Article.

3. The Council shall discuss with the reporting country the matter reported under paragraph 1 of this Article and shall decide whether such country's representations are well founded. If it finds that they are well founded, it shall decide whether and to what extent and on what conditions the reporting country shall be relieved of its guaranteed quantity for the crop-year concerned. The Council shall inform the reporting country of its decision.

4. If the Council decides that the reporting country shall be relieved of the whole or part of its guaranteed quantity for the crop-year concerned, the following procedure shall apply :

(a) The Council shall, if the reporting country is an importing country, invite the other importing countries, or, if the reporting country is an exporting country, invite the other exporting countries, to increase their guaranteed quantities for the crop-year concerned up to the amount of the guaranteed quantity of which the reporting country is relieved ; provided that an increase in the guaranteed quantities of an exporting country shall require approval by the Council by two-thirds of the votes cast by the exporting countries and two-thirds of the votes cast by the importing countries if any importing country, within such period as the Council shall prescribe, objects to such increase on the ground that it will have the effect of making the balance of payments problems of that importing country more difficult.

(b) If the amount of which the importing country is relieved cannot be fully offset in the manner provided in (a) of this paragraph, the Council shall invite the exporting countries, if the reporting country is an

THE SCHEDULE—*continued.*

importing country, or the importing countries, if the reporting country is an exporting country, to accept a reduction of their guaranteed quantities for the crop-year concerned up to the amount of the guaranteed quantity of which the reporting country is relieved, after taking account of any adjustments made under (a) of this paragraph.

- (c) If the total offers received by the Council from the exporting and importing countries to increase their guaranteed quantities under (a) of this paragraph or to reduce their guaranteed quantities under (b) of this paragraph exceed the amount of the guaranteed quantity of which the reporting country is relieved, their guaranteed quantities shall, unless the Council decides otherwise, be increased or reduced, as the case may be, on a pro rata basis, provided that the increase or reduction of the guaranteed quantity of any such country shall not exceed its offer.
- (d) If the amount of the guaranteed quantity of which the reporting country is relieved cannot be fully offset in the manner provided in (a) and (b) of this paragraph, the Council shall reduce the guaranteed quantities in Annex A to Article III, if the reporting country is an exporting country, or in Annex B to Article III, if the reporting country is an importing country, for the crop-year concerned by the amount necessary to make the total in the one Annex equal to the total in the other Annex. Unless the exporting countries, in the case of a reduction in Annex B, or the importing countries, in the case of a reduction in Annex A, agree otherwise, the reduction shall be made on a pro rata basis, account being taken of any reduction already made under (b) of this paragraph.

ARTICLE XI

Increase of Guaranteed Quantities by Consent

The Council may at any time, upon request by an exporting or importing country, approve an increase in the figures in one Annex for the remaining period of this Agreement if an equal increase is made in the other Annex for that period, provided that the exporting and importing countries whose figures would thereby be changed consent.

ARTICLE XII

Additional Purchases in Case of Critical Need

In order to meet a critical need which has arisen or threatens to arise in its territory, an importing country may appeal to the Council for assistance in obtaining supplies of wheat in addition to its guaranteed purchases. On consideration of such an appeal the Council may reduce pro rata the guaranteed quantities of the other importing countries in order to provide the quantity of wheat which it determines to be necessary to relieve the emergency created by the critical need, provided that it considers that such an emergency cannot be met in any other manner. Two-thirds of the votes cast by the exporting countries and two-thirds of the votes cast by the importing countries shall be required for any reduction of guaranteed purchases under this paragraph.

PART 4—ADMINISTRATION

ARTICLE XIII

The Council

A. CONSTITUTION

1. An International Wheat Council is hereby established to administer this Agreement.
2. Each exporting country and each importing country shall be a voting member of the Council and may be represented at its meetings by one delegate, one alternate, and advisers.
3. Any country which the Council recognizes as an irregular exporter or an irregular importer of wheat may become a non-voting member of the Council,

THE SCHEDULE—*continued.*

provided that it accepts the obligations prescribed in Article VIII and agrees to pay such membership fees as shall be determined by the Council. Each country which is a non-voting member of the Council shall be entitled to have one representative at its meetings.

4. The Food and Agriculture Organization of the United Nations, the International Trade Organization, the Interim Coordinating Committee for International Commodity Arrangements, and such other intergovernmental organizations as the Council may decide, shall each be entitled to have one non-voting representative at meetings of the Council.

5. The Council shall elect for each crop-year a Chairman and a Vice Chairman.

B. POWERS AND FUNCTIONS

6. The Council shall establish its rules of procedure.

7. The Council shall keep such records as are required by the terms of this Agreement and may keep such other records as it considers desirable.

8. The Council shall publish an annual report and may publish any other information concerning matters within the scope of this Agreement.

9. The Council, after consultation with the International Wheat Council established under the Memorandum of Agreement approved in June, 1942, and amended in June, 1946, may take over the records, assets and liabilities of that body.

10. The Council shall have such other powers and perform such other functions as it may deem necessary to carry out the terms of this Agreement.

11. The Council may, by two-thirds of the votes cast by the exporting countries and two-thirds of the votes cast by the importing countries, delegate the exercise of any of its powers or functions. The Council may at any time revoke such delegation by a majority of the votes cast. Any decision made under any powers or functions delegated by the Council in accordance with this paragraph shall be subject to review by the Council at the request of any exporting or importing country made within a period which the Council shall prescribe. Any decision, in respect of which no request for review has been made within the prescribed period, shall be binding on all exporting and importing countries.

C. VOTING

12. The importing countries shall hold 1,000 votes, which shall be distributed between them in the proportions which their respective guaranteed purchases for the current crop-year bear to the total of the guaranteed purchases for that crop-year. The exporting countries shall also hold 1,000 votes, which shall be distributed between them in the proportions which their respective guaranteed sales for the current crop-year bear to the total of the guaranteed sales for that crop-year. No exporting country or importing country shall have less than one vote and there shall be no fractional votes.

13. The Council shall redistribute the votes in accordance with the provisions of paragraph 12 of this Article whenever there is any change in the guaranteed purchases or guaranteed sales for the current crop-year.

14. If an exporting or an importing country forfeits its votes under paragraph 5 of Article XVII or is deprived of its votes under paragraph 3 of Article XIX, the Council shall redistribute the votes as if that country had no guaranteed quantity for the current crop-year.

15. Except where otherwise specified in this Agreement, decisions of the Council shall be by a majority of the total votes cast.

16. Any exporting country may authorize any other exporting country, and any importing country may authorize any other importing country, to represent its interests and to exercise its votes at any meeting or meetings of the Council. Evidence of such authorization satisfactory to the Council shall be submitted to the Council.

D. SESSIONS

17. The Council shall meet at least once during each half of each crop-year and at such other times as the Chairman may decide.

THE SCHEDULE—*continued.*

18. The Chairman shall convene a Session of the Council if so requested by (a) any five delegates of the exporting and importing countries or (b) the delegate or delegates of any of the exporting and importing countries holding a total of not less than ten per cent. of the total votes or (c) the Executive Committee.

E. QUORUM

19. The presence of delegates with a majority of the votes held by the exporting countries and a majority of the votes held by the importing countries shall be necessary to constitute a quorum at any meeting of the Council.

F. SEAT

20. The Council shall select in July 1949 its temporary seat. The Council shall select, so soon as it deems the time propitious, its permanent seat after consultation with the appropriate organs and specialized agencies of the United Nations.

G. LEGAL CAPACITY

21. The Council shall have in the territory of each exporting and importing country such legal capacity as may be necessary for the exercise of its functions under this Agreement.

H. DECISIONS

22. Each exporting and importing country undertakes to accept as binding all decisions of the Council under the provisions of this Agreement.

ARTICLE XIV

Executive Committee

1. The Council shall establish an Executive Committee. The members of the Executive Committee shall be three exporting countries elected annually by the exporting countries and not more than seven importing countries elected annually by the importing countries. The Council shall appoint the Chairman of the Executive Committee and may appoint a Vice-Chairman.

2. The Executive Committee shall be responsible to and work under the general direction of the Council. It shall have such powers and functions as are expressly assigned to it under this Agreement and such other powers and functions as the Council may delegate to it under paragraph 11 of Article XIII.

3. The exporting countries on the Executive Committee shall have the same total number of votes as the importing countries. The votes of the exporting countries shall be divided among them as they shall decide, provided that no exporting country shall have more than forty per cent. of the total votes of the exporting countries. The votes of the importing countries shall be divided among them as they shall decide, provided that no importing country shall have more than forty per cent. of the total votes of the importing countries.

4. The Council shall prescribe rules of procedure regarding voting in the Executive Committee, and may make such other provisions regarding rules of procedure in the Executive Committee as it thinks fit. A decision of the Executive Committee shall require the same majority of votes as this Agreement prescribes for the Council when making a decision on a similar matter.

5. Any exporting or importing country which is not a member of the Executive Committee may participate, without voting, in the discussion of any question before the Executive Committee whenever the latter considers that the interests of that country are affected.

ARTICLE XV

Advisory Committee on Price Equivalents

The Council shall establish an Advisory Committee on Price Equivalents consisting of representatives of three exporting countries and of three importing countries. The Committee shall advise the Council and the Executive Committee on the matters referred to in paragraphs 4, 5, and 6 of Article VI and on such other questions as the Council or the Executive Committee may refer to it. The Chairman of the Committee shall be appointed by the Council.

THE SCHEDULE—*continued.*

ARTICLE XVI

The Secretariat

1. The Council shall have a Secretariat consisting of a Secretary and such staff as may be required for the work of the Council and of its committees.
2. The Council shall appoint the Secretary and determine his duties.
3. The staff shall be appointed by the Secretary in accordance with regulations established by the Council.

ARTICLE XVII

Finance

1. The expenses of delegations to the Council, of representatives on the Executive Committee, and of representatives on the Advisory Committee on Price Equivalents shall be met by their respective Governments. The other expenses necessary for the administration of this Agreement, including those of the Secretariat and any remuneration which the Council may decide to pay to its Chairman or its Vice-Chairman, shall be met by annual contributions from the exporting and importing countries. The contribution of each such country for each crop-year shall be proportionate to the number of votes held by it when the budget for that crop-year is settled.
2. At its first Session, the Council shall approve its budget for the period ending July 31, 1950 and assess the contribution to be paid by each exporting and importing country.
3. The Council shall, at its first Session during the second half of each crop-year, approve its budget for the following crop-year and assess the contribution to be paid by each exporting and importing country for that crop-year.
4. The initial contribution of any exporting or importing country acceding to this Agreement under Article XXI shall be assessed by the Council on the basis of the number of votes to be held by it and the period remaining in the current crop-year, but the assessments made upon other exporting and importing countries for the current crop-year shall not be altered.
5. Contributions shall be payable immediately upon assessment. Any exporting or importing country failing to pay its contribution within one year of its assessment shall forfeit its voting rights until its contribution is paid, but shall not be deprived of its other rights nor relieved of its obligations under this Agreement. In the event of any exporting or importing country forfeiting its voting rights under this paragraph its votes shall be redistributed as provided in paragraph 14 of Article XIII.
6. The Council shall, each crop-year, publish an audited statement of its receipts and expenditures in the previous crop-year.
7. The government of the country where the temporary or permanent seat of the Council is situated shall grant exemption from taxation on the salaries paid by the Council to its employees except that such exemption need not apply to the nationals of that country.
8. The Council shall, prior to its dissolution, provide for the settlement of its liabilities and the disposal of its records and assets upon the termination of this Agreement.

ARTICLE XVIII

Co-operation with Other Intergovernmental Organizations

1. The Council shall make whatever arrangements are required for consultation and co-operation with the appropriate organs of the United Nations and its specialized agencies and with other intergovernmental organizations.
2. If the Council finds that any terms of this Agreement are materially inconsistent with such requirements as may be laid down by the United Nations or through its appropriate organs and specialized agencies regarding intergovernmental commodity agreements, the inconsistency shall be deemed to be a circumstance affecting adversely the operation of this Agreement and the procedure prescribed in paragraphs 3, 4, and 5 of Article XXII shall be applied.

THE SCHEDULE—*continued.*

ARTICLE XIX

Disputes and Complaints

1. Any dispute concerning the interpretation or application of this Agreement which is not settled by negotiation and any complaint that any exporting or importing country has failed to fulfill its obligations under this Agreement, shall, at the request of any exporting or importing country party to the dispute or making the complaint, be referred to the Council which shall make a decision on the matter.

2. No exporting or importing country shall be found to have committed a breach of this Agreement except by a majority of the votes held by the exporting countries and a majority of the votes held by the importing countries. Any finding that an exporting or importing country is in breach of this Agreement shall specify the nature of the breach and, if the breach involves default by that country in its guaranteed quantities, the extent of such default.

3. If the Council finds that an exporting country or an importing country has committed a breach of this Agreement, it may, by a majority of the votes held by the exporting countries and a majority of the votes held by the importing countries, deprive the country concerned of its voting rights until it fulfills its obligations or expel that country from the Agreement.

4. If any exporting or importing country is deprived of its votes under this Article, the votes shall be redistributed as provided in paragraph 14 of Article XIII. If any exporting or importing country is found in default of the whole or part of its guaranteed quantities or is expelled from this Agreement, the remaining guaranteed quantities shall be adjusted as provided in Article IX.

PART 5—FINAL PROVISIONS

ARTICLE XX

Signature, Acceptance, and Entry into Force

1. This Agreement shall be open for signature in Washington until April 15, 1949 by the Governments of the countries listed in Annex A and Annex B to Article III.

2. This Agreement shall be subject to acceptance by signatory Governments in accordance with their respective constitutional procedures. Subject to the provisions of paragraph 4 of this Article, instruments of acceptance shall be deposited with the Government of the United States of America not later than July 1, 1949.

3. Provided that the Governments of countries listed in Annex A to Article III responsible for not less than seventy per cent. of the guaranteed purchases and the Governments of countries listed in Annex B to Article III responsible for not less than eighty per cent. of the guaranteed sales have accepted this Agreement by July 1, 1949, Parts 1, 3, 4, and 5 of the Agreement shall enter into force on July 1, 1949 between those Governments which have accepted it. The Council shall fix a date which shall not be later than September 1, 1949 on which Part 2 of this Agreement shall enter into force between those Governments which have accepted it.

4. Any signatory Government which has not accepted this Agreement by July 1, 1949 may be granted by the Council an extension of time after that date for depositing its instrument of acceptance. Parts 1, 3, 4, and 5 of this Agreement shall enter into force for that Government on the date of the deposit of its instrument of acceptance, and Part 2 of the Agreement shall enter into force for that Government on the date fixed under paragraph 3 of this Article for the entry into force of that Part.

5. The Government of the United States of America will notify all signatory Governments of each signature and acceptance of this Agreement.

ARTICLE XXI

Accession

The Council may, by two-thirds of the votes cast by the exporting countries and two-thirds of the votes cast by the importing countries, approve accession

THE SCHEDULE—*continued.*

to this Agreement by any Government not already a party to it and prescribe conditions for such accession. Accession shall be effected by depositing an instrument of accession with the Government of the United States of America, which will notify all signatory and acceding Governments of each such accession.

ARTICLE XXII

Duration, Amendment, Withdrawal, and Termination

1. This Agreement shall remain in force until July 31, 1953.
2. The Council shall, not later than July 31, 1952, communicate to the exporting and importing countries its recommendations regarding the renewal of this Agreement.
3. If circumstances arise which, in the opinion of the Council, affect or threaten to affect adversely the operation of this Agreement, the Council may, by a majority of the votes held by the exporting countries and a majority of the votes held by the importing countries, recommend an amendment of this Agreement to the exporting and importing countries.
4. The Council may fix a time within which each exporting and importing country shall notify the Government of the United States of America whether or not it accepts the amendment. The amendment shall become effective upon its acceptance by exporting countries which hold two-thirds of the votes of the exporting countries and by importing countries which hold two-thirds of the votes of the importing countries.
5. Any exporting or importing country which has not notified the Government of the United States of America of its acceptance of an amendment by the date on which such amendment becomes effective may, after giving such written notice of withdrawal to the Government of the United States of America as the Council may require in each case, withdraw from this Agreement at the end of the current crop-year, but shall not thereby be released from any obligations under this Agreement which have not been discharged by the end of that crop-year.
6. Any exporting country which considers its interests to be seriously prejudiced by the nonparticipation in or withdrawal from this Agreement of any country listed in Annex A to Article III responsible for more than five per cent. of the guaranteed quantities in that Annex, or any importing country which considers its interests to be seriously prejudiced by the nonparticipation in or withdrawal from the Agreement of any country listed in Annex B to Article III responsible for more than five per cent. of the guaranteed quantities in that Annex, may withdraw from this Agreement by giving written notice of withdrawal to the Government of the United States of America before September 1, 1949 or such earlier date as the Council may fix by two-thirds of the votes cast by the exporting countries and by two-thirds of the votes cast by the importing countries.
7. Any exporting or importing country which considers its national security to be endangered by the outbreak of hostilities may withdraw from this Agreement by giving thirty days' written notice of withdrawal to the Government of the United States of America.
8. The Government of the United States of America will inform all signatory and acceding Governments of each notification and notice received under this Article.

ARTICLE XXIII

Territorial Application

1. Any Government may, at the time of signature or acceptance of or accession to this Agreement, declare that its rights and obligations under the Agreement shall not apply in respect of all or any of the overseas territories for the foreign relations of which it is responsible.
2. With the exception of territories in respect of which a declaration has been made in accordance with paragraph 1 of this Article, the rights and obligations of any Government under this Agreement shall apply in respect of all territories for the foreign relations of which that Government is responsible.
3. Any Government may, at any time after its acceptance of or accession to this Agreement, by notification to the Government of the United States of America, declare that its rights and obligations under the Agreement shall apply in respect

THE SCHEDULE—*continued.*

of all or any of the territories regarding which it has made a declaration in accordance with paragraph 1 of this Article.

4. Any Government may, by giving notification of withdrawal to the Government of the United States of America, withdraw from this Agreement separately in respect of all or any of the overseas territories for whose foreign relations it is responsible.

5. The Government of the United States of America will inform all signatory and acceding Governments of any declaration or notification made under this Article.

IN WITNESS WHEREOF the undersigned, having been duly authorized to this effect by their respective Governments, have signed this Agreement on the dates appearing opposite their signatures.

Done at Washington, this twenty-third day of March, 1949, in the English and French languages, both texts being equally authentic, the original to be deposited in the archives of the Government of the United States of America, which shall transmit certified copies thereof to each signatory and acceding Government.

FOR AUSTRALIA :	
Edwin McCarthy	Mar 23rd 1949
FOR AUSTRIA :	
L. Kleinwacchter	March 23rd, 1949
FOR BELGIUM :	
Silvercruys	March 23rd, 1949.
FOR BOLIVIA :	
R Martinez Vargas	April 13/49
FOR BRAZIL :	
Walder Lima Sarmanho.	March 25th, 1949
FOR CANADA :	
Charles F Wilson	March 23, 1949
FOR CEYLON :	
G. C. S. Corea.	March 23, 1949
FOR CHINA :	
V. K. Wellington Koo	March 23, 1949
FOR COLOMBIA :	
E Gallego.	March 23, 1949
FOR CUBA :	
R Sarabasa.	March 23, 1949.
FOR DENMARK :	
A. F. Knudsen.	Mar. 23, 1949.
FOR THE DOMINICAN REPUBLIC :	
Joaquin E. Salazar.	March 23, 1949.
FOR ECUADOR :	
A Dillon	April 14, 1949
FOR EGYPT :	
A. Hassan	March 23rd, 1949.
FOR EL SALVADOR :	
Salvador Jáuregui	March 23rd., 1949.
FOR FRANCE :	
H Bonnet	23 Mars 1949
FOR GREECE :	
Costas P. Caranicas	March 23d, 1949
FOR GUATEMALA :	
I González Arévalo	March 23 1949
FOR INDIA :	
N. G. Abhyankar.	March 23rd 1949.
R. R. Saksena	March 23, 1949
FOR IRELAND :	
Timothy O'Connell.	March 23rd 1949
FOR ISRAEL :	
L. Samuel	March 23 1949
Arthur C A Liverhant	March 23, 1949
FOR ITALY :	
Alberto Tarchiani	March 23rd 1949

THE SCHEDULE—*continued.*

FOR LEBANON :	
Emile Mattar	March 23, 1949
FOR LIBERIA :	
W. R. Tolbert	March 23, 1949
FOR MEXICO :	
C. M. Cinta	April 15th 1949.
FOR THE NETHERLANDS :	
J. B. Ritzema van Ikema	March 23, 1949.
FOR NEW ZEALAND :	
R. W. Marshall	25th March, 1949.
FOR NICARAGUA :	
Alfredo J Sacasa	March 23, 1949
FOR NORWAY :	
Wilhelm Munthe Morgenstierne	April 13th 1949.
FOR PANAMA :	
O. A. Vallarino.	April 12th, 1949.
FOR PERU :	
Subject to the reservation that the guaranteed purchases in the case of Peru, specified in Annex A to Article III, shall be changed from 200.000 to 150.000 metric tons.	
C Donayre —	April 15, 1949
FOR THE REPUBLIC OF THE PHILIPPINES :	
Emilio Abello	March 23, 1949
Urbano A. Zafra	March 23, 1949
Justiniano D. Quirino	March 23, 1949
FOR PORTUGAL :	
Antonio Ferreira d'Almeida	March 23, 1949.
FOR SAUDI ARABIA :	
Ahmed Abdul Jabbar	March 23, 1949
FOR SWEDEN :	
A Aminoff	April 11, 1949.
FOR SWITZERLAND :	
Werner Fuchss	April 11, 1949.
FOR THE UNION OF SOUTH AFRICA :	
W A Horrocks	March 23rd 1949
FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND :	
F. S. Anderson.	March 23rd, 1949
FOR THE UNITED STATES OF AMERICA :	
Charles F. Brannan	March 23, 1949.
Albert J. Loveland	Mar. 23 — 1949
FOR URUGUAY :	
Juan Felipe Yriart	March 23, 1949.
FOR VENEZUELA :	
Sant E Vera	April 12, 1949

JERVIS BAY TERRITORY ACCEPTANCE ACT 1915.^(a)

An Act to provide for the Acceptance of certain Territory
Surrendered by the State of New South Wales to
the Commonwealth.

WHEREAS the Commonwealth and the State of New South Wales (in this Act referred to as the State) have entered into an agreement, set out in the Schedule to this Act, for the surrender to and acceptance by the Commonwealth of the territory set out in the said agreement: And whereas it is desirable that the said agreement be ratified and confirmed and that the surrender of the territory be accepted by the Commonwealth: 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:—

Preamble.

1. This Act may be cited as the *Jervis Bay Territory Acceptance Act 1915*.^(a)

Short title.

2. This Act shall commence on a day to be fixed by proclamation, after the Act passed by the Parliament of the State confirming the said agreement and surrendering the territory to the Commonwealth has been proclaimed by the Governor of the State to be in force.^(a)

Commence-
ment.

3. The agreement made between the Commonwealth and the State and set out in the Schedule to this Act is hereby ratified and confirmed.

Ratification of
agreement.

4.—(1.) Upon the commencement of this Act, the territory set out in the agreement and surrendered by the State to the Commonwealth shall be and is hereby accepted by the Commonwealth as a territory of the Commonwealth.

Acceptance of
territory.

(2.) The territory so accepted shall be annexed to and be deemed to form part of the Territory acquired by the Commonwealth for the Seat of Government, to the intent that all laws ordinances and regulations (whether made before or after the commencement of this Act), which are from time to time in force in the Territory for the Seat of Government shall so far as applicable apply to and be in force in the territory so accepted.

Application of
laws.

(3.) Sections six to nine (both inclusive) of the *Seat of Government Acceptance Act 1909* and the whole of the *Seat of Govern-*

(a) No. 19, 1915; assented to on 12th July, 1915; commenced on 4th September, 1915. See *Gazette*, 1915, p. 1710.

ment (Administration) Act 1910 except sections nine and ten shall apply to the territory as if it formed part of the Territory for the Seat of Government.^(a)

Disposal of
Crown Lands.

5. No Crown lands in the territory shall be sold or disposed of for any estate of freehold, except in pursuance of some contract entered into before the commencement of this Act.

Application of
Lands
Acquisition Act
1906.

6. The provisions of the *Lands Acquisition Act 1906* shall apply to the acquisition by the Commonwealth, for any public purpose, of any land owned in the territory, set out in the said agreement, by any private person :^(a)

Provided that in determining the compensation to which the owner is entitled under that Act, the value of the land shall be taken not to exceed the unimproved value of the land, or the interest therein of the owner, on the first day of January One thousand nine hundred and fourteen, together with the value of his interest in the improvements on the land at the date of the acquisition of the land.

THE SCHEDULE.

SURRENDER TO THE COMMONWEALTH OF AUSTRALIA BY THE STATE OF NEW SOUTH WALES OF LAND AT JERVIS BAY.

AGREEMENT between the Commonwealth of Australia (hereinafter called the Commonwealth) of the one part and the State of New South Wales (hereinafter called the State) of the other part :

WITNESSETH THAT, subject as hereinafter mentioned to the approval of the Parliaments of the Commonwealth and of the State, it is hereby agreed as follows :—

1. The State shall surrender to the Commonwealth, and the Commonwealth shall accept, the territory (hereinafter called the territory), now being part of the State, described hereunder, namely :—

All that piece and parcel of land and water situate at Jervis Bay in the Parish of Bherwerre, County of St. Vincent, State of New South Wales, Commonwealth of Australia, area about 18,000 acres, commencing at a point on the high water mark on the left bank of Sussex Inlet at its intersection with the western boundary of portion 12 of 40 acres and bounded thence westerly and north-westerly by that high water mark to the high water mark of St. George's Basin, thence in a general easterly and north-easterly direction by that high water mark to its intersection with the production westerly of the southern boundary of portion 18 ; thence

(a) Held by the High Court that as a result of section four of this Act and section eight of the *Seat of Government Acceptance Act 1909* the Supreme Court of New South Wales is not a "State Court of competent jurisdiction" within the meaning of section thirty-seven of the *Lands Acquisition Act 1906* in so far as an action for compensation pursuant to section six of this Act is concerned. *Commonwealth v. Woodhill*, (1917) 23 C.L.R. 482 ; 18 S.R. (N.S.W.) 110 ; 34 W.N. (N.S.W.) 173 ; 23 A.L.J.R. 325. Section eight of the *Seat of Government Acceptance Act 1909* has since been repealed by the *Judiciary Act 1927* ; see now the *Australian Capital Territory Supreme Court Act 1933-1950, supra*.

THE SCHEDULE—*continued.*

easterly by a straight line formed by the western production of the southern boundary of portion 18, the boundary itself, and its production easterly to the high water mark of Jervis Bay; thence by a line across the southern part of Jervis Bay bearing north-easterly to a point in the high water mark of Jervis Bay at the northernmost extremity of Bowen Island; thence by the high water mark of Jervis Bay and of the South Pacific Ocean along the eastern boundary of Bowen Island to the southernmost point thereof; thence by a line bearing south-westerly across the passage between Bowen Island and Governor Head to the high water mark of the South Pacific Ocean on the foreshore of the mainland, at the northernmost point of Governor Head; and thence by that high water mark in a general southerly and south-westerly direction to St. George's Head; thence in a general northerly, westerly, and south-westerly direction by the high water mark of Wreck Bay to the high water mark on the left bank of Sussex Inlet before mentioned; and thence in a general northerly direction by that high water mark to the commencing point.

2. This Agreement shall not in any way be binding unless and until it is approved by the Parliaments of the Commonwealth and of the State, and legislation is passed enabling the Commonwealth and the State to effect the surrender and acceptance of the territory.

3. The Commonwealth shall account to the State for any purchase money received by the Commonwealth in respect of any grant of an estate in fee simple in the territory—

- (a) made by the State before the date of the surrender; or
 - (b) contracted before that date to be so made, either unconditionally or upon conditions which (except as to the payment of purchase money) have been wholly fulfilled at that date.
4. The State shall make no claim for payment in respect of—
- (a) the value of the waste lands of the Crown in the territory; or
 - (b) the rents and profits, after the date of the surrender, of any land in the territory held from the Crown under any estate less than an estate in fee simple; or
 - (c) the value of the right, title, estate, or interest of the Crown in reversion or expectancy upon the termination of any such estate as mentioned in the last preceding paragraph; or
 - (d) the purchase money for the grant by the State of any conditional estate in any land in the territory, in respect of which at the date of the surrender there remains unfulfilled any conditions precedent (other than the payment of purchase money) to the grant of an estate in fee simple.

Signed by the Governor of the State of New South Wales, with the advice and consent of the Executive Council thereof, for and on behalf of that State and sealed with the public seal of that State on the twenty-third day of September 1913.

(L.S.) G. STRICKLAND
Governor of New South Wales.
By Command.
W. A. HOLMAN.

Signed by the Governor-General of the Commonwealth of Australia, with the advice and consent of the Executive Council thereof, for and on behalf of the Commonwealth and sealed with the seal of the Commonwealth on the 4th day of December 1913.

(L.S.) DENMAN
Governor-General.
By Command.
JOSEPH COOK.

JUDGES' PENSIONS ACT 1948^(a).

An Act to make provision for Pensions for Judges of Courts established under laws of the Commonwealth and to make provision for the families of such Judges, 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>Judges' Pensions Act 1948</i> . ^(a) |
| Commence-
ment. | 2. This Act shall come into operation on the day on which it receives the Royal Assent. |
| Definitions. | 3. In this Act, unless the contrary intention appears—
"Judge" means a Justice or Judge to whom this Act applies ;
"salary" means salary at the rate payable to a Judge immediately prior to his retirement or to his death before retirement as the case may be ;
"the Schedule" means the Schedule to this Act. |
| Judges to
whom Act
applies. | 4. This Act shall apply to Justices of the High Court of Australia, Judges of the Commonwealth Court of Conciliation and Arbitration, Judges of the Federal Court of Bankruptcy, the Judge of the Supreme Court of the Australian Capital Territory and to Judges of the Federal Court of Claims. |
| Amendments
of Acts. | 5. The Acts specified in the first column of the Schedule are amended as respectively specified in the second column of the Schedule and, as so amended, may be cited as respectively specified in the third column of the Schedule. |
| Pensions of
Judges. | 6.—(1.) Where a Judge who has attained the age of sixty years retires after serving as a Judge for not less than ten years, he shall, on retiring, be entitled to an annual pension at the rate of twenty-seven and one-half per centum of his salary and at the additional rate of two and one-half per centum of his salary for each completed year of his service in excess of ten years, but so that the rate of his pension shall not exceed forty per centum of his salary. |

(a) The *Judges' Pensions Act 1948* comprises the *Judges' Pensions Act 1948* (No. 65 of 1948) as amended by the *Commonwealth Conciliation and Arbitration Act 1948* (No. 77 of 1948). The *Judges' Pensions Act 1948* was assented to and commenced on 9th December, 1948. The *Commonwealth Conciliation and Arbitration Act 1948* was assented to and commenced on 17th December, 1948.

(2.) Where a Judge retires, and the Minister certifies that his retirement is by reason of permanent disability or infirmity—

- (a) if his retirement occurs during the first five years of his service as a Judge, he shall be entitled, on retiring, to an annual pension at the rate of fifteen per centum of his salary ; or
- (b) if his retirement occurs after he has served as a Judge for not less than five years, he shall be entitled, on retiring, to an annual pension at the rate of fifteen per centum of his salary and at an additional rate of two and one-half per centum of his salary for each completed year of his service in excess of five years, but so that the rate of his pension shall not exceed forty per centum of his salary.

7. Where a Judge dies before his retirement—

- (a) if his death occurs during the first five years of his service as a Judge, an annual pension shall be paid to his widow at the rate of seven and one-half per centum of his salary ; or
- (b) if his death occurs after he has served as a Judge for not less than five years, an annual pension shall be paid to his widow at the rate specified in the last preceding paragraph of this section and at an additional rate, for each completed year of his service in excess of five years, of one and one-quarter per centum of his salary, but so that the rate of her pension shall not exceed twenty per centum of that salary :

Pension to widow on death of Judge before retirement.

Provided that, if the widow re-marries, her pension under this section shall thereupon cease and determine.

8. Upon the death of a retired Judge who is in receipt of a pension under section six of this Act an annual pension shall be paid to his widow, if her marriage to the retired Judge occurred prior to his retirement, at the rate of one-half of the rate of pension payable to that pensioner immediately prior to his death :

Pension to widow on death of retired Judge.

Provided that, if the widow re-marries, her pension under this section shall thereupon cease and determine.

9.—(1.) On the death of a person who is a Judge or was, immediately prior to his death, in receipt of a pension under section six of this Act, an allowance at the rate of One pound per week shall be paid in respect of each of his, or of his widow's, children who are under the age of sixteen years and until the age of sixteen years has been attained :

Allowances in respect of children of deceased Judge.

Provided that, if the widow re-marries, an allowance under this sub-section shall not be payable in respect of any child of the re-marriage.

(2.) An allowance payable under this section shall be payable—

- (a) to the widow of the deceased person during her own life and, in the event of her death before the child attains the age of sixteen years, to the guardian of the child to be used for the child's support and education ; or
- (b) in the event of the deceased person having been a widower, to the guardian of the child to be used for the child's support and education.

Marriage after retirement.

10. Notwithstanding anything contained in the last three preceding sections, where a retired Judge marries after his retirement and predeceases his wife, a pension shall not be payable to his widow, nor shall allowances in respect of the children of the marriage be payable.

Payment of pensions and allowances.

11. The pensions and allowances payable under or by virtue of this Act—

- (a) shall grow due from day to day ; and
- (b) shall be payable monthly out of the Consolidated Revenue Fund which is, to the necessary extent, hereby appropriated accordingly.

Prior judicial service under a State.

12. Where a Judge has, prior to his appointment, served in any judicial office under a State—

- (a) the period of his service in that office ; or
- (b) the period of ten years,

whichever is the less, shall, for the purposes of sections six and seven of this Act, be added to, and be deemed to be part of, his service as a Judge.

Application of pension, &c., provisions.

13.—(1.) The provisions of sections six to eleven (inclusive) of this Act shall apply to and in relation to every Judge who is appointed after the commencement of this Act.

(2.) The provisions of sections six to eleven (inclusive) of this Act shall not apply to or in relation to any Judge who is serving as a Judge at the date of the commencement of this Act unless, by notice in writing to the Minister within six months after the commencement of this Act, he elects to come within the application of those provisions.

(3.) A Judge to and in relation to whom the provisions of sections six to eleven (inclusive) of this Act apply by virtue of an election in pursuance of the last preceding sub-section shall, as on and from the date of his election, have the rights and benefits provided by those provisions in substitution for any right to pension to which he would have been entitled under any provision of an Act specified

in the first column of the Schedule if the Act so specified had not been amended as provided in this Act.

(4.) A Judge who is serving as such at the date of the commencement of this Act and who does not make an election in pursuance of sub-section (2.) of this section shall retain any right to pension to which he was entitled, immediately prior to the commencement of this Act, under any provision of an Act specified in the first column of the Schedule, and that provision shall continue to apply to and in relation to that Judge as if the Act so specified had not been amended as provided in this Act.

(5.) Notwithstanding anything contained in the foregoing provisions of this section, the provisions of section twelve of this Act shall apply to every Judge, whether appointed before or after the commencement of this Act.

14.—(1.) Where, immediately prior to the commencement of this Act, a person, having retired from the office of Judge, is in receipt of a pension under any provision of an Act specified in the first column of the Schedule, that person shall, subject to this section, continue to receive that pension as if this Act had not been passed.

Persons in receipt of pensions at commencement of this Act.

(2.) The salary, in relation to which the pension of any person to whom the last preceding sub-section applies is calculated, shall be deemed to be salary at the rate payable, at the date of the commencement of this Act, to a holder of the office which that person held immediately prior to his retirement.

(3.) If a person to whom sub-section (1.) of this section applies elects, by notice in writing to the Minister within three months after the commencement of this Act, to come within the application of sections six, eight, nine and ten of this Act, that person shall, as on and from the date of his election, have the rights and benefits provided by those sections in substitution for his right to pension under sub-sections (1.) and (2.) of this section.

15. A pension or allowance under this Act shall not, unless the Governor-General otherwise decides, be payable to a Judge, or to the widow and children of a Judge, who has been removed under section seventy-two of the Constitution.

Pension, &c., not payable on removal of Judge.



Amended by
No. 77, 1948,
s. 1.

THE SCHEDULE.

First Column.	Second Column.	Third Column.
<i>Judiciary Act 1903-1947</i>	Section forty-eight A is repealed	<i>Judiciary Act 1903-1948</i>
<i>Commonwealth Conciliation and Arbitration Act 1904-1947</i>	Section twenty-two is repealed	*
<i>Bankruptcy Act 1924-1947</i>	Omit sub-sections (2.) to (5.) (inclusive) of section eighteen BB Omit from sub-section (6.) of section eighteen BB the words "and pensions" Omit from sub-section (1.) of section eighteen C all words from and including the words "and on retirement" Omit from sub-section (2.) of section eighteen C the words "and pension"	<i>Bankruptcy Act 1924-1948</i>
<i>Seat of Government Supreme Court Act 1933-1947</i>	Omit sub-sections (3.) to (6.) (inclusive) of section eight B Omit from sub-section (7.) of section eight B the words "and pensions"	<i>Seat of Government Supreme Court Act 1933-1948</i>
<i>Banking Act 1947</i>	Section thirty is repealed Omit from section thirty-one the words "and pensions"	<i>Banking Act 1947-1948</i>

* The *Commonwealth Conciliation and Arbitration Act 1904-1947* as amended by the *Judges' Pensions Act 1948* and by the *Commonwealth Conciliation and Arbitration Act 1948* may be cited as the *Commonwealth Conciliation and Arbitration Act 1904-1948*. See Act No. 77, 1948, s. 1 (4.).

JUDICIARY ACT 1903-1950.^(a)

An Act to make provision for the Exercise of the Judicial Power of the Commonwealth.

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 *Judiciary Act 1903-1950*,^(a) and is divided into Parts as follows :—

Part I. — Preliminary, ss. 1-3.

Part II. — Constitu-
tion and seat of the } Justices of the High Court, ss. 4-9.
High Court. } Seat of the High Court, ss. 10-14.

Short title and Divisions.

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

Amended by No. 34, 1910, s. 2, and by No. 45, 1934, s. 2 (3.), 4th Schedule.

(a) The *Judiciary Act 1903-1950* comprises the *Judiciary 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>Judiciary Act 1903</i> ..	1903, No. 6	25th August, 1903 ..	25th August, 1903
<i>Judiciary Act 1906</i> ..	1906, No. 5	28th August, 1906 ..	28th August, 1906
<i>Judiciary Act 1907</i> ..	1907, No. 8	14th October, 1907 ..	14th October, 1907
<i>Judiciary Act 1910</i> ..	1910, No. 34	1st December, 1910 ..	1st December, 1910
<i>Judiciary Act 1912</i> ..	1912, No. 31	24th December, 1912 ..	24th December, 1912
<i>Judiciary Act 1914</i> ..	1914, No. 11	29th October, 1914 ..	29th October, 1914
<i>Judiciary Act 1915</i> ..	1915, No. 4	1st May, 1915 ..	1st May, 1915
<i>Judiciary Act 1920</i> ..	1920, No. 38	30th October, 1920 ..	30th October, 1920
<i>Judiciary Act 1926</i> ..	1926, No. 39	11th August, 1926 ..	11th August, 1926
<i>Judiciary Act 1927</i> ..	1927, No. 9	8th April, 1927 ..	2nd September, 1929. <i>See Gazette</i> , 1929, p. 1854
<i>Judiciary Act 1932</i> ..	1932, No. 60	5th December, 1932 ..	5th December, 1932
<i>Seat of Government Supreme Court Act 1933</i> ..	1933, No. 34	9th December, 1933 ..	1st January, 1934
<i>Judiciary Act 1933</i> ..	1933, No. 65	15th December, 1933 ..	15th December, 1933
<i>Statute Law Revision Act 1934</i> ..	1934, No. 45	6th August, 1934 ..	6th August, 1934
<i>Judiciary Act 1937*</i> ..	1937, No. 5	3rd July, 1937 ..	3rd July, 1937
<i>Judiciary Act 1939</i> ..	1939, No. 43	23rd November, 1939 ..	23rd November, 1939
<i>Judiciary Act 1940</i> ..	1940, No. 50	22nd August, 1940 ..	22nd August, 1940
<i>Judiciary Act 1946</i> ..	1946, No. 10	18th April, 1946 ..	16th May, 1946
<i>Salaries (Statutory Offices) Adjustment Act 1947</i> ..	1947, No. 52	1st November, 1947 ..	1st November, 1947
<i>Judges' Pensions Act 1948</i> ..	1948, No. 65	9th December, 1948 ..	9th December, 1948
<i>Salaries (Statutory Offices) Adjustment Act 1950</i> ..	1950, No. 51	14th December, 1950 ..	1st July, 1950
<i>Statute Law Revision Act 1950</i> ..	1950, No. 80	16th December, 1950 ..	31st December, 1950

* Section 4 of the *Judiciary Act 1937* effected certain amendments in Acts specified in the Schedule. Such of the amendments as affected Acts in force on 31st December 1950 have been incorporated in the prints of those Acts. The amendments consisted in the deletion of provisions enabling the High Court to make, under the Acts so specified, Rules regulating procedure under those Acts. Those provisions were rendered unnecessary by the amendment of the *Judiciary Act 1903-1934* made by s. 2 of the Act of 1937. Section 5 of the last-mentioned Act which provided for the saving of Rules in force under the Acts listed in the Schedule is as follows :—

" 5. All Rules of Court made by the Justices of the High Court, or a majority of them, under the powers conferred by any provision repealed by this Act, which were in force immediately prior to the commencement of this Act, shall continue in force as if this Act had not been passed and shall for all purposes, including the purpose of amendment or annulment, be deemed to be Rules of Court made under the powers conferred by section eighty-six of the *Judiciary Act 1903-1934* as amended by this Act."

Part III.—Jurisdiction and Powers of the High Court generally.	{ Exercise of Jurisdiction, s. 15. Single Justices, ss. 16-18. A Full Court, ss. 19-23. Enforcement of Process, ss. 24, 25. Costs, ss. 26, 27. Absent Defendants, ss. 28, 29.
Part IV.—Original Jurisdiction of the High Court.	{ ss. 30-33.
Part V.—Appellate Jurisdiction of the High Court.	{ Appeals, ss. 34, 35. Power of Court, ss. 36, 37.
Part VI.—Exclusive and Invested Jurisdiction,	ss. 38, 39.
Part VII.—Removal of Causes,	ss. 40-46.
Part VIII.—Members and Officers of the High Court.	{ Salaries of Justices, ss. 47, 48. Barristers and Solicitors, ss. 49, 50. Registrars, ss. 51, 52. The Marshal, ss. 53-55.
Part IX.—Suits by and against the Commonwealth and the States,	ss. 56-67.
Part X.—Criminal Jurisdiction.	{ Application of Laws, s. 68. Indictable Offences, ss. 69-71. Appeal, ss. 72-77.
Part XI.—Supplementary Provisions.	{ Appearance of Parties, s. 78. Application of Laws, ss. 79-81. Venue, ss. 82-85. Rules of Court, ss. 86, 87.

Interpretation.

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

- “ Suit ”^(a) includes any action or original proceeding between parties ;
- “ Cause ”^(a) 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 ;

(a) Held by the High Court that “ suit ” (and therefore “ cause ”) includes a rule *nisi* for *habeas corpus*. *Ex parte Walsh and Johnson*; *In re Yates*, (1925) 37 C.L.R. 36; 32 A.L.R. 46. As to the word “ cause ” as used in s. 40A, see *George Hudson Ltd. v. Australian Timber Workers' Union*, (1923) 32 C.L.R. 413; 30 A.L.R. 13.

"The Chief Justice" includes any Justice upon whom the powers and duties of the Chief Justice devolve for the time being ;

"Judgment"^(a) includes any judgment decree order or sentence ;

"Appeal"^(b) 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.

3. The *Claims against the Commonwealth Act* 1902 is hereby repealed. Repeal
of Act
No. 21 of 1902.

PART II.—CONSTITUTION AND SEAT OF THE HIGH COURT.

Justices of the High Court.

4. The High Court shall be a superior court of record, and shall consist of the Chief Justice and six other Justices, who shall respectively be appointed by commission. Justices.
Amended by
No. 5, 1906,
s. 2 ; No. 31,
1912, s. 2 ;
No. 65, 1933,
s. 2 ; and by
No. 10, 1946,
s. 2.

5. The qualification of a Justice of the High Court shall be as follows :—He must either be or have been a Judge of the Supreme Court of a State, or be or have been a practising barrister or solicitor of the High Court or of the Supreme Court of a State of not less than five years' standing. Qualification of
Justices.
(N.S.W.)

6. The Justices other than the Chief Justice shall have seniority according to the dates of their commissions, or when the commissions of two or more of them bear the same date according to the precedence assigned to them by their commissions, or failing such assignment according to the order of their being sworn. Seniority.
U.S. 674.

7.—(1.) In case of the absence of the Chief Justice from the Commonwealth, or of his inability to perform the duties of his office, all the duties and powers of the Chief Justice shall, during such absence or inability, devolve upon the senior Justice. Vacancy of
office of Chief
Justice.
U.S. 675.

(2.) In case of the absence from the Commonwealth or inability of any Justice upon whom such powers and duties devolve, they shall during such absence or inability devolve upon the Justice who is next in seniority.

(a) Held by the High Court that an order of the Full Court of the Supreme Court of Queensland declaring that the appellant was not eligible to be appointed as a Judge and not entitled to be sworn in is not a judgment. *Per Barton J.* : a judgment must be pronounced in some litigation between parties. *In re McCawley*, (1918) 24 C.L.R. 345.

(b) Held by Griffith *C.J.*, Gavan Duffy and Rich *JJ.* that this definition does not apply to the word "appeal" used in s. 39 (2.) (a) and held by Barton *J.* that the Parliament cannot include in the definition of appeal anything not warranted by s. 73 of the Constitution. *Commonwealth v. Brisbane Milling Co. Ltd.*, (1916) 21 C.L.R. 559 ; 22 A.L.R. 272. As to a "case stated", see *Symons v. Schiffman*, (1915) 20 C.L.R. 277 ; 1915 V.L.R. 645 ; 22 A.L.R. 376.

Acting Chief Justice.
Inserted by No. 50, 1940, s. 4.

7A. In the case of the absence of the Chief Justice from Australia, the senior Justice shall, during such absence, be designated Acting Chief Justice.

Justices not to hold other office.

8. A Justice of the High Court shall not be capable of accepting or holding any other office or any other place of profit within the Commonwealth, except any such judicial office as may be conferred upon him by or under any law of the Commonwealth.

Oath or affirmation of allegiance and of office.
31 & 32 Vict., c. 72, s. 4.

9. Every Justice of the High Court shall before proceeding to discharge the duties of his office take an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation in the form following :—

I A.B. do swear that I will well and truly serve our Sovereign Lord the King in the office of a Justice of the High Court of Australia and I will do right to all manner of people according to law without fear or favour affection or ill-will : So help me GOD.

Or I A.B. do solemnly and sincerely promise and declare that (*&c. as above, except the words "So help me GOD"*).

Seat of the High Court.

Seat of the High Court.
Amended by No. 39, 1926, s. 2.

10. On and after a date to be fixed by Proclamation the principal seat of the High Court shall be at the seat of Government. Until the date so fixed, the principal seat of the High Court shall be at such place as the Governor-General from time to time appoints.^(a)

Registries.

11.—(1.) There shall be a Principal Registry of the High Court, which shall be at the principal seat of the Court.

(2.) There shall also be a District Registry of the High Court in every State except the State in which the principal seat of the Court is situated. Such District Registry shall be at the seat of Government of the State.

Inserted by No. 9, 1927, s. 3.

(2A.) There shall also be a Registry of the High Court in the Territory for the Seat of Government, and that Registry shall be a District Registry until the principal seat of the High Court is at the Seat of Government.

(3.) The Governor-General may on the recommendation of the Justices of the High Court, or a majority of them of whom the Chief Justice is one, establish District Registries at other places within any State or Territory.^(b)

(a) The Proclamation contemplated by this section has not yet (31st December 1950), been made. By minute dated 2nd October, 1903 (*see Gazette*, 3rd October, 1903, p. 626 ; Consolidation of Commonwealth Statutory Rules 1901-1927, Vol. IV., p. 3684) the Governor-General ordered and declared that until the Seat of Government should be established, or until otherwise ordered, the principal seat of the High Court should be at Melbourne, Victoria. Since the issue of that minute, the section has been amended to its present form.

(b) No such District Registries have yet (31st December, 1950) been established.

12. Sittings of the High Court shall be held from time to time Place of sitting. as may be required at the principal seat of the Court and at each place at which there is a District Registry.^(a)

13. When any cause or matter has been heard at a sitting of the High Court held at any place the Justice or Justices before whom the matter was heard may pronounce judgment or give further hearing or consideration to the cause or matter at a sitting of the High Court held at another place. Matter heard at one place may be further dealt with at another place.

14.—(1.) When any cause or matter, after being fully heard before a Full Court, is ordered to stand for judgment, it shall not be necessary that all the Justices before whom it was heard shall be present together in Court to declare their opinions thereon, but the opinion of any of them may be reduced to writing and may be read by any other Justice at any subsequent sitting of a Full Court at which judgment in the cause or matter is appointed to be delivered. Reserved judgments. Cf. Q. 57 Vict., No. 17, s. 8.

(2.) In any such case the question shall be decided in the same manner, and the judgment of the Court shall have the same force and effect, as if the Justice whose opinion is so read had been present in Court and had declared his opinion in person.

PART III.—JURISDICTION AND POWERS OF THE HIGH COURT GENERALLY.

15. The jurisdiction of the High Court may, subject to the provisions of this Act, be exercised by any one or more Justices sitting in open Court.^(b) Exercise of jurisdiction.

Single Justices.

16. The jurisdiction of the High Court may be exercised by a Justice sitting in Chambers in the cases following :— Jurisdiction in Chambers.

- (a) Applications relating to the conduct of a cause or matter ;
- (b) Applications relating to the custody management or preservation of property, or to the sale of property and the disposition of the purchase money ;
- (c) Applications for orders or directions as to any matter which by this Act or by Rules of Court is made subject to the direction of a Justice sitting in Chambers ;

(a) Section 51 of the *Financial Emergency Act* 1931-1938 provides as follows :—

" 51. Notwithstanding anything contained in the *Judiciary Act* 1903-1927, or in the *High Court Procedure Act* 1903-1925, sittings of a Full Court of the High Court shall not be held at any place or places specified, from time to time, by the Governor-General by notice in the *Gazette*, so long as that notice has not been revoked."

The only notice issued in pursuance of that section (*see Gazette*, 1931, p. 1312) has since been revoked (*see Gazette*, 1933, p. 1353 ; Commonwealth Statutory Rules, 1933, p. 381).

(b) Held by the High Court that the jurisdiction of the High Court must be exercised in open Court. *Dickason v. Dickason*, (1913) 17 C.L.R. 50 ; 19 A.L.R. 400.

- (d) Any other applications which by this or any Act or by Rules of Court are authorized to be made to a Justice sitting in Chambers.

But on the application of either party the Justice may order the application to be adjourned into Court and heard in open Court.

State Supreme Courts invested with jurisdiction in Chambers.

17.—(1.) In any matter pending in the High Court, not being a matter in which the High Court has exclusive jurisdiction, the Supreme Court of a State shall, subject to any Rules of Court, be invested with federal jurisdiction to hear and determine any applications which may be made to a Justice of the High Court sitting in Chambers.^(a)

(2.) Such jurisdiction may be exercised by a single Judge of the Supreme Court sitting in Chambers, and the order of the Judge shall have the effect of an order of a Justice of the High Court sitting in Chambers.

Reference to Full Court.
Jud. Act 1873, s. 46.

18. Any Justice of the High Court sitting alone, whether in Court or in Chambers, and any Judge of the Supreme Court of a State exercising federal jurisdiction may state any case or reserve any question for the consideration of a Full Court, or may direct any case or question to be argued before a Full Court, and a Full Court shall thereupon have power to hear and determine the case or question.^(b)

A Full Court.

Quorum of a Full Court.

19. Except as hereinafter provided, a Full Court may be constituted by any two or more Justices of the High Court sitting together.

Appeals from Judges of federal jurisdiction.

20. The jurisdiction of the High Court to hear and determine appeals from judgments—

(a) As to the jurisdiction of the Judge of a Supreme Court under this section, see *Markell v. Wollaston*, (1906) 23 W.N. (N.S.W.) 36 and *General Transport Company Ltd. and another v. State of South Australia, the Metropolitan Omnibus Board and Others*, 1928 S.A.S.R. 78. In *R. v. Owens and Farrington*; *Ex parte Sealton*, (1933) 49 C.L.R. 20; 7 A.L.J. 49, an attempt was made to justify the issue by a Judge of a State Supreme Court of an order nisi for prohibition returnable in the High Court, but the High Court held that no matter was pending in the High Court at the time of the making of the order and that the Judge had had no jurisdiction to make it.

(b) In *Lee Fay v. Vincent*, (1908) 7 C.L.R. 389; 15 A.L.R. 35, the Supreme Court of a State, assuming that a case which had been stated by a magistrate for its consideration fell within s. 40A of this Act, ordered the proceedings to be transmitted to the High Court. It was held by the High Court that no question as to the limits *inter se* of the constitutional powers of the Commonwealth and the State was involved, and that therefore the Supreme Court had power to determine the case. The High Court, however, decided that under the circumstances the case should be treated as a case stated by the Supreme Court under this section for the consideration of the High Court. In *R. v. Kidman*, (1915) 20 C.L.R. 425; 21 A.L.R. 405, the High Court assumed that this section applied to criminal as well as to civil cases. *Per Rich, Dixon, Evatt and McTiernan JJ.*, concerning two counts before the Supreme Court of South Australia, charging offences under the *Bankruptcy Act 1924-1930*, "The question of the validity of these counts was reserved for the consideration of this Court by the presiding Judge who, we think, had authority to do so under s. 18 of the *Judiciary Act 1903-1934*, if not under s. 72." *R. v. Adams*, (1935) 53 C.L.R. 563; 8 A.B.C. 97; 41 A.L.R. 421. In *New South Wales v. Commonwealth*, (1926) 38 C.L.R. 74, the Full Court of the High Court proceeded to hear a case where a single Justice had directed that the whole of the case before him be argued before the Full Court. Held by the High Court that where the case has been stated by the Supreme Court of a State the costs in relation to proceedings before the High Court should be taxed by the proper officer of the High Court and those in relation to proceedings before the Supreme Court by the proper officer of the Supreme Court. *Alexander Stewart and Sons Ltd. v. Robinson (No. 2)*, (1921) 29 C.L.R. 325; 27 A.L.R. 358.

- (a) of a Justice of the High Court exercising the original jurisdiction of the High Court ; or
- (b) of the Supreme Court of a State exercising federal jurisdiction when such jurisdiction is exercised by a single Judge ; or
- (c) of any other Court exercising federal jurisdiction ; or
- (d) of the Inter-State Commission ;

and to hear and determine applications for a new trial of any cause or matter, after a trial before any such Justice or any such Court exercising federal jurisdiction, shall be exercised by a Full Court.

21.—(1.) Applications for leave or special leave to appeal to the High Court from a judgment of the Supreme Court of a State, or of any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be heard and determined by a Full Court.

Applications for leave to appeal to High Court.

(2.) The jurisdiction of the High Court to hear and determine appeals from judgments of the Supreme Court of a State sitting as a Full Court, or of any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be exercised by a Full Court consisting of not less than three Justices.

Quorum of Justices on appeals from State Supreme Courts.

22. Applications to the High Court for a certificate that a question as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States, which has been decided by the High Court, is one which ought to be determined by the King in Council, shall be heard and determined by a Full Court consisting of not less than three Justices.

Quorum for granting leave to appeal to the King in Council or to High Court.

23.—(1.) A Full Court consisting of less than all the Justices shall not give a decision on a question affecting the constitutional powers of the Commonwealth, unless at least three Justices concur in the decision.^(a)

Decision in case of difference of opinion.

(2.) Subject to the last preceding sub-section, when the Justices sitting as a Full Court are divided in opinion as to the decision to be given on any question, the question shall be decided according to the decision of the majority, if there is a majority ; but if the Court is equally divided in opinion,^(b)

Substituted by No. 31, 1912, s. 3.
Sub-section (1.) amended by No. 38, 1920, s. 2.

(a) The Full Court abstained from giving a decision in *Field Pens Marketing Board of Tasmania v. Clements and Marshall Pty. Ltd.*, (1948) 76 C.L.R. 414 ; [1948] A.L.R. (Vol. 2) 261 ; 22 A.L.J. 243, a case which involved a question of the interpretation of s. 92 of the Constitution, less than three judges being prepared to concur.

(b) *Per Rich and Dixon JJ.* : a decision given by an equally divided High Court is not a precedent binding on the Court in subsequent cases. *Tasmania v. Victoria*, (1935) 52 C.L.R. 157. In *Public Trustee v. Perpetual Trustee Co. (Ltd.)*, (1940) 63 C.L.R. 232 ; 46 A.L.R. 197 ; 14 A.L.J. 130 (an appeal from the Supreme Court of N.S.W.) a majority of the High Court was in favour of allowing the appeal, but there was not a majority in favour of all the terms of any particular order to be substituted for that of the Supreme Court. The difficulty arising from doubts as to the applicability of this sub-section was solved by one of the judges withdrawing his judgment and thus leaving a majority of the Court in favour of a particular order.

- (a) in the case where a decision of a Justice of the High Court (whether acting as a Justice of the High Court or in some other capacity), or of a Supreme Court of a State or a Judge thereof, is called in question by appeal or otherwise, the decision appealed from shall be affirmed; and
- (b) in any other case, the opinion of the Chief Justice, or if he is absent the opinion of the Senior Justice present, shall prevail.

Enforcement of Process.

Contempt.
See *Jud. Act*
1873, s. 16.

24. The High Court shall have the same power to punish contempts of its power and authority as is possessed at the commencement of this Act by the Supreme Court of Judicature in England.^(a)

Powers of
court to extend
to whole
Common-
wealth.

25. The process of the High Court shall run, and the judgments and orders of the High Court shall have effect and may be executed, throughout the Commonwealth.

Costs.

Costs.

26. The High Court and every Justice thereof sitting in Chambers shall have jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.^(b)

No appeal as to
costs.

27. An appeal shall not lie to the High Court from a decision of a Justice of the Court, or from a decision of the Supreme Court of a State exercising federal jurisdiction, with respect to costs which are in the discretion of the Court, except by leave of the Justice or Court.^(c)

Absent Defendants.

Non-
appearance of
some
defendants.
U.S. 737.

28. When there are several defendants in any cause pending in the High Court, if any defendant is not served with process and does not voluntarily appear, the Court may nevertheless entertain the cause and proceed to hear and determine it between the parties who are properly before the Court; but the judgment given in the cause shall not conclude or prejudice other parties who are not regularly served with process and do not voluntarily submit to the jurisdiction of the Court.

(a) Held by the High Court that statements made concerning a Judge of the High Court do not constitute a contempt of the High Court unless they are calculated to obstruct or interfere with the course of justice, or the due administration of the law, in the High Court. *R. v. Nicholls*, (1911) 12 C.L.R. 280; 17 A.L.R. 309. In *James v. Cowan*; *In re Botten*, (1929) 42 C.L.R. 305; 3 A.L.J. 170, the High Court (Knox C.J., Gavan Duffy, Rich and Dixon JJ.) upheld an order made by Starke J., committing to prison for contempt an officer of a State acting under the instructions of a State Minister. As to the power of the High Court to punish for contempt a newspaper publishing criticisms of judgment and as to what criticism constitutes contempt, see *R. v. Fletcher and Another*; *Ex parte Kisch*, (1935) 52 C.L.R. 248; 41 A.L.R. 134.

(b) Held by the High Court that this section confers jurisdiction on the High Court to order a person tried and convicted on indictment before it to pay the costs of the trial. *R. v. Snow*, (1919) 26 C.L.R. 506; 25 A.L.R. 393.

(c) Held by the High Court that this section does not prevent an appeal as to costs in a cause tried by a jury. *Ryan v. Davies Bros. Ltd.*, (1921) 29 C.L.R. 527; 28 A.L.R. 178.

29. When, in any suit of which the High Court has original jurisdiction, any defendant is not a resident of or found within the Commonwealth, and does not voluntarily appear in the suit, the Court may nevertheless proceed to exercise its jurisdiction after such notice to the defendant and upon such terms as are prescribed by Rules of Court.

Absent
defendants.

PART IV.—ORIGINAL JURISDICTION OF THE HIGH COURT.

Extent of Jurisdiction.

30. In addition to the matters in which original jurisdiction is conferred on the High Court by the Constitution,^(a) the High Court shall have original jurisdiction—

Original
jurisdiction
conferred.

(a) in all matters arising under the Constitution or involving its interpretation;^(b) and

Amended by
No. 11, 1914,
s. 2; No. 4,
1915, s. 2; and
by No. 43, 1939,
s. 2.

* * * * *

Para. (b)
omitted by
No. 43, 1939,
s. 2.

(a) That is by s. 75 of the Constitution which is as follows:—

“In all matters—

- (i) Arising under any treaty;
- (ii) Affecting consuls or other representatives of other countries;
- (iii) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
- (iv) Between States, or between residents of different States, or between a State and a resident of another State;
- (v) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;

the High Court shall have original jurisdiction.”

(b) Held by the High Court (Knox C.J., Gavan Duffy, Powers, Rich and Starke JJ.; Higgins J. dissenting) that s. 76 (i) of the Constitution (the terms of which are identical with this paragraph) does not empower the Parliament to confer upon the High Court jurisdiction to determine abstract questions of law involving the interpretation of the Constitution. *In re Judiciary and Navigation Acts*, (1921) 29 C.L.R. 257; 27 A.L.R. 193. Held by the High Court (Isaacs A.C.J., Gavan Duffy, Powers, Rich, and Starke JJ.) that the validity of acquisitions of dried fruits, intended for inter-State trade, made pursuant to State Acts, and the validity of determinations under those Acts fixing the quantity of dried fruits which might be marketed in the Commonwealth were questions involving the interpretation of the Constitution but (Isaacs and Powers JJ. dissenting) that the High Court had no jurisdiction to entertain an action complaining of similar acquisitions made after the State Acts had ceased to operate. *James v. South Australia*, (1927) 40 C.L.R. 1; 33 A.L.R. 334; 1 A.L.J. 189. Held by the High Court that where a person claims immunity from a State Act on the grounds that he is an officer of the Commonwealth the interpretation of the Constitution is involved. *Troy v. Wrighthesworth*, (1919) 26 C.L.R. 305; 25 A.L.R. 196. Held also by the High Court that a question involving the interpretation of the Constitution (viz. s. 109) arises where a person accused of an offence against a State Act raises a defence that the provisions of that Act are inconsistent with Commonwealth legislation. *H. V. McKay Pty. Ltd. v. Hunt*, (1926) 38 C.L.R. 308; 32 A.L.R. 393; *Hume v. Palmer*, (1926) 38 C.L.R. 441; 33 A.L.R. 66; and *Ex parte McLean*, (1930) 43 C.L.R. 472; 4 A.L.J. 103; 36 A.L.R. 377. *Per* Starke J.; There is no question arising under the Constitution or involving its interpretation where the question at issue turns on the interpretation of the Criminal Appeal Act of New South Wales in its application to an appeal from a State court exercising federal jurisdiction. *Ex parte Williams*, (1934) 51 C.L.R. 545. Held by the High Court (Evatt J.) that an action by an individual against the Commonwealth for breach of contract is not an action arising under the Constitution or involving its interpretation where neither the action nor the issue depends upon the meaning or application of the Constitution, and that the High Court has no power, therefore, to remove the action into the High Court pursuant to s. 40 (1). *Heimann v. Commonwealth*, (1935) 54 C.L.R. 126; 41 A.L.R. 501; 9 A.L.J. 384. Held by the High Court (Evatt J.) that the jurisdiction of the High Court once vested is not lost by reason of the rejection of the constitutional point. *R. v. Carter*; *Ex parte Kisch*, (1934) 52 C.L.R. 221; 41 A.L.R. 125. See also footnote (d) to s. 39 (2) (d), *infra*. In a case involving the interpretation of the Constitution, the jurisdiction being once attracted, the Court is clothed with full authority essential for the complete adjudication of the matter and not merely the interpretation of the Constitution. *Per* Starke J. in *The King v. Bevan*; *Ex parte Elias and Gordon*, (1942) 66 C.L.R. 452; 48 A.L.R. 170; 16 A.L.J. 213. See footnote to s. 30A, *infra*.

Per Latham C.J. and Dixon J. (McTiernan J. *contra*): In a case where it was claimed that a levy on certain dairymen pursuant to the Milk Board Acts (Victoria) and regulations and determinations made thereunder was invalid as being the imposition of a duty of excise and it was further claimed that the regulations were *ultra vires* the Act, the latter claim in the circumstances of the case was within the original jurisdiction of the Court. *Parton v. Milk Board (Vic.)*, (1949) 80 C.L.R. 229; [1950] A.L.R. 55; 23 A.L.J. 554.

(c) in trials of indictable offences against the laws of the Commonwealth.^(a)

Section 30A
inserted by
No. 11, 1914,
s. 3, and
repealed by
No. 43, 1939,
s. 3.

Section 30B
inserted by
No. 9, 1927,
s. 4, and
repealed by
No. 34, 1933,
s. 4.

Judgment and
execution.

(b) * * * * *

31. The High Court in the exercise of its original jurisdiction may make and pronounce all such judgments as are necessary for doing complete justice in any cause or matter pending before it, and may for the execution of any such judgment in any part of the Commonwealth direct the issue of such process, whether in use in the Commonwealth before the commencement of this Act or not, as is permitted or prescribed by this or any Act or by Rules of Court.^(c)

Complete relief
to be granted.

Jud. Act 1873,
s. 24 (7).

32. The High Court in the exercise of its original jurisdiction in any cause or matter pending before it, whether originated in the High Court or removed into it from another Court, shall have power to grant, and shall grant, either absolutely or on such terms and conditions as are just, all such remedies whatsoever as any of the parties thereto are entitled to in respect of any legal or equitable claim properly brought forward by them respectively in the cause or matter; so that as far as possible all matters in controversy between the parties regarding the cause of action, or arising out of or connected with the cause of action, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters may be avoided.^(c)

Mandamus.
Prohibition.
Ouster of
office.

U.S. 688.

33.—(1.) The High Court may make orders or direct the issue of writs^(c)—

(a) As to the distinction between "laws of the Commonwealth" and "laws made by the Parliament" see *R. v. Kidman and Others*, (1915) 20 C.L.R. 425 per Griffith C.J. at pp. 438-439.

(b) Section 30A was inserted by the *Judiciary Act 1914* which, after being assented to by the Governor-General on 29th October, 1914, was assented to by His Majesty on 7th September, 1916. As to the effect of this procedure on the compliance of that Act with the provisions of s. 4 of the *Colonial Courts of Admiralty Act 1890* see *John Sharp and Sons Ltd. v. The Katherine Mackall*, (1924) 34 C.L.R. 420; 30 A.L.R. 321.

As a result of Act No. 43, 1939, which repealed this section and amended s. 30, the Supreme Courts of the States, as well as the High Court are now Colonial Courts of Admiralty under the *Colonial Courts of Admiralty Act 1890* (Imp.). *McIlwraith McEachern Ltd. v. The Shell Company of Australia Ltd.*, (1945) 70 C.L.R. 175; 51 A.L.R. 361; 19 A.L.J. 82.

For consideration by the High Court (Dixon J.) of the Admiralty Jurisdiction of the High Court see *Nagrin v. The "Regis"* (formerly the ship *Rodney*) (1939) 61 C.L.R. 688; 45 A.L.R. 167; 13 A.L.J. 81, in which it was held that the High Court has jurisdiction in an action *in rem* for personal injuries caused by negligent navigation.

(c) As to making a declaratory order against the Crown see *Colonial Sugar Refining Co. Ltd. v. Attorney-General for the Commonwealth*, (1912) 15 C.L.R. 182; 18 A.L.R. 429. As to the power to issue injunction to a Board appointed to advise a Minister of the Crown see *R. v. MacFarlane and Others*; *Ex parte O'Flanagan and O'Kelly*, (1923) 32 C.L.R. 518; 29 A.L.R. 353.

- (a) commanding the performance by any court invested with federal jurisdiction, of any duty relating to the exercise of its federal jurisdiction ; or
- (b) requiring any court to abstain from the exercise of any federal jurisdiction which it does not possess ;^(a) or
- (c) commanding the performance of any duty by any person holding office under the Commonwealth ; or
- (d) removing from office any person wrongfully claiming to hold any office under the Commonwealth ; or
- (e) of mandamus ;^(b) or
- (f) of *habeas corpus*.

(2.) This section shall not be taken to limit by implication the power of the High Court to make any order or direct the issue of any writ.

33A. The High Court may by order direct that an award in an arbitration in respect of any matter over which the High Court has original jurisdiction, or in respect of which original jurisdiction may be conferred upon the High Court, shall be a Rule of the High Court.^(c)

Awards may be made Rules of Court. Inserted by No. 38, 1920, s. 4.

PART V.—APPELLATE JURISDICTION OF THE HIGH COURT.

Appeals.

34. The High Court shall, except as provided by this Act, have jurisdiction to hear and determine appeals from all judgments whatsoever of any Justice or Justices, exercising the original jurisdiction of the High Court whether in Court or Chambers.

Appeals from Justices of High Court. (See ss. 27, 77.)

* * * * *

Section 34A inserted by No. 9, 1927, s. 5 and repealed by No. 34, 1933, s. 4.

35.—(1.) The^(d) appellate jurisdiction of the High Court with

Appeals from Supreme Courts of States.

(a) As to the jurisdiction of the High Court to issue prohibition to the Commonwealth Court of Conciliation and Arbitration, see footnote to s. 32 (1) of the *Conciliation and Arbitration Act 1904-1950, supra*.

(b) Held by the High Court that the jurisdiction in respect of mandamus, conferred upon the High Court by the Constitution, (s. 75 (v.)), has not been enlarged by this section. *R. v. The Governor of the State of South Australia*, (1907) 4 C.L.R. 1497 ; 14 A.L.R. 98.

Per Jordan C.J., of the Supreme Court of New South Wales: There is no reason why, by the combined effect of this section and s. 76 (iii.) of the Constitution, the High Court should not have jurisdiction to issue mandamus to a State Court exercising federal jurisdiction. *Ex parte Australian Timber Workers' Union ; Veneer Co. Ltd. and Another*, (1936) 37 S.R. (N.S.W.) 52 ; 53 W.N. (N.S.W.) 230.

(c) Held by the High Court that this section is *intra vires* the Parliament and applies to awards already in existence when the section was enacted. *Minister for Home and Territories v. Teesdale Smith and Others*, (1924) 35 C.L.R. 120 ; 31 A.L.R. 74.

(d) Held by the High Court that on an appeal to the High Court from the judgment of the Supreme Court of a State the High Court has no jurisdiction to receive fresh evidence. *New Lambton Land and Coal Co. Ltd. v. London Bank of Australia Ltd.*, (1904) 1 C.L.R. 524 ; 4 S.R. (N.S.W.) 202 ; 21 W.N. (N.S.W.) 603 ; *Ronald v. Harper*, (1910) 11 C.L.R. 63 ; *Scott Fell v. Lloyd*, (1911) 13 C.L.R. 230 ; 18 A.L.R. 97. Held also that the conditions imposed by this section on appeals to the High Court from judgments of the Supreme Court of a State are exhaustive. *Parkin v. James*, (1905) 2 C.L.R. 315 ; 11 A.L.R. 142. But held, that an appeal from a decision of the Chief Judge in Equity of New South Wales is a re-hearing, and in dealing with his findings on questions of fact, the High Court will reconsider the materials that were before the Judge, applying the rules laid down in *Coglan v. Cumberland*, (1898) 1 Ch. 704. *McLaughtin v. Daily Telegraph Newspaper Co. (No. 2)*, (1904) 1 C.L.R. 243.

Sub-section (1.) amended by No. 45, 1934, s. 2 (3.), 4th Schedule.

respect to judgments of the Supreme Court of a State,^(a) or of any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council,^(b) shall extend to the following judgments whether given or pronounced in the exercise of federal jurisdiction or otherwise and to no others, namely :

- (a) Every judgment, whether final or interlocutory,^(c) which—

(a) Held by the High Court that the words "Supreme Court of a State" in s. 73 of the Constitution—where the words occur in a similar collocation to the present—are used to designate the Court which at the time of the establishment of the Commonwealth was in any particular State known by the name of the Supreme Court of that State. Held, therefore, that an order made by a Judge of the Supreme Court of Victoria, sitting in Chambers upon an originating summons, by which the rights of the parties under a will are finally decided, is an order from which an appeal will lie to the High Court, inasmuch as such an order is, by the Statute law of the State, an order of the Supreme Court. *Parkin v. James*, (1905) 2 C.L.R. 315; 11 A.L.R. 142. Held, also, that an order made by a Judge of the Supreme Court of New South Wales, sitting in Chambers in the exercise of the jurisdiction conferred by s. 107 of the *Justices Act* 1902 of that State, is a judgment of the Supreme Court from which an appeal will lie to the High Court. *Saunders v. Borthistle*, (1904) 1 C.L.R. 379. Held, also, that a decision of a Judge of the Supreme Court of Victoria on an interpleader summons under Order LVII. of the Rules of the Supreme Court is a judgment of the Supreme Court from which an appeal will lie to the High Court. *O'Connor v. Quinn*, (1911) 12 C.L.R. 239; 17 A.L.R. 345. But held that the Supreme Court upon which jurisdiction is conferred by the *Electoral Act* 1904 of Western Australia is a special tribunal, and is not the Supreme Court of the State of Western Australia, and that therefore an appeal will not lie to the High Court. *Holmes v. Angwin*, (1906) 4 C.L.R. 297; 13 A.L.R. 128. Held, also, that certain jurisdiction conferred on a Judge of the Supreme Court of South Australia by the *Lands Clauses Consolidation Act* 1881 of that State is conferred not upon the Supreme Court of the State but upon a Judge of the Supreme Court as a *persona designata* with a right of appeal to the Full Court, and that therefore a judgment of a Judge exercising the jurisdiction so conferred is not a judgment of the Supreme Court from which an appeal will lie to the High Court. *MacDonald v. South Australian Railways Commissioner*, (1911) 12 C.L.R. 221. A Judge of the Insolvency Court of Victoria stated a case to the Supreme Court setting out the evidence but no findings of facts, the parties having agreed to abide by the inference drawn from the facts by the Supreme Court. Held by the High Court that the judgment of the Supreme Court was *extra cursum curiæ* as an arbitrator and the High Court had no jurisdiction to entertain an appeal from such a body. *Schumacher Mill Furnishing Works Pty. Ltd. v. Small*, (1916) 21 C.L.R. 149; 1916 V.L.R. 213; 22 A.L.R. 65. In *Mutual Life and Citizens Assurance Company Ltd. v. Thiel*, (1919) 27 C.L.R. 187, the High Court held that the Queensland Court of Industrial Arbitration is not a Supreme Court within the meaning of s. 73 of the Constitution. As to appeals from judgments founded on the verdict of a jury see footnote (e) to s. 35 (1) (b), *infra*. Held by the High Court (Evatt J. doubting) that a Judge of the Supreme Court of Victoria, sitting in Chambers to hear an appeal under the *Medical Board Act* 1928 (Victoria) from a decision of the Medical Board, is the Supreme Court of Victoria and that the High Court has jurisdiction to entertain an appeal. *Medical Board of Victoria v. Meyer*, (1937) 58 C.L.R. 62; 43 A.L.R. 573; 11 A.L.J. 194.

See also *Webb v. Hanton*, (1939) 61 C.L.R. 313; 45 A.L.R. 150; 13 A.L.J. 32 in which Latham C.J. and Evatt J. held that an order of the Full Court of the Supreme Court of Queensland on an appeal from a Judge of the Supreme Court sitting as an Elections Tribunal was a judgment of the Supreme Court within the meaning of this sub-section but in which Starke and McTiernan J.J. held that the order was not made by the Supreme Court in the course of the exercise of its functions as a judicial tribunal and that this sub-section did not therefore apply to it.

Per Rich, Starke, Evatt and McTiernan J.J.: The decision of the Judges of the Supreme Court of Victoria on an appeal from the Board of Examiners constituted under the Rules of the Council of Legal Education 1932 (Vic.) is a decision of the Supreme Court within the meaning of this sub-section. *Kahn v. The Board of Examiners*, (1939) 62 C.L.R. 422; 45 A.L.R. 318; 13 A.L.J. 211. As a result of Act No. 43, 1939, the Supreme Courts of the States, as well as the High Court, are now Colonial Courts of Admiralty under the *Colonial Courts of Admiralty Act* 1890 (Imp.). The Supreme Court of a State exercises the Admiralty jurisdiction as the Supreme Court and not as a district Court created by the last-mentioned Act and an appeal lies from its judgment to the High Court. *McIlraith McEacharn Ltd. v. The Shell Company of Australia Ltd.*, (1945) 70 C.L.R. 175; 51 A.L.R. 361; 19 A.L.J. 82.

(b) Held by the High Court that the words "judgments . . . of any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council" include judgments from which an appeal lay either with or without special leave of the Privy Council. *Parkin v. James*, (1905) 2 C.L.R. 315; 11 A.L.R. 142. But see also *Kamarooka Gold Mining Co. No Liability v. Kerr*, (1908) 6 C.L.R. 255.

(c) Held by the High Court that a judgment of the Supreme Court of a State dismissing an application to expunge a trade mark from the register is a final judgment from which an appeal lies to the High Court without leave. *Ashton and Parsons Ltd. v. Gould*, (1909) 7 C.L.R. 598. Held by the Supreme Court of Queensland that a decision of the Full Court on a case stated by the Court of Review is a final judgment. *Macanish v. Commissioner of Income Tax*, 1913 St.R.Qd. 175; 1913 Q.W.N. 35. Held by the High Court that an order refusing to set aside a judgment and grant a new trial is a final order. *Adams v. Herald and Weekly Times*, (1934) 50 C.L.R. 1; 40 A.L.R. 149; 8 A.L.J. 72. Held by Rich, Evatt and McTiernan J.J., that a judgment of non-suit which is entered by the Supreme Court

- (1) is given or pronounced for or in respect of any sum or matter at issue amounting to or of the value^(a) of Three hundred pounds ;^(b) or

of New South Wales under the Supreme Court Procedure Act of that State, or which is left standing after appeal to the Full Court, is a final judgment. *Coroneo v. Kurri Kurri and South Maitland Amusement Co. Ltd.*, (1934) 51 C.L.R. 328. Held by the High Court that under this section an appeal from an interlocutory judgment may be brought to the High Court by leave in every case in which there would be an appeal to that Court as of right from the final judgment in the action or suit in which the interlocutory judgment was given. *Willis v. Trequair*, (1906) 3 C.L.R. 912; 6 S.R. (N.S.W.) 292; 23 W.N. (N.S.W.) 81; 12 A.L.R. 507. As to whether an order of the Supreme Court of a State refusing to grant a rule nisi for a new trial on certain grounds, but granting it on others, is *quoad* the refusal, an interlocutory judgment, see *Nolan v. Clifford*, (1904) 1 C.L.R. 429. Held by the Supreme Court of New South Wales (Pring J.) that the rule absolute setting aside a non-suit and granting a new trial is an interlocutory judgment. *McKeon v. Miller*, (1905) 22 W.N. (N.S.W.) 22. Held by the High Court (Barton, Gavan Duffy and Rich JJ.) that an order of the Full Court of the Supreme Court of Queensland declaring that the appellant was not eligible to be appointed as a Judge and not entitled to be sworn in was not a judgment; if it were it was not interlocutory. *Per Barton J.*: A judgment must be pronounced in some litigation between parties. *In re McCawley*, (1918) 24 C.L.R. 345. Held by the High Court that a refusal by a Judge of a Supreme Court to grant leave to amend pleadings is an order from which an appeal lies by leave. *Norton v. Hoare*, (1913) 17 C.L.R. 310. Held by Griffith C.J., Gavan Duffy and Rich JJ. (Isaacs J. dissenting) that a direction by the trial judge to a jury to bring in a verdict of not guilty is not a judgment. *R. v. Snow*, (1915) 20 C.L.R. 315. Held by the High Court that an order giving leave to enter final judgment pursuant to Order XIV., rule 1, of the *Rules of the Supreme Court* 1916 (Victoria) upon a specially endorsed writ of summons is interlocutory. *Cox Bros. (Australia) Ltd. v. Cox*, (1934) 50 C.L.R. 314; 40 A.L.R. 193; 8 A.L.J. 107.

Held by the High Court (Rich, Dixon and Evatt JJ.; Latham C.J. doubting) that a judgment in demurrer upholding a pleading answering a cause of action may be final and not interlocutory if the opposite party has not pleaded as well as demurred to the pleading and has not obtained leave to amend and amended pursuant to that leave. *Hope v. R.C.A. Photophone of Australia Pty. Ltd.*, (1937) 59 C.L.R. 348.

Per Dixon J.: Where demurrers do not affect pleas and replications to all counts of the declaration a judgment thereon is interlocutory. *John Grant and Sons Ltd. v. Trocadero Building and Investment Co. Ltd.*, (1938) 38 S.R. (N.S.W.) 193.

On an appeal from a single judge of the Supreme Court of Queensland, sitting as an Elections Tribunal, the Full Court of the Supreme Court allowed the appeal and remitted the matter to the Elections Tribunal with a direction that the petition should be dismissed and the elected candidate declared to have been duly elected. Held by Latham C.J., Rich and Starke JJ. that the judgment was interlocutory. *Webb v. Hanton*, (1939) 61 C.L.R. 313; 45 A.L.R. 150; 13 A.L.J. 32.

See further as to what constitutes an interlocutory judgment, *Bell v. Thompson and Another*, (1934) 8 A.L.J. 467.

(a) Held by the High Court that in ascertaining the appealable amount under this section in the case of a plaintiff who has failed and seeks to appeal to the High Court the test is the amount of the sum which he has claimed and failed to recover. Where a plaintiff obtained a judgment in the Supreme Court for £600, which on appeal to the Full Court was reduced to £500, it was held that for the purposes of his appeal to the High Court the adverse judgment was in respect of £100 only, and that an appeal would not lie without leave. *Jenkins v. Lanfranchi*, (1910) 10 C.L.R. 595; 16 A.L.R. 275.

E. proceeded against F. in the Court of Petty Sessions for recovery of possession of premises, the rental for which was £3 per week. The Magistrate's order for possession was upheld on appeal to the State Supreme Court. Held by the High Court that the order was not one involving a property or civil right or sum or matter at issue amounting to £300 within the meaning of this sub-paragraph and accordingly no appeal lay as of right. *Finnegan v. Elton*, [1948] A.L.R. (Vol. 1) 120.

(b) As to whether special leave to appeal is necessary when the judgment of a State Supreme Court indirectly involves a sum amounting to or of the value of £300, see *Markell v. Lockyer*, (1905) 11 A.L.R. 485. On a rule nisi for probate of a will in respect of property amounting in value to over £1,000, it appeared that the interest of the caveator, one of three sons of the testatrix, none of whom took any benefit under the will, would on an intestacy have amounted to less than £300. The Supreme Court having decided in favour of the validity of the will, it was held by the High Court that the judgment was one for or in respect of a matter at issue of the value of over £300. *Tipper v. Moore*, (1911) 13 C.L.R. 248; 18 A.L.R. 341. Held by the High Court (Barton and Gavan Duffy JJ.; Isaacs and Rich JJ. dissenting) that an order to pay £2 per week compensation (which might or might not continue until £300 was exceeded) is not within either paragraph (1) or paragraph (2). *Coal Cliff Collieries Ltd. v. Austin*, (1919) 27 C.L.R. 355; 20 S.R. (N.S.W.) 617; 37 W.N. (N.S.W.) 46.

Held by the High Court that an appeal as of right does not lie from an order of a Supreme Court relating to costs even though the amount in issue exceeds £300. *Glen v. Union Trustee Co. of Australia Ltd.*, (1936) 54 C.L.R. 463; 42 A.L.R. 129; 9 A.L.J. 416.

Held by the High Court that an order under the *Imprisonment of Fraudulent Debtors Act* (1928) (Victoria) ordering a judgment debtor to pay the judgment debt (which amounted to more than £300) by instalments and in the alternative ordering imprisonment, is not a judgment to which this sub-paragraph applies so as to give an appeal as of right. *Ridgway v. Lockwood*, (1938) 60 C.L.R. 732; 44 A.L.R. 482; 12 A.L.J. 267.

- (2) involves directly or indirectly any claim, demand, or question, to or respecting any property or any civil right^(a) amounting to or of the value^(b) of Three hundred pounds ;^(a) ^(c) or

(a) A solicitor whose name had been struck off the roll of solicitors by order of the Supreme Court of New South Wales appealed to the High Court, which held that the appeal was in respect of a civil right worth more than £300. *Thomas v. Incorporated Law Institute of New South Wales*, (1929) 3 A.L.J. 32.

Held by the High Court that convictions of offences under the National Security (Prices) Regulations in selling wine at excessive prices as a result of which the defendant suffered pecuniary loss apart from the fines imposed did not involve any civil right of the amount required by this sub-paragraph and no appeal lay as of right. *De Bortoli v. Kenny*, (1948) 76 C.L.R. 453; [1948] A.L.R. (Vol. 2) 354; 22 A.L.J. 289.

(b) Held by Harvey J. of the Supreme Court of New South Wales that the words "amounting to or of the value of £300" qualify "claim, demand or question" and not "property or civil right". *Re Robert H. Barber and Co. Ltd.*, (1913) 30 W.N. (N.S.W.) 91. Held by the High Court that the determination from which an appeal is sought must so prejudicially affect the litigant as to make him worse off by at least £300 than he would be if he appealed and were wholly successful. *Beard v. Perpetual Trustee Co. Ltd.*, (1918) 25 C.L.R. 1. Held by the High Court that in an affidavit under the High Court Rules, as to the appealable nature of a judgment, the statement that the judgment involves indirectly a question respecting property of the value of £300 is, in the absence of evidence to the contrary, a sufficient statement of the value. *Ashton and Parsons Ltd. v. Gould*, (1909) 7 C.L.R. 598.

A landlord obtained against his tenant judgment for recovery of possession of premises occupied by the latter. The value of the property exceeded £300, but the value of the tenant's interest was admitted to be less than that sum. Held by the High Court that in applying this sub-paragraph the value of the possession under the tenancy was the relevant matter and the tenant could not therefore appeal as of right to the High Court. *Oertel v. Crocker*, (1947) 75 C.L.R. 261; 53 A.L.R. 519; 21 A.L.J. 339. See *Finnegan v. Elton*, [1948] A.L.R. (Vol. 1) 120 in footnote (a) to s. 35 (1) (a) (1), *supra*.

(c) An action was brought by a remainderman asking for a declaration that the trustees were liable to keep and maintain certain property valued at £2,000, and buildings and fences thereon valued at £300, in repair during the life of the tenant for life. Held by the High Court that a judgment of the Supreme Court of a State refusing any relief was a judgment which involved a claim, demand, or question to or respecting property amounting to or of the value of £300 within the meaning of this paragraph, and that an appeal to the High Court lay without leave. *Amos v. Fraser*, (1906) 4 C.L.R. 78; 12 A.L.R. 481. A plaintiff brought an action for a declaration of right to a strip of land, having upon it a wall, over which the defendant claimed an easement of support for the beams supporting the upper floor of his adjoining building. He also claimed a mandatory injunction and damages. The land and wall were worth £290, and the plaintiff had suffered actual damage to the extent of £15. Held by the High Court that the judgment was one involving a claim respecting property amounting to or of the value of £300 within the meaning of this paragraph. *Milne v. James*, (1910) 13 C.L.R. 165. Where the only point decided by the judgment from which an appeal was sought was that the defendant's contrivance was not an infringement of the plaintiff's patent and the damage alleged to be suffered was less than £300, it was held by the High Court that, special leave to appeal was necessary. *McMullan v. Stewarts and Lloyds (Australia) Ltd.*, (1915) 20 C.L.R. 641; 22 A.L.R. 15. Held by Griffith C.J. and Barton J. that, on a claim for injunction, where the injury alleged could be obviated by an expenditure of less than £50 an appeal, without special leave, was incompetent. *Shield v. Municipality of Huon*, (1916) 21 C.L.R. 109; 22 A.L.R. 110. Where an action to recover £1,000 had been brought in respect of alleged wrongful entry on land valued at over £300, the jury having found a verdict for the plaintiff for £250 and the only remedy which the defendant could obtain on appeal was a new trial, it was held by the High Court that an appeal to the High Court did not lie without special leave. *Pierce v. Cooper*, (1918) 24 C.L.R. 362. Held by the High Court that an appeal as of right lies from an order of a Supreme Court for the winding up of a company by the Court, where the assets at the time of the order exceeded £300 and the petitioning creditor alleges that the company's debt to him exceeds £300. *Robert H. Barber and Co. Ltd. v. Simon*, (1914) 19 C.L.R. 24. Where a contract involved an amount exceeding £300 but the damages suffered by breach of that contract were less than £300 the High Court held that an appeal as of right did not lie. *Bear v. Lockyer*, (1915) 19 C.L.R. 288. Held by the High Court (Barton and Gavan Duffy J.J.; Isaacs and Rich J.J. dissenting) that an order to pay £2 per week compensation (which might or might not continue until £300 was exceeded) is not within either paragraph (1) or paragraph (2). *Coal Cliff Collieries Ltd. v. Austin*, (1919) 27 C.L.R. 355; 20 S.R. (N.S.W.) 617; 37 W.N. (N.S.W.) 46. An insurance policy was for actual damage done to a motor car up to the amount of £350. Held by the High Court (Isaacs and Starke J.J.; Gavan Duffy J. dissenting) that an appeal lay as of right from a Supreme Court declaration that the policy was good and binding. *Western Australian Insurance Co. Ltd. v. Dayton*, (1924) 35 C.L.R. 355; 1925 V.L.R. 533; 31 A.L.R. 170.

Held by the High Court that the rescission by a Supreme Court of the liquor licence of a members' club (having no juristic entity) in which the annual profits from the sale of liquor exceed £300, is not within the meaning of this paragraph and that appeal as of right does not lie. (The Court also refused to grant special leave to appeal.) *Watson v. J. and A. G. Johnson Ltd.*, (1936) 55 C.L.R. 63; 42 A.L.R. 258; 10 A.L.J. 36.

Held by Dixon and Evatt J.J. that a petition by a defeated candidate at an election for a declaration that the elected candidate had not been duly elected and that the election was void, was not a matter involving any right of the value of £300. *Webb v. Hanlon*, (1939) 61 C.L.R. 313; 45 A.L.R. 150; 13 A.L.J. 32.

Held by the High Court that where in affiliation proceedings a court of summary jurisdiction ordered a defendant to pay 12s. 6d. per week maintenance and the present value of such weekly payments calculated actuarially amounted to over £300 an appeal lay by the Complainant from the decision of the Supreme Court to the High Court. *Cocks v. Juncken*, (1947) 74 C.L.R. 277; 53 A.L.R. 293; 21 A.L.J. 127.

(3) affects the status of any person under the laws relating to aliens, marriage, divorce,^(a) bankruptcy or insolvency;

but so that an appeal may not be brought from an interlocutory judgment except by leave of the Supreme Court^(b) or the High Court—

(b) Any judgment, whether final^(c) or interlocutory^(d) and whether in a civil or criminal matter, with respect to which the High Court thinks fit to give special leave to appeal;^(e)

(c) Any judgment of the Supreme Court of a State given or pronounced in the exercise of federal jurisdiction in a matter pending in the High Court.

(2.) It shall not be necessary in any case, in order to appeal from a judgment of the Court of a State to the High Court, to obtain the leave of the Court appealed from.

(a) Held by the High Court that an order of the Judge in Divorce under s. 4 of the New South Wales *Matrimonial Causes Act* 1899, awarding the husband (the successful petitioner in a suit for dissolution of marriage) the custody of a child of the marriage, is not a judgment which affects the status of any person under the laws relating to divorce, within the meaning of this section. *Daniel v. Daniel*, (1906) 4 C.L.R. 563; 13 A.L.R. 500. Held by the High Court that an order to pay costs pronounced against a co-respondent in a divorce suit is not a judgment which affects the status of any person under the laws relating to divorce and that special leave to appeal is therefore necessary. *McConville v. Bayley*, (1914) 17 C.L.R. 509; 20 A.L.R. 153. Held by the High Court that a decree dismissing a petition for dissolution of marriage is a judgment affecting the status of a person under the laws relating to marriage or divorce within the meaning of this sub-paragraph. *Shanks v. Shanks*, (1942) 65 C.L.R. 334; 48 A.L.R. 106; 16 A.L.J. 28. Held by the High Court (Latham C.J., Starke, Dixon and Williams JJ.; McTiernan J. dissenting) that a decree dismissing a petition for judicial separation was not a judgment which affects the status of a person under the laws relating to marriage or divorce within the meaning of this sub-paragraph. *Ford v. Ford*, (1947) 73 C.L.R. 524; 53 A.L.R. 181; 21 A.L.J. 79.

(b) The Full Court of the Supreme Court of Queensland refused leave to appeal from an interlocutory judgment of that Court on the grounds that such leave would make it incumbent upon the High Court to hear the appeal and that application for leave to appeal should therefore be made to the High Court. *Eastern and Australian Steamship Company Ltd. v. Fowles* (No. 2), 1913 St. R. Qd. 173; 1913 Q.W.N. 31.

As to the principles which the High Court will apply in determining whether leave (as distinct from special leave pursuant to paragraph (b) of this sub-section) ought to be granted see *Ex parte Bucknell*, (1936) 56 C.L.R. 221; 43 A.L.R. 34 and 332; 10 A.L.J. 378.

Per the High Court: If the interlocutory order, being an order of the character specified in sub-paragraph (1), (2) or (3) of paragraph (a) of this sub-section has the practical effect of determining the rights of the parties, though it is interlocutory in form, a *prima facie* case for granting leave to appeal exists. *Ibid.*

(c) As to what constitutes a final judgment see footnote (c) to s. 35 (1.) (a), *supra*.

(d) As to what constitutes an interlocutory judgment see footnote (c) to s. 35 (1.) (a), *supra*.

(e) Under this paragraph many decisions have been given by the High Court as to the cases in which special leave to appeal will or will not be granted. The following are a few of the more important decisions which have been so given:—

In dealing with applications for special leave to appeal in cases below the appealable amount, the High Court will substantially follow the rule laid down by the Privy Council in the case of *Prince v. Gagnon* (8 A.C. 103, at p. 105), that leave will not be given except where the case is of gravity involving matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character. *Hannah v. Dalgarno*, (1903) 1 C.L.R. 1; *Backhouse v. Moderana*, (1904) 1 C.L.R. 675. In *Norton v. Taylor* the High Court, in dealing with an application for special leave to appeal, adopted the rule laid down by Lord Watson in *La Côte de Montreuil v. Les Ecclesiastiques du Séminaire de St. Sulpice de Montreuil*, (14 A.C. 660, at p. 662) that a case may be of a substantial character, may involve matter of great public interest, and may raise an important question of law, and yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify their Lordships in advising Her Majesty to grant leave to appeal. *Norton v. Taylor*, (1905) 2 C.L.R. 201; 22 W.N. (N.S.W.) 36. The High Court will not grant special leave to appeal in cases which do not raise questions of general importance likely to arise in the future, or (in general) in cases depending upon the terms of particular documents. *Baxter v. New South Wales Clickers' Association*, (1909) 10 C.L.R. 114; 16 A.L.R. 461; 27 W.N. (N.S.W.) 8. Nor will special leave be granted where the

questions involved are mere questions of fact, nor, even in a case involving an important question of law, if the judgment from which leave to appeal is sought appears to the Court to be unattended with sufficient doubt to justify the granting of leave. *Johansen v. City Mutual Life Assurance Society Ltd.*, (1905) 2 C.L.R. 186; 11 A.L.R. 6. Nor where there is no reason to doubt the correctness of the decision from which it is desired to appeal. *Manton v. Williams*, (1907) 4 C.L.R. 1046; 7 S.R. (N.S.W.) 236; 24 W.N. (N.S.W.) 45. *Resch's Ltd. v. Allan*, (1911) 13 C.L.R. 194; 12 S.R. (N.S.W.) 179. Nor where the decision is manifestly right. *Rae v. Simmons*, (1910) 11 C.L.R. 246; 11 S.R. (N.S.W.) 265; 28 W.N. (N.S.W.) 77. *Waterhouse v. R.*, (1911) 13 C.L.R. 228; 12 S.R. (N.S.W.) 396. *Hey v. Brookes*, (1911) 13 C.L.R. 219; 12 S.R. (N.S.W.) 379. Nor where a very small amount is involved, and where the appellant has lain by in the lower Court and taken the chance of a judgment in his favour. *Zinzel v. Allard*, (1904) 2 C.L.R. 117. Nor, in cases where the sum involved is much below the appeal limit, even though the judgment of the Supreme Court appears to be erroneous, if the error has arisen from a wrong inference of fact, or from a wrong application to the facts of a well-known rule of law. *Learmonth v. Atkinson*, (1905) 11 A.L.R. 287. Nor where the matter to be decided is purely a question of fact. *Murray v. Munro*, (1906) 3 C.L.R. 788; *Dwyer v. Vindin*, (1906) 4 C.L.R. 216; *Cameron v. Irwin*, (1908) 5 C.L.R. 836; *Jones v. Gedge*, (1909) 9 C.L.R. 262. Nor where the amount involved is very small, while the case raises a very difficult question of law. *Bagnall v. White*, (1906) 4 C.L.R. 89; 7 S.R. (N.S.W.) 184; 13 A.L.R. 58. Nor where the applicant for special leave may bring an appeal as of right. *Adams v. Herald and Weekly Times Ltd.*, (1934) 50 C.L.R. 1; 40 A.L.R. 149; 8 A.L.J. 72. But in some circumstances leave to appeal will be given as a matter of course. *Wilcox v. Donahoe*, (1905) 3 C.L.R. 83; 12 A.L.R. 54. And in some cases it will be granted on a condition. *a'Beckett v. Buckhouse*, (1907) 4 C.L.R. 1234. Where costs are in the discretion of the Supreme Court, special leave to appeal as to costs alone will be granted only in very special circumstances. *Jenkins v. Lanfranchi*, (1910) 10 C.L.R. 595; 16 A.L.R. 275. See also *O'Sullivan v. Morton*, (1911) 12 C.L.R. 390; 1911 V.L.R. 249; 32 A.L.J. 198; 17 A.L.R. 201. In *MacDonald v. Beare*, (1904) 1 C.L.R. 513, a motion to rescind special leave to appeal was dismissed on the ground that the question involved was of great public importance, and that on it depended the liability or non-liability of the appellant to a number of actions. In *Donahoe v. Britz*, (1904) 1 C.L.R. 391; 10 A.L.R. (C.N.) 49, it was held that the fact that the question raised was an important question of law, and of general interest to the mercantile community, was an adequate reason for granting special leave to appeal. As to an appeal from a decision involving the doctrine of "the last clear chance" in a case of negligence see *Allen v. Redding*, (1934) 50 C.L.R. 476; 40 A.L.R. 94; 7 A.L.J. 461.

In *Ex parte Rowe*; *Rowe v. Edwards*, ((1934) 8 A.L.J. 28) the High Court (Gavan Duffy C.J., Rich, Evatt and McTiernan J.J.; Starke J. dissenting) granted special leave to appeal from a decision of the Full Court of the Supreme Court of Victoria refusing to disturb a verdict of a jury awarding to a plaintiff injured in a collision what appeared to be inadequate damages.

Where the order for costs failed to give effect to a settled rule of practice the High Court considered the matter of importance and granted special leave. *Glen v. Union Trustee Co. of Australia Ltd.*, (1936) 54 C.L.R. 463; 42 A.L.R. 129; 9 A.L.J. 416.

In *Kahn v. the Board of Examiners*, ((1939) 62 C.L.R. 422; 45 A.L.R. 318; 13 A.L.J. 211), the High Court (Latham C.J., Rich, Starke and McTiernan J.J.; Evatt J. dissenting) refused special leave to appeal from the decision of the Supreme Court of Victoria dismissing an appeal from the decision of the Board of Examiners constituted under the rules of the Council of Legal Education (Victoria).

Held by Rich, Dixon and Evatt J.J. (Latham C.J. dissenting) that if an order of the Full Court of the Supreme Court of Queensland on an appeal from a Judge of the Supreme Court sitting as an Elections Tribunal were a case in which an appeal to the High Court would lie by special leave, special leave should be refused. *Webb v. Hanton*, (1939) 61 C.L.R. 313; 45 A.L.R. 150; 13 A.L.J. 32.

In *Russell v. Russell*, (1917) 24 C.L.R. 19, the High Court granted special leave to appeal where, owing to inadvertence on the part of the defendant's solicitor, notice of appeal from the Supreme Court of a State, which lay as of right, was not given within the prescribed time.

In dealing with applications for special leave in criminal cases the High Court first adopted the principle laid down by the Privy Council, *In re Dillet*, (12 A.C. 459, at p. 467), that special leave to appeal will not be granted unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done. See *Bataillard v. R.*, (1907) 4 C.L.R. 1282; 13 A.L.R. 408; *McGee v. R.*, (1907) 4 C.L.R. 1453; 13 A.L.R. 296; *Connolly v. Meagher*, (1906) 3 C.L.R. 682; 1906 St. R. Qd. 125; 1906 Q.W.N. 23; *Millard v. R.*, (1906) 3 C.L.R. 827; *R. v. Neil*, (1909) 8 C.L.R. 671; 1909 St. R. Qd. 225; 1909 Q.W.N. 36; 3 Q.J.P.R. 87, 91; *Hope v. R.*, (1909) 9 C.L.R. 257; *Eather v. R.*, (1914) 19 C.L.R. 409; 21 A.L.R. 113 and *Corbet v. Lovekin and Others*, (1915) 19 C.L.R. 562; 21 A.L.R. 120. But in 1915 Griffith C.J. on behalf of all the Justices of the High Court (excepting Barton J., who was absent from Australia) stated that the High Court has under this paragraph an unfettered discretion to grant or refuse special leave in every case, but a *prima facie* case showing special circumstances must be made out. *In re Eather v. R.*, (1915) 20 C.L.R. 147; 21 A.L.R. 212. See further as to the application of this principle *Ross v. R.*, (1922) 30 C.L.R. 246; 1922 V.L.R. 329; 28 A.L.R. 138. Special leave will not be granted from a decision of the Supreme Court quashing a conviction on a Crown case reserved on the ground that the point upon which the decision went was not one of those specifically reserved at the trial, if that point appears clearly on the face of the case stated (*per Griffith C.J.*). *Attorney-General of N.S.W. v. Jackson*, (1906) 3 C.L.R. 730; 12 A.L.R. 375; 5 S.R. (N.S.W.) 581; 22 W.N. (N.S.W.) 206. Nor will it be granted where the accused, who had been acquitted in the Court below, is at most only technically guilty of the offence charged. *Connolly v. Meagher*, (1906) 3 C.L.R. 682; 1906 St. R. Qd. 125; 1906 Q.W.N. 23. Nor on questions of fact. *Bataillard v. R.*, (1907) 4 C.L.R. 1282; 13 A.L.R. 408. *Collis v. Smith*, (1909) 9 C.L.R. 490; 10 S.R. (N.S.W.) 102. *Soby v. Levy*, (1909) 9 C.L.R. 496; 9 S.R. (N.S.W.) 688; 26 W.N. (N.S.W.) 179.

See for further examples of the principles on which the High Court acts in dealing with applications for special leave in criminal cases, *Cornelius v. R.*, ((1936) 55 C.L.R. 235; 42 A.L.R. 278); *Green v. R.*, ((1939) 61 C.L.R. 167; 45 A.L.R. 108) and *R. v. Vella*, (1938) 32 Q.J.P.R. 133.

As to judgments founded on the verdict of a jury it was held by the High Court (Griffith C.J., Gavan Duffy and Rich J.J.; Isaacs, Higgins and Powers J.J. dissenting) that as s. 73

Power of Court.

36. The High Court in the exercise of its appellate jurisdiction shall have power to grant a new trial in any cause in which there has been a trial whether with or without a jury.^(a)

New trials.
U.S. 726.

37. The High Court in the exercise of its appellate jurisdiction may affirm reverse or modify the judgment appealed from, and may give such judgment as ought to have been given in the first instance,^(b) and if the cause is not pending in the High Court may in its discretion award execution from the High Court or remit the cause to the Court from which the appeal was brought for the execution of the judgment of the High Court; and in the latter case it shall be the duty of that Court to execute the judgment of the High Court in the same manner as if it were its own judgment.^(c)

Form of
judgment on
appeal.
U.S. 709.

of the Constitution does not confer on the High Court jurisdiction to set aside a verdict of "not guilty" the granting of special leave to appeal from a judgment following such a verdict would be futile. *R. v. Snow*, (1915) 20 C.L.R. 315. Following this finding the High Court (Griffith C.J., Barton, Higgins, Gavan Duffy and Rich JJ.; Isaacs and Powers JJ. dissenting) later held (overruling *Burne v. Commonwealth*, (1906) 4 C.L.R. 97; 13 A.L.R. 22; and affirming *Musgrove v. McDonald*, (1905) 3 C.L.R. 132; 12 A.L.R. 49) that the High Court has no jurisdiction either to entertain a motion by way of appeal to set aside the finding of a jury in a civil action or to order a new trial. *Commonwealth v. Brisbane Milling Co. Ltd.*, (1916) 21 C.L.R. 559; 22 A.L.R. 272.

See also on the question of appeals from judgments founded on the verdict of a jury. *Fieman v. Balas and Others*, (1930) 47 C.L.R. 107 and *McDonald and East Ltd. v. McGregor*, (1936) 56 C.L.R. 50; 42 A.L.R. 324; 10 A.L.J. 113.

As to the principles upon which the High Court acts in dealing with applications for special leave to appeal in cases of suspension of practitioners from practice or readmission to practice, see *In re Coleman*, (1905) 2 C.L.R. 834; 11 A.L.R. 243; *In re Daley*, (1907) 5 C.L.R. 193; 14 A.L.R. 205; *Incorporated Law Institute of New South Wales v. Meagher*, (1909) 9 C.L.R. 655; 16 A.L.R. 401; 26 W.N. (N.S.W.) 180.

Practice. In applications for special leave to appeal counsel for the respondent may be allowed to appear and oppose. *Collis v. Smith*, (1909) 9 C.L.R. 490; 10 S.R. (N.S.W.) 102. In *Campbell v. Kitchen and Sons Ltd. and Brisbane Soap Co. Ltd.*, (1910) 12 C.L.R. 513, leave was given to one director of a company to institute and carry on an appeal to the High Court, notwithstanding that his co-director was opposed to such an appeal. The action was one involving an amount in excess of the appealable amount.

Leave to appeal will, as a rule, be given to a person who might properly be made a party to the action. *Cuthbertson v. Hobart Corporation*, (1921) 30 C.L.R. 16.

(a) This section is not expressed to be limited to the jurisdiction of the Court to hear and determine Appeals from a justice exercising the original jurisdiction of the Court or from a State Court. The Court may therefore grant a new trial when exercising the appellate jurisdiction conferred by s. 52 of the *Seat of Government Supreme Court Act 1933-1935*. *Per McTiernan J.*, in *Spore v. The King*, (1942) 66 C.L.R. 149; 16 A.L.J. 144.

(b) As to the duty of the High Court under this section to disregard formal defects and irregularities in the proceedings, and to make all such amendments as the Court appealed from should have made see *McLaughlin v. Fosbery*, (1904) 1 C.L.R. 546. Held by the High Court, in a case in which a magistrate had imposed a fine under the *Immigration Restriction Act 1901*, s. 9, but had omitted to impose a term of imprisonment in default of payment of the fine, that the High Court had power under this section to amend the conviction by adding the alternative. *Alexander v. Donohoe*, (1906) 4 C.L.R. 781; 13 A.L.R. 630. Section 3 of the *Appellate Jurisdiction Act 1911* (W.A.) confers on the Supreme Court in the exercise of its appellate jurisdiction a discretion, subject to certain restrictions, to grant a new trial in any matrimonial cause. Having held that the Supreme Court ought to have ordered a new trial the High Court ordered accordingly. *Ryan v. Ryan*, (1914) 18 C.L.R. 601.

(c) In *Re Lovell; Ex parte Dixon* (No. 2), 1904 St. R. Qd. 147, a judgment of the High Court on appeal remitting a case back to the Supreme Court "for further hearing and inquiry as to the facts and for the said Court to do therein as shall be just and in accordance with law," was made a rule of the Supreme Court. *Per Darling C.J.* of New South Wales: It is not necessary to make a judgment of the High Court a rule of the Supreme Court for the purpose of enforcing it. *Macintosh v. Dun*, (1906) 6 S.R. (N.S.W.) 451; 22 W.N. (N.S.W.) 185. Held by the Full Court of Western Australia that it has no power to stay execution on a judgment of the High Court pending an appeal therefrom to the Privy Council. *Bechtel v. Goode*, (1904) 7 W.A.L.R. 112. Held similarly by the Full Court of New South Wales. *Macintosh v. Dun* (supra). Held by the High Court that where the High Court has remitted a cause to the Supreme Court for the execution of the judgment of the High Court, the Supreme Court has jurisdiction to make any order for the purpose of executing the judgment of the High Court, but has not jurisdiction to make an order which has the effect of preventing or obstructing the execution of that order, and that an order staying proceedings until further order, or until the decision of the Privy Council in the case should be made known, is not an order which the Supreme Court has power to make. *Peacock v. Osborne*, (1907) 4 C.L.R. 1564; *Bayne v. Blake*, (1908) 5 C.L.R. 497; 14 A.L.R. 103. Held further by the High

PART VI.—EXCLUSIVE AND INVESTED JURISDICTION.

Matters in
which jurisdic-
tion of High
Court
exclusive;

38. The jurisdiction of the High Court shall be exclusive of the jurisdiction of the several Courts of the States in the following matters:—

- (a) matters arising directly under any treaty;
- (b) suits between States, or between persons suing or being sued on behalf of different States, or between a State and a person suing or being sued on behalf of another State;
- (c) suits by the Commonwealth, or any person suing on behalf of the Commonwealth, against a State, or any person being sued on behalf of a State;
- (d) suits by a State, or any person suing on behalf of a State, against the Commonwealth, or any person being sued on behalf of the Commonwealth;
- (e) matters in which a writ^(a) of mandamus or prohibition is sought against an officer of the Commonwealth^(b) or a federal Court.^(c)

Court that this section, in so far as it authorizes the High Court in the exercise of its appellate jurisdiction to remit a cause to the Supreme Court of a State for the execution of the judgment of the High Court, and imposes on the Supreme Court the duty of executing the judgment of the High Court in the same manner as if that judgment were the judgment of the Supreme Court, is a valid exercise by the Parliament of the power conferred by s. 51 (xxxix.) of the Constitution. *Bayne v. Blake (supra)*. As to the power of the High Court to order an officer of the Supreme Court to obey a judgment of the High Court, see *ibid.* In a case which was taken to the High Court on appeal from the Supreme Court of a State, the High Court remitted the cause to the Supreme Court with a declaration of rights and an order for accounts and inquiries. It was held by the High Court that the High Court had no jurisdiction to determine questions arising on the taking of the accounts by the Chief Clerk of the Supreme Court as to the extent of the accounts and inquiries actually directed. *Cock v. Smith*, (1910) 12 C.L.R. 11; 17 A.L.R. 467. On appeal to the High Court from a judgment of the Supreme Court of Victoria the plaintiff obtained judgment for debt. Held by the Supreme Court of Victoria (*Hodges J.*) that interest due under s. 181 of the *Supreme Court Act* 1915 (Vic.) ran from the date of the judgment given in the Supreme Court. *Keogh v. Dalgety and Co. Ltd.*, 1917 V.L.R. 309; 23 A.L.R. 127. Held by the Supreme Court of Victoria (*Schutt J.*) that, where the High Court in the exercise of its appellate jurisdiction had ordered judgment to be entered for the plaintiff and certain costs to be taxed and set off but, although the order was filed, the judgment was not actually entered in the Supreme Court, the High Court had given the judgment which the Supreme Court ought to have given and it only remained for the Supreme Court to execute that judgment. *Craine v. Colonial Mutual Fire Insurance Co. Ltd.*, 1923 V.L.R. 623; 45 A.L.J. 50; 29 A.L.R. 395.

(a) Held by the High Court (overruling *Ex parte Stelling*, (1904) 4 S.R. (N.S.W.) 201; 21 W.N. (N.S.W.) 65, that the writ of prohibition referred to in this section is the prerogative writ for the control by superior courts of inferior courts exceeding their jurisdiction, and does not include the statutory writ of prohibition in New South Wales, which is in reality a form of appeal. *Wilcox v. Donohoe*, (1905) 3 C.L.R. 83; 12 A.L.R. 54.

(b) Held by the Full Court of the Supreme Court of Queensland that a Police Magistrate exercising Federal jurisdiction is not an officer of a Federal Court within the meaning of this paragraph. *R. v. Archdall and Others*; *Ex parte Taylor*, 1919 St.R. Qd. 207; 13 Q.J.P.R. 98. See also *R. v. Murray and Cormie and Others*; *Ex parte The Commonwealth*, (1916) 22 C.L.R. 437, in which the High Court (*Isaacs, Higgins, Gavan Duffy and Rich JJ.*; *Griffith C.J.* and *Barton J.* dissenting) held that a Judge of an inferior Court of a State invested with and purporting to exercise Federal jurisdiction is not an officer of the Commonwealth within the meaning of s. 75 (v.) of the Constitution. This paragraph was held by the Supreme Court of New South Wales (*Wade J.*) to be fatal to an application to the Supreme Court for prohibition against a stipendiary magistrate where an officer of the Commonwealth was a party to the case. *Ex parte Levy*; *re Deputy Federal Commissioner of Taxation*, (1921) 39 W.N. (N.S.W.) 39.

Per Jordan C.J., of the Supreme Court of New South Wales: There is no reason why by the combined effect of s. 33 of this Act and s. 76 (iii.) of the Constitution the High Court should not have jurisdiction to issue mandamus to a State Court exercising federal jurisdiction. *Ex parte Australian Timber Workers' Union*; *Veneer Co. Ltd. and Another*, (1936) 37 S.R. (N.S.W.) 52; 53 W.N. (N.S.W.) 230.

(c) Held by the Supreme Court of Western Australia (*Walker J.*) that when the Local Courts (W.A.) function under the provisions of the National Security (Landlord and Tenant) Regulations they are federal courts within the meaning of this section. *Astone & Astone v. Hatjizimnakis*, (1948) 51 W.A.L.R. 9.

38A. In matters (other than trials of indictable offences) involving any question, however arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States,^(a) or as to the limits *inter se* of the constitutional powers

Matter in which jurisdiction of High Court is exclusive of jurisdiction of State Supreme Courts.

(a) The following questions have been held by the Court indicated to be questions as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State :—

By the Privy Council, whether an industrial dispute extends beyond the limits of any one State. *Jones and Others v. Commonwealth Court of Conciliation and Arbitration and Others*, [1917] A.C. 528; 24 C.L.R. 396; 23 A.L.R. 387.

By the High Court, whether the State Motors Act 1915 of Victoria binds members of the defence force and whether s. 40A of the Judiciary Act is effective in ousting the jurisdiction of the State Courts on that matter. *Pirrie v. McFarlane*, (1925) 36 C.L.R. 170; 31 A.L.R. 365.

By the Supreme Court of Victoria, whether s. 19 of the *Australian Soldiers' Repatriation Act* 1917-1918, which gives to a loan under that Act the same priority as a Crown debt, is *intra vires* the Parliament. *In re Drew*, 1919 V.L.R. 600; 41 A.L.J. 65; 25 A.L.R. 400.

By the Supreme Court of New South Wales where it was alleged that an offence was against a law of the Commonwealth and that therefore a conviction under a law of the State was bad. *R. v. Gates; Ex parte Maling*, (1928) 41 C.L.R. 519; 2 A.L.J. 330.

The Full Court of the Supreme Court of Victoria, overruling, on the grounds that s. 39 (2) (a) was *ultra vires*, an objection to its jurisdiction, heard an appeal from a Judge exercising Federal jurisdiction. After dismissing the appeal the Full Court made an order granting leave to appeal to the Privy Council. On appeal to the High Court from that order it was held by Knox C.J., Isaacs, Gavan Duffy, Powers and Rich JJ. (Higgins J. dissenting, Starke J. silent on this point) that a question had arisen as to the limits *inter se* of the constitutional powers of the Commonwealth and a State and that pursuant to s. 40A the Supreme Court had had no jurisdiction either to entertain the appeal or to make the order. *Commonwealth v. Kreglinger and Fernau Ltd. and Bardsley*, (1926) 37 C.L.R. 393; 1926 V.L.R. 331; 47 A.L.J. 181; 32 A.L.R. 161.

Where the Supreme Court of a State held to be *ultra vires* the provisions of the *Service and Execution of Process Act* 1901-1934 empowering the application of that Act to authorize the apprehension in a State of a fugitive offender from a territory, it was considered by the High Court that a question as to the limits *inter se* was involved and that the Supreme Court had proceeded without jurisdiction. *Frost v. Stevenson*, (1937) 58 C.L.R. 528; 43 A.L.R. 533; 11 A.L.J. 205.

Per Evatt J.: A question as to the limits *inter se* is involved where State Legislature is challenged on the ground that it contravenes s. 90 of the Constitution. *Hopper v. Egg and Egg Pulp Marketing Board (Vic.)*, (1939) 61 C.L.R. 665, at p. 681; 45 A.L.R. 249, at p. 255.

Per Evatt J.: Each question of the validity of the Commonwealth legislation in s. 51 of the Constitution (and *a fortiori* in s. 52) necessarily raises a question as to the limits of Commonwealth and State powers. *Ibid* at p. 682 C.L.R. and p. 255 A.L.R.

Held by the High Court that the question of the validity of s. 5 (2) (b) of the *Seamen's Compensation Act* 1911 (which precludes a seaman who has recovered compensation under that Act from recovering compensation independently of the Act) is a question as to the limits *inter se* of the constitutional powers of the Commonwealth and States. *Joyce v. Australasian United Steam Navigation Co. Ltd.*, (1939) 62 C.L.R. 160; 45 A.L.R. 442; 13 A.L.J. 295.

Held further that upon the contention of the invalidity of s. 5 (2) of the *Seamen's Compensation Act* 1911 being made, the whole of the cause, and not merely the specific question, was removed by force of s. 40A of the *Judiciary Act* 1903-1937 to the High Court. *Ibid*.

See note on *O'Neill v. O'Connell*, (1946) 72 C.L.R. 101; 52 A.L.R. 173; 20 A.L.J. 22 under s. 40A (*infra*).

Per the Supreme Court of New South Wales; whether the Legislature of New South Wales has power to pass an Act binding the Crown in the right of the Commonwealth is an *inter se* question. *Washington v. Commonwealth*, (1939) 39 S.R. (N.S.W.) 133 at p. 136; 56 W.N. (N.S.W.) 60.

Held by the High Court that the question whether s. 118 of the *Re-establishment and Employment Act* 1945 (requiring that, before a State exercised its power to acquire land owned by a member of the Forces, the consent of the Commonwealth Attorney-General should be obtained) is within the legislative power of the Commonwealth Parliament is a question as to the limits *inter se* of the constitutional powers of the Commonwealth and the States. *Land Settlement Debenture Co. Ltd. v. Housing Commission of N.S.W.*, (1947) 53 A.L.R. 578.

The following questions have been held not to be questions involving the limits *inter se* of the constitutional powers of the Commonwealth and those of any States :—

By the Privy Council, whether State legislation does or does not violate a prohibition contained in the Constitution. *James v. Cowan*, [1932] A.C. 542; 47 C.L.R. 386; 6 A.L.J. 202; 38 A.L.R. 334. (Cf. on the same point *Lee Fay v. Vincent*, (1908) 7 C.L.R. 389; 15 A.L.R. 35; *Challenger v. Rae*, (1929) 24 Tas. L.R. 53 and *Ex parte Nelson (No. 2)*, (1929) 42 C.L.R. 258; 35 A.L.R. 177; 3 A.L.J. 66, *per* Rich and Dixon JJ. and (*contra*) *per* Isaacs and Starke JJ.). By Rich and Dixon JJ. (and *semble* *per* Isaacs C.J. and Starke J.), a question as to the inconsistency of Commonwealth and State laws. *Ex parte McLean*, (1930) 43 C.L.R. 472; 4 A.L.J. 103; 36 A.L.R. 377. By the High Court, where a person working for a Country Roads Board, under a State Unemployment Relief Scheme, contended that he should be paid wages under an award of the Commonwealth Court of Conciliation and Arbitration. *O'Keefe v. Country Roads Board*, (1931) 45 C.L.R. 27; 4 A.L.J. 411. Held by the Supreme Court of New South Wales that a provision in a State Act that a section should be construed subject to the Commonwealth Constitution so as not to exceed the legislative power of the

Inserted by
No. 8, 1907,
s. 2.

of any two or more States,^(a) the jurisdiction of the High Court^(b) shall be exclusive of the jurisdiction of the Supreme Courts of the States; so that the Supreme Court of a State shall not have jurisdiction to entertain or determine any such matter, either as a Court of first instance or as a Court of Appeal from an inferior Court.^(c)

Federal
jurisdiction of
State Courts in
other matters.

Sub-section (1.)
amended by
No. 8, 1907,
s. 3.

Amended by
No. 45, 1934,
s. 2 (3.), 4th
Schedule.

39.^(d)—(1.) The jurisdiction of the High Court, so far as it is not exclusive of the jurisdiction of any Court of a State by virtue of either of the last two preceding sections, shall be exclusive of the jurisdiction of the several Courts of the States, except as provided in this section.

(2.) The several Courts of the States shall within the limits of their several jurisdictions, whether such limits are as to locality, subject-matter, or otherwise,^(e) be invested with federal jurisdiction,^(f) in all matters in which the High Court has original jurisdic-

State, rendered it unnecessary to remove the cause into the High Court pursuant to s. 40A as the Supreme Court was bound to construe the section so as not to conflict with the legislative powers of the Commonwealth. *Ex parte Beath; Re Phillipson and Another*, (1932) 49 W.N. (N.S.W.) 76. As to whether the liability of Commonwealth officers to State taxation is such a question see *Deakin and Lyne v. Webb*, (1904) 1 C.L.R. 585; *Webb v. Outtrim*, [1907] A.C. 81; 4 C.L.R. 356; 13 A.L.R. (C.N.) 1; *Baxter v. Commissioners of Taxation (N.S.W.)*, (1907) 4 C.L.R. 1087; 13 A.L.R. 313.

Held by the Supreme Court of New South Wales (Long Innes C.J. in Eq.) that the question whether the prerogative of the Crown in right of a State to the exclusive right of printing and publishing the Statutes of the State existing prior to the confederation of the Commonwealth was affected thereby, is not a question as to the limits *inter se* of the constitutional power of the Commonwealth and the State, on the ground that the prerogative was not in the nature of an executive power but merely of a priority right. *Attorney-General for New South Wales v. Butterworth and Co. (Australia) Ltd.*, (1938) 38 S.R. (N.S.W.) 195.

(a) Held by the Full Court of the Supreme Court of Queensland that the question whether the *Gift Duty Act* 1922 (Qld.) can impose taxes on gifts of South Australian Government Bonds, shares in companies incorporated and on registers outside Queensland, and debts secured on South Australian freeholds by mortgages under the Real Property Acts of that State, is a question involving the limits *inter se* of the Constitutional powers of any two or more States. *Counsell v. Commissioner of Stamps*, 1929 St. R. Qd. 99.

(b) As to the nature of the jurisdiction of the High Court referred to in this section see *per Isaacs J.*, *George Hudson Ltd. v. Australian Timber Workers' Union*, (1923) 32 C.L.R. 413, at pp. 429-431.

(c) See also s. 40A (*infra*) and the footnotes thereto.

(d) Held by the High Court to be *intra vires* the Parliament. *Lorenzo v. Carey*, (1923) 29 C.L.R. 243; 27 A.L.R. 225.

The leading cases on this section were collected and analysed by Latham C.J. in *Minister of State for the Army v. Parbury Healy & Co. Pty. Ltd. and Anor.; Brickworks Ltd. v. Minister of State for the Army*, (1945) 70 C.L.R. 459 at pp. 481-490; 51 A.L.R. 309 at pp. 313-317.

(e) Held by the High Court that the federal jurisdiction which is conferred on a State Court by the section is subject to any limitations imposed by the laws of the State upon its State jurisdiction, unless otherwise expressly declared. *Federated Saw-mill Timberyard and General Woodworkers Employees Association v. Alexander*, (1912) 15 C.L.R. 308; 19 A.L.R. 22. Held by the High Court that a State Court, the appellate jurisdiction of which is limited by a State Act, has no federal appellate jurisdiction beyond those limits. *R. v. Whitfield and Others; Ex parte Quon Tat*, (1913) 15 C.L.R. 689; 19 A.L.R. 97. See also footnote (e) to s. 68 (2), *infra*.

Held by the High Court that s. 50 (2) of the *Sales Tax Assessment Act* (No. 1) 1930-1935 (which provides that a prosecution under certain provisions of that Act may be brought at any time) validly applies to the prosecution in a Court of Petty Sessions of Victoria notwithstanding a provision in the *Justices Act* 1928 of that State requiring an information to be laid within a limited period. *Adams v. Chas. S. Watson Pty. Ltd.*, (1938) 60 C.L.R. 545; 44 A.L.R. 365; 12 A.L.J. 187.

(f) Held by the High Court that under this section the Courts of the several States have federal appellate jurisdiction, as regards the matters enumerated in ss. 75 and 76 of the Constitution, to the same extent that, and subject to the same conditions as, under the State laws they have appellate jurisdiction in matters to which the State laws apply. *Ah Yick v. Lehmert*, (1905) 2 C.L.R. 593; 11 A.L.R. 306. Held that a State Court is exercising federal jurisdiction when it erroneously applies a Commonwealth Act to subject matter before the Court. *Commonwealth v. Cole*, (1923) 32 C.L.R. 602 and *Commonwealth v. Dalton*, (1924) 33 C.L.R. 452; 30 A.L.R. 85. Held also by the High Court that a State Court is exercising federal jurisdiction when a party pleads the non-application of a State Act owing to the application of a Commonwealth Act. *Troy v. Wrigglesworth*, (1919) 26 C.L.R. 305; 25 A.L.R. 196; *McKay v. Hunt*, (1926) 38 C.L.R. 308; 32 A.L.R. 393, and *Hame v. Palmer*, (1926) 38 C.L.R. 441; 33 A.L.R. 66. See also footnote (d) to s. 39 (2) (d), *infra*.

tion or in which original jurisdiction can be conferred upon it, except as provided in the last two preceding sections, and subject to the following conditions and restrictions :—

- (a) Every decision of the Supreme Court of a State, or any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be final and conclusive^(a) except so far as an appeal^(b) may be brought to the High Court.^(c)
- (b) Wherever an appeal^(b) lies from a decision of any Court or Judge of a State^(d) to the Supreme Court of the

(a) As to the meaning of "final and conclusive" see *Commonwealth v. Limerick Steamship Co. Ltd. and Kidman*, (1924) 35 C.L.R. 69, per Isaacs and Rich JJ., at pp. 88-89; 31 A.L.R. 153 at p. 158.

(b) Per Gavan Duffy and Rich JJ., an appeal to the High Court, whenever mentioned in s. 39, means the appeal provided for in s. 73 of the Constitution as regulated by s. 35 of this Act. *R. v. Snow*, (1915) 20 C.L.R. 315, at p. 362. Held by Griffith C.J., Gavan Duffy and Rich JJ. (overruling on this point *Baume v. Commonwealth*, (1906) 4 C.L.R. 97; 13 A.L.R. 22) that the word "appeal" in paragraph (a) shows an intention contrary to the definition in s. 2 and by Barton J., the Parliament cannot give the word a meaning not warranted by s. 73 of the Constitution. *Commonwealth v. Brisbane Milling Co. Ltd.*, (1916) 21 C.L.R. 559; 22 A.L.R. 272.

(c) As to the validity or otherwise of this paragraph, see *In re Income Tax Acts; Outtrim's case*, 1905 V.L.R. 463; 26 A.L.T. 198; 11 A.L.R. 117; *Webb v. Outtrim*, [1907] A.C. 81; 4 C.L.R. 356; 13 A.L.R. (C.N.) 1; *Baxter v. Commissioners of Taxation, N.S.W.*, (1907) 4 C.L.R. 1087; 13 A.L.R. 313; *Lorenzo v. Carey*, (1921) 29 C.L.R. 243; 27 A.L.R. 225. (In this case the High Court upheld the validity of section 39 as a whole without particular reference to this paragraph); and *Booth v. Shelmerdine Bros. Pty. Ltd.*, 1924 V.L.R. 276; 30 A.L.R. 240; 46 A.L.T. 8. These decisions were reviewed by the High Court in *Commonwealth v. Limerick Steamship Co. Ltd. and Kidman*, (1924) 35 C.L.R. 69; 31 A.L.R. 153; 25 S.R. (N.S.W.) 293 in which Isaacs, Rich and Starke, JJ. (Knox C.J. and Gavan Duffy J. dissenting) held paragraph (a) to be a valid exercise of the legislative power of the Parliament, distinguishing the decision of the Privy Council in *Webb v. Outtrim* (*supra*) as applying to cases where a Supreme Court is exercising State as distinct from Federal jurisdiction. This decision of the High Court has since been considered and followed by the High Court in *Pirrie v. McFarlane*, (1925) 36 C.L.R. 170; 31 A.L.R. 365 and *Commonwealth v. Kreylinger and Fernau Ltd. and Bardsley*, (1926) 37 C.L.R. 393; 1926 V.L.R. 331; 47 A.L.T. 181; 32 A.L.R. 161. Held by Griffith C.J., Gavan Duffy and Rich JJ., that this paragraph is not a positive enactment conferring appellate jurisdiction on the High Court. *Commonwealth v. Brisbane Milling Co. Ltd.*, *supra*. In *Commonwealth v. Limerick Steamship Co. Ltd. and Kidman*, *supra*, the High Court (Isaacs, Rich and Starke JJ., Knox C.J. and Gavan Duffy J. dissenting) entertained an appeal from an order of a Supreme Court granting leave to appeal to the Privy Council.

Quære, per Dixon J., whether this sub-section governs an authority which is given by a Federal statute to State Courts for the first time and does not otherwise exist. *Ffrost v. Stevenson*, (1937) 58 C.L.R. 528, at p. 571; 43 A.L.R. 533, at p. 547. Effect of this sub-section on the relationship between State and Federal jurisdiction considered by Jordan C.J., of the Supreme Court of New South Wales. *Ex parte Australian Timber Workers' Union; Vencer Co. Ltd. and Another*, (1936) 37 S.R. (N.S.W.) 52; 53 W.N. (N.S.W.) 230.

Held by the High Court that an appeal lay to the Full Court of the Supreme Court of New South Wales from a determination made on a review of compensation under Regulation 60G (5) of the National Security (General) Regulations by a judge of the Supreme Court of N.S.W. sitting as a Court but without a jury and such appeal was not prevented by this paragraph. By Latham C.J., McTiernan and Williams JJ. on the grounds that this paragraph did not apply to a review of compensation by the Supreme Court of a State under Regulation 60G of the National Security (General) Regulations, the jurisdiction of the Supreme Court being conferred by the Regulations which allowed an appeal from the decision of a single judge of the Supreme Court to the Full Supreme Court.

By Latham C.J. and McTiernan J. on the further ground that even if the jurisdiction of the State Supreme Court was held to be conferred by sub-section (2), this paragraph did not prevent an appeal in cases of Federal jurisdiction from the Supreme Court of a State constituted by a single judge to the Full Supreme Court of that State. By Rich, Starke and Dixon JJ. on the ground that this paragraph did not prevent an appeal in cases of Federal jurisdiction from the Supreme Court of a State constituted by a single judge to the Full Supreme Court of that State. *Minister of State for the Army v. Parbury Henty & Co. Pty. Ltd. and Anor.*; *Brickworks Ltd. v. Minister of State for the Army*, (1945) 70 C.L.R. 459; 51 A.L.R. 309; 19 A.L.J. 150.

(d) Held by the High Court that the expression "Court or Judge of a State" does not include a Judge sitting in Chambers exercising the jurisdiction of the Supreme Court. *Wilcox v. Danohoe*, (1905) 3 C.L.R. 83; 12 A.L.R. 54.

Special leave to appeal from decisions of State Courts though State law prohibits appeal.

Exercise of federal jurisdiction by State Courts of summary jurisdiction.

State, an appeal^(a) from the decision may be brought to the High Court.^(b)

(c) The High Court may grant special leave to appeal^(a) to the High Court from any decision of any Court or Judge of a State notwithstanding that the law of the State may prohibit any appeal from such Court or Judge.^(c)

(d) The federal jurisdiction^(d) of a Court of summary jurisdiction of a State shall not be judicially exercised except by a Stipendiary or Police or Special Magistrate, or some Magistrate of the State who is specially authorized by the Governor-General to exercise such jurisdiction.

(a) See footnote (b) to s. 39 (2) (a), *supra*.

(b) As to appeals direct to the High Court from inferior Courts under this paragraph, see *Roberts v. Ahern*, (1904) 1 C.L.R. 406; 10 A.L.R. 162. The High Court has laid it down that this paragraph will be construed liberally in favour of a party desiring to appeal. *Ex parte Gordon*, (1906) 3 C.L.R. 724; 12 A.L.R. 106. Held by the High Court that it has no jurisdiction to make absolute an order *nisi* granted by a Judge of a Supreme Court to review a decision of an inferior State Court exercising Federal jurisdiction. *Per Starke J.*; The order *nisi* should be granted by a Justice of the High Court. *Symons v. City of Perth*, (1922) 30 C.L.R. 433. Similarly held by the High Court with respect to an order *nisi* for prohibition, *R. v. Owens and Furrington*; *Ex parte Seaton*, (1933) 49 C.L.R. 20; 7 A.L.J. 49. Held by the High Court that neither s. 58 of the *Sales Tax Assessment Act* (No. 1) 1930-1934, which provides for appeals to be made from a court of summary jurisdiction in manner provided by State law nor the similar provisions of s. 68 of this Act, limit the right of appeal to the High Court pursuant to this paragraph. *Adams v. Cleeve*, (1935) 53 C.L.R. 185; 41 A.L.R. 168. In *R. v. Poole and Another*; *Ex parte Henry*, ((1938) 61 C.L.R. 1; 45 A.L.R. 9; 12 A.L.J. 311) where a person convicted in a Court of Petty Sessions appealed first to the Court of Quarter Sessions and, while that appeal was pending, to the High Court, by way of an application for a writ of prohibition, the High Court refused to proceed until the proceedings before the Court of Quarter Sessions had been determined and adjourned the hearing *sine die*. The *Justices Act* 1902 of New South Wales provides by s. 101 for appeals to the Supreme Court from a Court of Petty Sessions by way of case stated and, by s. 112, by way of statutory prohibition. On the dismissal by a Court of Petty Sessions exercising Federal Jurisdiction of four charges, one with costs and the other three without orders as to costs, the informant appealed to the High Court by way of statutory prohibition from the decision in the case in which costs were ordered and by way of notice of appeal in all cases. Held by the High Court that as no provision for appeal to the Supreme Court by way of notice was made, the appeals by way of notice were incompetent and that the appeal by way of statutory prohibition was also incompetent as the provisions of s. 112 of the *Justices Act* did not apply to orders for costs. *Grayndler v. Cunich*, (1939) 62 C.L.R. 573; 46 A.L.R. 366; 13 A.L.J. 336. *Per Latham C.J.*; As in a case of the exercise of federal jurisdiction there can be no appeal to the Supreme Court there can be no appeal as of right to the High Court. *Ibid.* Held by the High Court that an order of a competent court of Federal jurisdiction confirming on appeal a conviction by a Magistrate exercising Federal jurisdiction is, while it stands, a bar to any appeal from the Magistrate's decision direct to the High Court. *Wishart v. Fraser*, (1941) 64 C.L.R. 470; 47 A.L.R. 133; 15 A.L.J. 24. An appeal by way of case stated from the decision of a Magistrate to the Supreme Court of New South Wales is not an admissible procedure under Part IV. of the *Landlord and Tenant Act* 1899 (N.S.W.) and such an appeal does not therefore lie as of right to the High Court under this sub-section and s. IV. of the High Court Appeal Rules, but the High Court may under s. 39 (2) (c) grant special leave to appeal. *Australian Red Cross Society v. Beaver Trading Co. Pty. Ltd.*, (1947) 75 C.L.R. 320; [1948] A.L.R. (Vol. 1) 37; 21 A.L.J. 406.

(c) In *Prentice v. Amalgamated Mining Employees' Association of Victoria and Tasmania* the High Court entertained an appeal by way of order to review from the decision of a Police Magistrate exercising federal jurisdiction, notwithstanding that in the case in question no appeal lay to the Supreme Court. *Prentice v. Amalgamated Mining Employees' Association of Victoria and Tasmania*, (1912) 15 C.L.R. 235; 18 A.L.R. 343. Held by the High Court that this provision does not apply where an appeal is precluded by a law of the Commonwealth. *R. v. Murray and Cormie and Others*; *Ex parte The Commonwealth*, (1916) 22 C.L.R. 437. In *O. Gilpin Ltd. v. Commissioner for Road Transport and Tramways (N.S.W.)*, (1935) 52 C.L.R. 189; 41 A.L.R. 138; 8 A.L.J. 472, the High Court overruled a preliminary objection that an appeal for a conviction for an offence against a State Act was incompetent (the validity of the State Act involved the interpretation of s. 92 of the Constitution).

(d) Held by the High Court that a Court of summary jurisdiction of a State exercises federal jurisdiction within the meaning of this paragraph if it is necessary in the particular case for the Court to decide any question arising under the Constitution or involving its interpretation. If, however, whether that question is answered rightly or wrongly, the Court answers another question, not arising under the Constitution or involving its interpretation, and its answer to that other question enables it to decide the case, the Court does not exercise federal jurisdiction, and therefore no appeal lies to the High Court from that decision. *Miller v. Haveis*, (1907) 5 C.L.R. 89; 13 A.L.R. 583. Held by the Full Court of Tasmania that the

PART VII.—REMOVAL OF CAUSES.

40.^(a)—(1.) Any cause^(b) or part of a cause arising under the Constitution or involving its interpretation^(c) which is at any time pending in any Court of a State^(d) may at any stage of the proceedings before final judgment be removed into the High Court under an order of the High Court, which may, upon the application of any party for sufficient cause shown, be made on such terms as the Court thinks fit, and shall be made as of course upon motion in open Court by or on behalf of the Attorney-General of the Commonwealth or the Attorney-General of a State.^(e)

Removal by order of the High Court.

Sub-section (1.) amended by No. 8, 1907, s. 4.

(2.) When any such order for removal is made, the proceedings in the cause and such documents, if any, relating thereto as are filed of record in the Court of the State, or if part only of the cause is removed a certified copy of those proceedings and documents, shall be transmitted to such Registry of the High Court as is directed by the order.

question whether the Licensing Act of that State is a proper exercise of the police powers of the State is a question involving the interpretation of the Constitution, and that such a question, being one of federal jurisdiction, cannot be determined by a court of summary jurisdiction not constituted in accordance with paragraph (d) of this section. *Conlan v. Watts*, (1911) 7 Tas. L.R. 40. Held by the Full Court of the Supreme Court of Victoria that a Court of Petty Sessions constituted other than as specified in this paragraph has no jurisdiction in a matter between residents of different States notwithstanding service under the Service and Execution of Process Act. *John Sanderson and Co. v. Crawford*, 1915 V.L.R. 568; 21 A.L.R. 368; 37 A.L.J. 89. (This point is also discussed in *Coates v. Coates*, 1925 V.L.R. 231; 31 A.L.R. 137; 46 A.L.J. 180 and *City and Suburban Parcel Delivery (Bryce) Ltd. v. Gourlay Bros. Ltd.*, 1932 St. R. Qd. 213; 26 Q.J.P.R. 132, but was decided on the meaning of the word "resident". See also *R. v. Police Magistrate at Brisbane*; *Ex parte Butler*, 1932 Q.W.N. 13; 26 Q.J.P.R. 129.) As to the effect of the parties consenting to the jurisdiction of a Court constituted other than provided for by this paragraph see *Booth v. Shelmerdine Bros. Pty. Ltd.*, 1924 V.L.R. 276; 46 A.L.J. 8; 30 A.L.R. 240. But cf. the grounds upon which the judgment was based with the subsequent decision of the High Court in *Commonwealth v. Limerick Steamship Co. Ltd. and Kidman*, (1924) 25 C.L.R. 69; 31 A.L.R. 153; 25 S.R. (N.S.W.) 293. Held by the High Court (Barton, Isaacs, Higgins and Rich J.J.; Gavan Duffy J. dissenting) that where a State Court of summary jurisdiction constituted other than in accordance with this paragraph entertains a matter which is one of federal jurisdiction it is exercising, though unlawfully, federal jurisdiction and an appeal therefore lies from the decision to the High Court. *Troy v. Wrigglesworth*, (1919) 26 C.L.R. 305; 25 A.L.R. 196. Held by the High Court that the issue of a summons for an offence punishable on summary conviction is not a judicial exercise of jurisdiction and may therefore be issued by a justice of the peace. *Donohoe v. Chew Ying*, (1913) 16 C.L.R. 364; 19 A.L.R. 199. See also on this point *Renton v. Renton*, (1918) 25 C.L.R. 291.

(a) Held by the High Court to be a valid exercise of the powers of the Parliament. *Ex parte Walsh and Johnson*; *In re Yates*, (1925) 37 C.L.R. 36; 32 A.L.R. 46.

(b) Held by the High Court that a rule *nisi* for a writ of *habeas corpus* to determine the right to personal liberty is a "cause" within the meaning of this section. *Ex parte Walsh and Johnson*; *In re Yates*, *supra*. See also footnote (b) to s. 40A (1), *infra*.

(c) As to whether the passage, by the Parliament of a State, of legislation inconsistent with a previous decision of the High Court gives rise to a cause arising under the Constitution or involving its interpretation, see *Hogan v. Ochiltree*, (1910) 10 C.L.R. 535. For further instances of matters within this section see footnote (b) to s. 30 (a), *supra*.

(d) Held by the High Court (Williams J.) that the Industrial Commission of the State of N.S.W. is a "court" within the meaning of this sub-section. *In re an Application by the Public Service Association of N.S.W.*, (1947) 75 C.L.R. 430.

(e) *Per* the High Court (Evatt J.): An order will not, in general, be made after the case has been set down for hearing in the Supreme Court. *Heimann v. Commonwealth*, (1935) 54 C.L.R. 126; 41 A.L.R. 501; 9 A.L.J. 384.

Held by the High Court (Williams J.) that under this section the Attorney-General for the Commonwealth or a State may apply for removal into the High Court of a cause or part of a cause whether or not he is a party to the proceedings in which the cause arises, and if the cause really and substantially arises under the Constitution or involves its interpretation, the Court must grant the removal as of right notwithstanding that the matter is apparently concluded by authority. Any distinct and divisible question may be "part" of such a cause within the meaning of this section. *In re an Application by the Public Service Association of N.S.W.*, (1947) 75 C.L.R. 430.

Removal by
virtue of this
Act.

Inserted by
No. 8, 1907,
s. 5.

40A.^(a)—(1.) When, in any cause pending in the Supreme Court of a State,^(b) there arises any question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States,^(c) or as to the limits *inter se* of the constitutional powers of any two or more States,^(d) it shall be the duty of the Court to proceed no further in the cause, and the cause shall be by virtue of this Act, and without any order of the High Court, removed to the High Court.^(e)

(2.) Thereupon the proceedings in the cause, and such documents if any relating thereto as are filed of record in the Supreme Court of the State, shall be transmitted by the Registrar, Prothonotary, or other proper officer of the Court, to the Registry of the High Court in the State; or if there are more Registries than one in the State, to such Registry as is prescribed by Rules of Court.

(a) The validity of this section was considered and upheld by the High Court in *Pirrie v. McFarlane*, (1925) 36 C.L.R. 170; 31 A.L.R. 365.

(b) Held by Isaacs, Higgins and Starke JJ., that an appeal from an inferior Court of a State to the Supreme Court is a "cause pending in the Supreme Court of a State". *Geo. Hudson Ltd. v. Australian Timber Workers' Union*, (1923) 32 C.L.R. 413. See also footnote (b) to s. 40 (1), *supra*.

(c) In *Lee Fay v. Vincent*, (1908) 7 C.L.R. 389; 15 A.L.R. 35, objection having been taken to the validity of a State Act on the ground that it imposed a discrimination between residents of different States, the Supreme Court of the State ordered the proceedings to be transmitted to the High Court. It was held by the High Court that no question as to the limits *inter se* of the constitutional powers of the Commonwealth and the States had arisen, and that, therefore, the Supreme Court had power to determine the case. The High Court, however, decided that under the circumstances the case should be treated as a case stated by the Supreme Court under s. 18 of this Act for the consideration of the High Court. For instances of questions involving the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States see footnote (a) to s. 38A, *supra*.

(d) For instances of questions involving the limits *inter se* of the constitutional powers of any two or more States see the footnote to "States" (second occurring) in s. 38A, *supra*.

(e) Held by the High Court that this section is limited to cases where a decision on the constitutional question is necessary and that, notwithstanding that such questions might arise, the Supreme Court of a State should proceed with the hearing if it might reach a decision by determining other questions. *R. v. Maryborough Licensing Court; Ex parte Webster and Co. Ltd.*, (1919) 27 C.L.R. 249. See also *Taylor and Others v. Attorney-General and Others*, 1917 St. R. Qd. 208; 1917 Q.W.N. 34, and *James v. South Australia*, (1927) 40 C.L.R. 1, *per Isaacs A.C.J.* and Powers J., at p. 33; 33 A.L.R. 334, at p. 345. The Supreme Court of Queensland made orders *nisi* for prohibition and *certiorari* in a matter involving questions as to the limits *inter se*, &c. On removal into the High Court a preliminary objection was taken that the proceedings were a nullity by virtue of the Supreme Court having proceeded so far. The High Court overruled the objection. *R. v. Brisbane Licensing Court; Ex parte Daniell*, (1920) 28 C.L.R. 23; 14 Q.J.P.R. 131. Where the Full Court of the Supreme Court of Victoria had, contrary to the provisions of this section, determined an appeal from a Judge exercising federal jurisdiction and then made an order granting leave to appeal to the Privy Council, the High Court held (*Knox C.J.*, Isaacs, Gavan Duffy, Powers and Rich JJ.; Higgins J. dissenting and Starke J. silent on this point) that the case had been removed into the High Court pursuant to this section and that the Full Court had therefore had no jurisdiction to entertain the appeal or make the order. *Commonwealth v. Kreglinger and Fernau Ltd. and Bardsley*, (1926) 37 C.L.R. 393; 1926 V.L.R. 331; 47 A.L.J. 181; 32 A.L.R. 161. As to an appeal from the refusal of a Judge of a Supreme Court to proceed with a hearing because of the application of this section, see *Cowburn v. Clyde Engineering Co. Ltd.*, (1926) 26 S.R. (N.S.W.) 64; 43 W.N. (N.S.W.) 32.

Where the Supreme Court of a State held to be *ultra vires* the provisions of the *Service and Execution of Process Act 1901-1934* empowering the application of that Act to authorize the apprehension in a State of a fugitive offender from a territory, it was considered by the High Court that a question as to the limits *inter se* was involved and that the Supreme Court had proceeded without jurisdiction. *Frost v. Stevenson*, (1937) 58 C.L.R. 528; 43 A.L.R. 533; 11 A.L.J. 205.

Held by the High Court that when, on the view taken in the Supreme Court of other questions, a question arises as to the limits *inter se* of the constitutional powers of the Commonwealth and of the States for decision, the whole cause is transmitted under this section to the High Court, which may decide it on any ground whether of State or of Federal law if the rights of the parties are thereby determined. *O'Neill v. O'Connell*, (1946) 72 C.L.R. 101; 52 A.L.R. 173; 20 A.L.J. 22.

See notes on *Land Settlement Debenture Co. Ltd. v. Housing Commission of N.S.W.*, (1947) 53 A.L.R. 578, and *Joyce v. Australasian United Steam Navigation Co. Ltd.*, (1939) 62 C.L.R. 160; 45 A.L.R. 442; 13 A.L.J. 295 under s. 38A, *supra*.

Per Latham C.J.: This section, read in conjunction with s. 38A, does not apply to trials of indictable offences. *R. v. Sharkey*, (1949) 79 C.L.R. 121; [1949] A.L.R. 828; 23 A.L.J. 435. But see the judgment of Dixon J., *ibid.*, C.L.R. at p. 156; A.L.R., at p. 844.

41. When a cause or part of a cause is removed into the High Court under the provisions of this Act, the High Court shall proceed therein as if the cause had been originally commenced in that Court and as if the same proceedings had been taken in the cause in the High Court as had been taken therein in the Court of the State prior to its removal, but so that all subsequent proceedings shall be according to the course and practice of the High Court.^(a)

Proceedings
after removal.
U.S. 1875,
c. 137, s. 6.
Amended by
No. 8, 1907,
s. 6.

Provided that, where the trial of any person for an indictable offence against the law of the Commonwealth or of a State is removed from any Court of a State into the High Court, the trial in the High Court shall be, as nearly as may be, according to the course and practice of the Court from which the trial was removed; and to that end the laws of the State relating to the trial and conviction of persons charged with indictable offences against the laws of the State shall extend and apply to the trial as if the trial were proceeding in the Court of the State.

42.—(1.) If in any cause removed in whole or part from a Court of a State into the High Court it appears to the satisfaction of the High Court at any time after the removal that the cause does not really and substantially arise under the Constitution or involve its interpretation, the High Court shall proceed no further therein but shall dismiss the cause or remit it to the Court from which it was removed as justice requires, and shall make such order as to costs as is just.^(b)

Remittal of
cases
improperly
brought or
removed.
Ib. s. 5.

(2). Every such order of remitter shall be carried into execution forthwith, and the proceedings and documents shall be returned to the Court from which they were received.

43. When a cause is or ought to be removed in whole or part into the High Court the High Court may—

Certiorari.
Ib. s. 7.

(a) issue a writ directed to the Judges of the Court from which it is removed commanding them to make return of the records in the cause, and may enforce the writ according to law; or

Amended by
No. 8, 1907,
s. 7.

(b) allow the party removing the cause to file in the High Court a sworn copy of the records in such other Court, and may thereupon proceed upon that copy.

44. When a cause is removed in whole or part into the High Court from any Court of a State—

Effect of
interlocutory
orders, &c.,
before removal
of cause.

(a) every order relating to the custody or preservation of any property the subject-matter of the cause which has been made before the removal shall remain in force until it is discharged or varied by the High Court; and

(a) Considered by the High Court in conjunction with s. 40A; see footnote (a) to s. 40A, *supra*.

(b) See footnote (c) to s. 40A (1), *supra*.

U.S. 1875,
c. 137, s. 4

- (b) any attachment or sequestration of the goods or estate of a defendant had in the cause in the Court of the State before the removal shall hold the goods or estate so attached or sequestered to answer the final judgment of the High Court in the same manner as by law they would have been held to answer the final judgment of the Court in which the cause was commenced; and
- (c) all undertakings or security given by any party in the cause before the removal shall remain valid and effectual notwithstanding the removal; and
- (d) all injunctions orders and other proceedings granted made or taken in the cause before the removal shall remain in full force and effect until the High Court otherwise orders.

Remitter for
trial.

45.—(1.) Any matter which is at any time pending in the High Court, whether originally commenced in the High Court or not, may be remitted for trial to any Court of a State which has federal jurisdiction with regard to the subject-matter and the parties.

(2.) The order remitting the matter may be made by the High Court, or a justice sitting in Chambers, on the application of any party to the matter.

Defence in
causes removed
to High Court.

46. When a cause is removed in whole or part from any Court of a State into the High Court, the defendant may set up by way of defence any matter which he might have set up if the cause had been commenced in the High Court, notwithstanding that the Court from which the cause was removed had not jurisdiction to entertain the matter of defence or could not entertain it in the same cause.

PART VIII.—MEMBERS AND OFFICERS OF THE HIGH COURT.

Salaries of Justices.

Salary.

Sub-section (1.)
amended by
No. 52, 1947,
s. 4 and First
Schedule; and
by No. 51, 1950,
s. 3 and First
Schedule.

47.—(1.) There shall be paid to the Chief Justice a salary at the rate of Five thousand pounds a year, and to each other Justice a salary at the rate of Four thousand five hundred pounds a year.

(2.) There shall also be paid to each Justice of the High Court, on account of his expenses in travelling to discharge the duties of his office, such sums as are considered reasonable by the Governor-General.

Payment of
salaries.

48.—(1.) The salaries of the Justices of the High Court shall be charged on and paid out of the Consolidated Revenue Fund.

(2.) They shall grow due from day to day, but shall be payable monthly.

Section 48A
inserted by
No. 39, 1926,
s. 3; repealed
by No. 65,
1948, s. 5, and
Schedule.

* * * * *

Barristers and Solicitors.

49.—(1.) Any person entitled to practise as a barrister or solicitor or both in any State shall have the like right to practise in any federal Court^(a) or in any Court of a Territory under the control of the Commonwealth.

Barristers and solicitors.
Sub-section (1.) amended by No. 9, 1927, s. 6.

(2.) Provided that before so doing he shall produce to the Principal Registrar evidence showing that he is so entitled and in what capacity, and the Principal Registrar shall thereupon enter his name in a Register of Practitioners to be kept at the Principal Registry.^(b)

(3.) A copy of the Register shall be kept at every District Registry.

(4.) The High Court may direct the name of any person to be struck off the Register upon proof that he has been guilty of conduct which renders him unfit to be allowed to continue to practise as a barrister or solicitor.

Amended by No. 9, 1927, s. 6.

(5.) Upon proof that any person has been deprived by the Supreme Court of the State, by virtue of his right to practise wherein he was registered, of the right to practise in that State as a barrister or solicitor, the Principal Registrar shall strike the name of that person off the Register of Practitioners of the High Court.

Added by No. 9, 1927, s. 6.

50. The Crown Solicitor for the Commonwealth shall, in respect of his office, be entitled to practise as a solicitor in any federal Court or Court exercising federal jurisdiction, and be entitled to all the rights and privileges of a solicitor in each State, whether he is or is not enrolled as a solicitor in any State.

Crown Solicitor entitled to rights and privileges of a solicitor in every State.
Cf. U.K., 37 and 38 Vict., c. 68, s. 12.

Registrars.

51.—(1.) At the Principal Registry of the High Court there shall be an officer to be called the Principal Registrar and such other officers as are necessary.

Registrars.

(2.) There shall also be at every District Registry a District Registrar and such other officers as are necessary.

(3.) Provided that after the first day of July One thousand nine hundred and four no new office shall be created either in the

Qd. Sup. Ct. Act.

(a) Cited by High Court in a case in which it was argued unsuccessfully that the High Court had no jurisdiction to entertain an appeal from an order of the Supreme Court of a State readmitting to practice a solicitor who had been struck off the roll for misconduct. *Incorporated Law Institute of New South Wales v. Meagher*, (1909) 9 C.L.R. 655; 16 A.L.R. 401; 26 W.N. (N.S.W.) 180.

Held by the Commonwealth Court of Conciliation and Arbitration that s. 46 (2) of the *Commonwealth Conciliation and Arbitration Act 1904-1947* cuts down the right conferred by this section upon Counsel to practise in any Federal Court. *Timber Merchants and Sawmillers Association and Another v. Building Workers Industrial Union of Australia*, (1948) 61 C.A.R. 128.

(b) Held by the High Court (Rich J.) that practitioners who have not complied with this sub-section by being registered in the Register of Practitioners, are not entitled to practise in the High Court, and consequently no fees are payable to them. *Kenna v. Connolly*, (1943) 49 A.L.R. 151; 17 A.L.J. 32.

Principal Registry or in any District Registry unless the Chief Justice certifies in writing to the Governor-General that the new office is necessary.

Power of
Registrars.
Jud. Act 1873,
s. 62.

52. The Principal Registrar and the several District Registrars shall have power to administer oaths and perform such duties in respect of any proceedings pending in the High Court as are assigned to them by Rules of Court or by any special order of the Court.

The Marshal.

Marshal.
Qd. Sup. Ct.
Act.

53. There shall be an officer to be called the Marshal, who shall be charged with the service and execution of all writs, summonses, orders, warrants, precepts, process, and commands of the High Court which are directed to him, and shall make such return of the same to the Court together with the manner of the execution thereof as he is thereby required, and who shall take receive and detain all persons who are committed to his custody by the Court, and shall discharge all such persons when thereunto directed by the Court or by law.

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

54. There shall also be in and for each State or Territory in which there is a Registry a Deputy or Deputies of the Marshal, each of whom shall, when required by the High Court by any writ process or other proceeding to him directed, execute and perform within the State or Territory all such acts as the Marshal would be bound to perform if he were personally present and acting in the State or Territory.

Marshal's
officers.
Qd. Law.

55. The Governor-General may appoint such officers as he thinks fit to assist the Marshal and his Deputies in the execution of their duties, and all acts done by those officers shall be deemed to be done by and under the authority of the Marshal.

PART IX.—SUITS BY AND AGAINST THE COMMONWEALTH AND THE STATES.

Suits against
the Common-
wealth.

56. Any person making any claim against the Commonwealth, whether in contract or in tort, may in respect of the claim bring a suit against the Commonwealth in the High Court or in the Supreme Court of the State in which the claim arose.^(a)

(a) Held by the Full Court of New South Wales that this section is retrospective, and applies to actions begun after the passing of the Act, although the cause of action existed or occurred before the Act was passed. *Baume v. Commonwealth*, (1904) 4 S.R. (N.S.W.) 709; 21 W.N. (N.S.W.) 226. Held by the High Court that this section operates as a submission by the Commonwealth to the jurisdiction of a State Court in cases falling within the section. *Commonwealth v. Baume*, (1905) 2 C.L.R. 405; 11 A.L.R. 124; 22 W.N. (N.S.W.) 5; *Commonwealth v. Miller*, (1910) 10 C.L.R. 742. Held by the High Court that ss. 56 and 64 of this Act give a subject the same rights of action against the Commonwealth as he would have against a subject in matters of tort as well as contract; and that the Commonwealth is therefore responsible in an action for the tortious acts of its servants in every case in which the gist of the cause of action is an infringement of a legal right, if the act complained of is not justified by law, and the person doing it is not exercising an independent discretion imposed upon him by Statute, but is performing a merely ministerial duty. *Baume v. Commonwealth*, (1906) 4 C.L.R. 97; 13 A.L.R. 22. See also *Pitcher v. Federal Capital Commission*, (1928) 41 C.L.R. 385; 2 A.L.J. 324; 35 A.L.R. 185.

57. Any State making any claim against the Commonwealth, whether in contract or in tort, may in respect of the claim bring a suit against the Commonwealth in the High Court. Suits by a State against the Commonwealth.

58. Any person making any claim against a State, whether in contract or in tort, in respect of a matter in which the High Court has original jurisdiction or can have original jurisdiction conferred on it, may in respect of the claim bring a suit against the State in the Supreme Court of the State, or (if the High Court has original jurisdiction in the matter) in the High Court.^(a) Suits against a State in matters of federal jurisdiction.

59. Any State making any claim against another State may in respect of the claim bring a suit against that State in the High Court.^(b) Suits between States.

60. In a suit against a State brought in the High Court, the High Court may grant an injunction against the State and against all officers of the State and persons acting under the authority of the State, and may enforce the injunction against all such officers and persons. Injunction against a State and its officers.

61. Suits on behalf of the Commonwealth may be brought in the name of the Commonwealth by the Attorney-General or by any person appointed by him in that behalf. Suits by Commonwealth.

62. Suits on behalf of a State may be brought in the name of the State by the Attorney-General of the State, or by any person appointed by him in that behalf. Suits by a State.

63. Where the Commonwealth or a State is a party to a suit, all process in the suit required to be served upon that party shall Service of process when Commonwealth or State is party.

As to whether an action for tort against the Commonwealth arises under this section or s. 75 (iii.) of the Constitution see *Musgrave v. Commonwealth*, (1937) 57 C.L.R. 514; 43 A.L.J.R. 614; 11 A.L.J. 153.

Per the Supreme Court of New South Wales: The law of torts to which the Commonwealth is made liable is the law in any State applicable as between private citizens on 25th August, 1903 (the date of the commencement of the *Judiciary Act 1903*). Held therefore that the *Compensation to Relatives Act of 1897 of New South Wales* is binding on the Commonwealth. *Washington v. Commonwealth*, (1939) 39 S.R. (N.S.W.) 133; 56 W.N. (N.S.W.) 60.

As to whether the exercise by the Executive of supposed statutory powers (later held to be invalid) amounts to a tort on the part of the Crown, see *James v. Commonwealth*, (1939) 62 C.L.R. 339; 45 A.L.R. 141; 13 A.L.J. 34.

(a) Held by the High Court that the High Court has jurisdiction to entertain an action for tort brought by the Commonwealth against a State without its consent; by *Knox C.J.*, *Isaacs*, *Rich* and *Starke J.J.*, on the ground that s. 75 (iii.) of the Constitution confers the jurisdiction and by *Higgins J.*, on the ground that it is conferred by this section. *Commonwealth v. New South Wales*, (1923) 32 C.L.R. 200. Held also by the High Court that a resident of New South Wales might bring an action in the High Court against the State of Victoria for a declaration that probate duty paid under protest was not payable and for a refund of the amount paid. *Daly v. State of Victoria*, (1920) 28 C.L.R. 395; 27 A.L.R. 359. Held by the High Court that in an action against a State on contract, the fact that insufficient moneys have been appropriated does not go to the validity of the contract but is merely an implied condition and an action may therefore be brought on the contract and judgment given in favour of the plaintiff. *New South Wales v. Bardolph*, (1934) 52 C.L.R. 455; 41 A.L.R. 22.

As to the application of the decisions noted in this footnote to an action for tort against the Commonwealth, see *Musgrave v. Commonwealth*, (1937) 57 C.L.R. 514; 43 A.L.R. 614; 11 A.L.J. 153.

(b) As to the right of a State to sue another State without the latter's consent see *South Australia v. Victoria*, (1911) 12 C.L.R. 667.

be served upon the Attorney-General of the Commonwealth or of the State, as the case may be, or upon some person appointed by him to receive service.

Rights of parties.

64. In any suit to which the Commonwealth or a State is a party, the rights^(a) ^(b) of parties shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject.^(c) ^(d)

No execution against Commonwealth or a State.
Tas. 55 Vict., No. 24, s. 10.
Schedule.

65. No execution or attachment, or process in the nature thereof, shall be issued against the property or revenues of the Commonwealth or a State in any such suit; but when any judgment is given against the Commonwealth or a State, the Registrar shall give to the party in whose favour the judgment is given a certificate in the form of the Schedule to this Act, or to a like effect.^(d)

Performance by Commonwealth or State.
Ib. s. 11.

66. On receipt of the certificate of a judgment against the Commonwealth or a State the Treasurer of the Commonwealth or of the State as the case may be shall satisfy the judgment out of moneys legally available.^(d)

Execution by Commonwealth or State.
Ib. s. 12.

67. When in any such suit a judgment is given in favour of the Commonwealth or of a State and against any person, the Commonwealth or the State, as the case may be, may enforce the judgment against that person by process of extent, or by such execution, attachment, or other process as could be had in a suit between subject and subject.

(a) See footnote (a) to s. 58, *supra*.

(b) As to the extent of the rights given by this section to subjects against the Commonwealth, and as to the meaning of the words "as nearly as possible", see *Commonwealth v. Baume*, (1905) 2 C.L.R. 405; 11 A.L.R. 124; 22 W.N. (N.S.W.) 5; *Baume v. Commonwealth*, (1906) 4 C.L.R. 97; 13 A.L.R. 22; *Commonwealth v. Miller*, (1910) 10 C.L.R. 742; *R. v. Associated Northern Collieries*, (1910) 11 C.L.R. 738; 17 A.L.R. 359; *Pitcher v. Federal Capital Commission*, (1928) 41 C.L.R. 385; 2 A.L.J. 324; 35 A.L.R. 185 and *New South Wales v. Bardolph*, (1934) 52 C.L.R. 455; 41 A.L.R. 22.

(c) Held by the High Court that the Supreme Court of New South Wales has no jurisdiction, in an action at common law brought by an individual against the Commonwealth, to make an order against the Commonwealth under s. 102 of the *Common Law Procedure Act 1899* of New South Wales for discovery of documents. *Commonwealth v. Baume*, (1905) 2 C.L.R. 405; 11 A.L.R. 124; 22 W.N. (N.S.W.) 5. Held later by the High Court (Evatt J.) that though the Supreme Court of New South Wales in its common law jurisdiction is not competent to order discovery against the Commonwealth, the plaintiff in a common law action may obtain the necessary order by invoking the auxiliary jurisdiction in equity. *Heimann v. Commonwealth*, (1935) 54 C.L.R. 126; 41 A.L.R. 501; 9 A.L.J. 384. Held by the High Court that in an action brought in the Supreme Court of Victoria against the Commonwealth, that Court has, by the combined effect of ss. 56 and 64 of the *Judiciary Act*, the *Victorian Supreme Court Act 1890*, and the *Supreme Court Rules 1906*, jurisdiction to order the Commonwealth to answer interrogatories and make discovery of documents. *Commonwealth v. Miller*, (1910) 10 C.L.R. 742. Held by the High Court that in an action by a resident of Victoria against the State of South Australia this section gives the plaintiff the right to obtain discovery of documents and to administer interrogatories to the defendant State even though the law of that State confers no similar rights on its own residents; held further that so interpreted the section is *intra vires* the Parliament. *Griffin v. South Australia*, (1924) 35 C.L.R. 200; 31 A.L.R. 81. See also *Clutterbuck Brothers v. Ringwood*, 1906 S.A.L.R. 130 and, as to similar words in the *Claims against the Government and Crown Suits Act 1912* (N.S.W.), *Jamieson v. Downie*, [1923] A.C. 691.

(d) *Per* Dixon J.: "these provisions serve to measure the liability to which the Crown may be adjudged. It is not absolute but to pay out of moneys made available by the law of the State. They recognize the principle that the liabilities of the Crown in right of the States are subject to parliamentary appropriation funds." *New South Wales v. Bardolph*, (1934) 52 C.L.R. 455, at pp. 506-507; 41 A.L.R. 22, at p. 41.

PART X.—CRIMINAL JURISDICTION.

Application of Laws.

68.—(1.) The laws of each State respecting the arrest and custody of offenders or persons charged with offences, and the procedure^(a) for—

State laws to apply as to preliminary proceedings in criminal cases.

Sub-section (1.) amended by No. 38, 1920, s. 5; and No. 60, 1932, s. 2.

- (a) their summary conviction; and
- (b) their examination and commitment for trial on indictment; and
- (c) their trial and conviction on indictment;^(b) and
- (d) the hearing and determination of appeals^(c) arising out of any such trial or conviction or out of any proceedings connected therewith

and for holding accused persons to bail, shall, subject to this section, apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth committed within that State, or whose trial for offences committed elsewhere may lawfully be held therein.

(2.) The several Courts of a State^(d) exercising jurisdiction with respect to—

Amended by No. 60, 1932, s. 2.

- (a) the summary conviction; or
- (b) the examination and commitment for trial on indictment; or
- (c) the trial and conviction on indictment;

of offenders or persons charged with offences against the laws of the State, and with respect to the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith, shall have the like jurisdiction with respect to persons who are charged with offences against the laws of the Commonwealth committed within the State, or who may lawfully be tried within the State for offences committed elsewhere;^(e)

(a) Held by the High Court that where a person is charged with an offence against the laws of the Commonwealth committed within a State, the taking of a recognisance is a matter of procedure within this sub-section, in the execution of which a Justice of the Peace may act, and is not a judicial exercise of jurisdiction within sub-section (3) of this section. *R. and Commonwealth v. Thom Sing*, (1911) 13 C.L.R. 32; 17 A.L.R. 445. Held by the High Court that a summons for an offence punishable upon summary conviction may be issued by a justice of the peace. *Donohoe v. Chew Ying*, (1913) 16 C.L.R. 364; 19 A.L.R. 199.

(b) Held by the Full Court of Victoria that this section does not import a provision of a State Act (which provides that, for the purpose of indictment, property in the custody of a body corporate shall be deemed to be the property of that body corporate) so as to preclude an indictment on a charge of stealing property belonging to the Commonwealth within the meaning of s. 71 of the *Crimes Act 1914*. *R. v. Dolan and Schiffmann*, 1919 V.L.R. 55; 24 A.L.R. 442; 40 A.L.J. 126.

(c) Held by the High Court that this section does not limit the right of appeal from a court of summary jurisdiction exercising Federal jurisdiction to the High Court pursuant to s. 39 (2) (b) of this Act. *Adams v. Clevee*, (1935) 53 C.L.R. 185; 41 A.L.R. 168.

(d) As to the Courts of a Territory see *Mitchell v. Barker*, (1918) 24 C.L.R. 365; 24 A.L.R. 64.

(e) *Per* Starke J.: The provisions of ss. 68 and 79 of the Judiciary Act give a State Court power to award costs pursuant to a State Act. *R. v. Archdall and Roskrugs; Ex parte Carrigan and Brown*, (1928) 41 C.L.R. 128, at p. 147. Prior to the amendments effected by the amending Act of 1932 it was held by the High Court that neither this section nor s. 39 confers upon a State Court of Criminal Appeal jurisdiction to hear an appeal brought before it under the provisions of the State Act by a person convicted in a State Court upon an indictment filed by the Commonwealth Attorney-General in respect of offences against the laws of the Commonwealth. *Seaggy v. R.*, (1932) 48 C.L.R. 251; 6 A.L.J. 238; 33 S.R. (N.S.W.) 346; 50 W.N. (N.S.W.) 149. After the amending Act of 1932 which amended the section to overcome the foregoing decision, it was argued that the section did not confer on the State Court of Criminal Appeal jurisdiction to hear an appeal brought by the Crown

(3.) Provided that such jurisdiction^(a) shall not be judicially exercised with respect to the summary conviction or examination and commitment for trial of any person except by a Stipendiary or Police or Special Magistrate, or some Magistrate of the State who is specially authorized by the Governor-General to exercise such jurisdiction.

Added by
No. 38, 1920,
s. 5.

(4.) The several Courts of a State exercising the jurisdiction conferred upon them by this section shall, upon application being made in that behalf, have power to order, upon such terms as they think fit, that any information laid before them in respect of an offence against the laws of the Commonwealth shall be amended so as to remove any defect either in form or substance contained in that information.

Indictable Offences.

Indictments.

69.—(1.) Indictable offences against the laws of the Commonwealth shall be prosecuted by indictment^(b) in the name of the Attorney-General of the Commonwealth^(c) or of such other person as the Governor-General appoints in that behalf.^(d)

(2.) Any such appointment shall be by commission in the King's name, and may extend to the whole Commonwealth or to any State or part of the Commonwealth.

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

(3.) Any person committed for trial for an offence against the laws of the Commonwealth may at any time within fourteen days after committal and before the jury is sworn apply to a Justice in Chambers or to a Judge of the Supreme Court of a State for the appointment of counsel^(e) for his defence. If it be found to the

from the sentence imposed. Without deciding this point the High Court held that such an appeal might not be brought to the State Court of Criminal Appeal by the Attorney-General of the State. *Williams v. R.* (No. 1), (1933) 50 C.L.R. 536; 40 A.L.R. 1; 7 A.L.J. 319. An appeal from the sentence was thereupon brought to the State Court of Criminal Appeal by the Attorney-General of the Commonwealth and the Court increased the sentence. *R. v. Williams*; *R. v. Somme*, (1934) 34 S.R. (N.S.W.) 143; 51 W.N. (N.S.W.) 24. On appeal to the High Court, held by Gavan Duffy C.J., Evatt and McTiernan J.J. (Rich, Starke and Dixon J.J. dissenting) that s. 68 did not operate upon the State Act so as to enable the Attorney-General of the Commonwealth to appeal to the State Court of Criminal Appeal. The High Court being equally divided, leave to appeal was refused. *Williams v. R.* (No. 2), (1934) 50 C.L.R. 551; 40 A.L.R. 314; 8 A.L.J. 64. After the accused had served the sentence originally imposed an unsuccessful application was made to the High Court for an order *nisi* for *habeas corpus*. *Ex parte Williams*, (1934) 51 C.L.R. 545.

(a) See footnote (a) to s. 68 (1), *supra*.

(b) Held by Chonley J., in the Court of General Sessions, Victoria, that indictment includes information, and that this provision is not in conflict with s. 80 of the Constitution. *R. v. Judd*, (1904) 10 A.L.R. (C.N.) 73. Held by the Supreme Court of Victoria (Gavan Duffy J.) that the Attorney-General may file a presentment against a person in the Court of General Sessions in respect of an offence against the *Crimes Act 1914-1944* without such person having been committed for trial thereon. *The King v. Gamble*; *Ex parte Cleary*, 1947 V.L.R. 491; [1948] A.L.R. (Vol. 1) 21.

(c) Held by the High Court that by virtue of s. 19 of the *Acts Interpretation Act 1901-1918* the indictment may be in the name of a Minister acting for and on behalf of the Attorney-General. *R. v. Judd*, (1919) 26 C.L.R. 168; 19 S.R. (N.S.W.) 253; 36 W.N. (N.S.W.) 44.

(d) In a case in which a Crown Prosecutor presented an information against a person for an indictable offence against a law of the Commonwealth, but was not authorized to do so by the Governor-General or the Attorney-General, it was held by the District Court, Bundaberg, Queensland, that the accused must be discharged. *R. v. Lynch*, 1904 Q.W.N. 17. Held by the Full Court of the Supreme Court of Victoria that it is for the trial Judge to satisfy himself that the appointment in that behalf has been correctly made. The trial Judge having so satisfied himself the Full Court would not interfere. *R. v. Quirke*, (1919) 25 A.L.R. 98.

(e) Held by Hodges J., of the Supreme Court of Victoria, that under this sub-section a certificate cannot be given that it is desirable to appoint a solicitor as well as counsel. *R. v. Douglas*, (1904) 10 A.L.R. 100; 25 A.L.T. 217. See also *In re Forrest*, 1912 V.L.R. 466; 34 A.L.T. 95; 18 A.L.R. 495.

satisfaction of the Justice or Judge that such person is without adequate means to provide defence for himself,^(a) and that it is desirable in the interests of justice^(b) that such an appointment should be made, the Justice or Judge shall certify this to the Attorney-General, who may if he thinks fit thereupon cause arrangements to be made for the defence of the accused person.^(c) Upon committal the person committed shall be supplied with a copy of this sub-section.

70. When an offence against the laws of the Commonwealth is begun in one State or part of the Commonwealth and completed in another, the offender may be dealt with tried and punished in either State or part in the same manner as if the offence had been actually and wholly committed therein.

Offences
committed
in several
States.
U.S. 731.

71. When any person is under commitment upon a charge of an indictable offence against the laws of the Commonwealth, the Attorney-General or such other person as the Governor-General appoints in that behalf may decline to proceed further in the prosecution, and may, if the person is in custody, by warrant under his hand direct the discharge of the person from custody, and he shall be discharged accordingly.

Discharge of
persons
committed for
trial.

71A.—(1.) Notwithstanding anything contained in this Part, or any provision of any State law, the Attorney-General of the Commonwealth^(d) may file an indictment for any indictable offence against the laws of the Commonwealth^(e) in the High Court or the Supreme Court of a State, without examination or commitment for trial.^(f)

Trial of
indictable
offence without
preliminary
examination.
Inserted by
No. 4, 1915,
s. 3.

(2.) Upon an indictment being so filed, the Court or a Justice or Judge thereof, may cause a summons to be issued to the defendant to appear at the time and place mentioned in the summons there to answer the charge mentioned in the indictment, or may issue a warrant for his arrest, and may hold him in custody or admit him to bail.

(a) As to what proof is required that a person is "without adequate means to provide defence for himself", see *R. v. Douglas*, (1904) 10 A.L.R. 100; 25 A.L.J. 217. See also *In re Forrest*, 1912 V.L.R. 466; 34 A.L.J. 95; 18 A.L.R. 495.

(b) As to cases in which it is "desirable in the interests of justice" that an appointment of counsel be made, see *R. v. Douglas* (*supra*). See also *In re Forrest* (*supra*).

(c) *Per Cussen J.*, of the Supreme Court of Victoria: Under this section the Attorney-General has power to provide not only counsel for the defence, but also a solicitor to instruct such counsel. *In re Forrest* (*supra*).

(d) See footnote (c) to s. 69 (1), *supra*.

(e) As to the distinction between "laws of the Commonwealth" and "laws made by the Parliament" see *R. v. Kidman*, (1915) 20 C.L.R. 425; 21 A.L.R. 405.

(f) Section 222 of the *Bankruptcy Act* 1924-1933 provides that where the Federal Court of Bankruptcy commits any person for trial for any offence against that Act it shall be the duty of the Attorney-General to institute and carry on the prosecution. Held by the Court of Criminal Appeal of Queensland that when the Attorney-General has filed an indictment under the provisions of this section and appointed counsel to appear and prosecute on his behalf, he has performed his duty under s. 222 of the *Bankruptcy Act* 1924-1933. *R. v. Lowndes*, 1938 Q.W.N. 11.

Appeal.

Reservation of
points of law.

Qd. Cr. Code,
s. 668.

Sub-section (1.)
amended by
No. 4, 1915,
s. 4.

72.—(1.) When any person is indicted for any indictable offence against the laws of the Commonwealth, the Court before which he is tried shall on the application by or on behalf of the accused person made before verdict, and may in its discretion either before or after judgment without such application, reserve any question of law which arises on the trial for the consideration of a Full Court of the High Court or if the trial was had in a Court of a State of a Full Court of the Supreme Court of the State.^(a)

(2.) If the accused person is convicted, and a question of law has been so reserved before judgment, the Court before which he was tried may either pronounce judgment on the conviction and respite execution of the judgment, or postpone the judgment until the question has been considered and decided, and may either commit the person convicted to prison or admit him to bail on recognisance with or without sureties, and in such sum as the Court thinks fit, conditioned to appear at such time and place as the Court directs and to render himself in execution or to receive judgment as the case may be.

(3.) The presiding Judge is thereupon required to state in a case signed by him the question of law so reserved with the special circumstances upon which it arose, and if it be reserved for the High Court the case shall be transmitted to the Principal Registry.

Hearing.
Ib. s. 669.

73. Any question so reserved shall be heard and determined after argument by and on behalf of the Crown and the convicted person or persons if they desire that the question shall be argued, and the Court may—

- (a) affirm the judgment given at the trial ; or
- (b) set aside the verdict and judgment and order a verdict of not guilty or other appropriate verdict to be entered ;
or
- (c) arrest the judgment ; or
- (d) amend the judgment ; or
- (e) order a new trial ; or
- (f) make such other order as justice requires ;

or the Court may send the case back to be amended or restated.

Effect of order
of Full Court.
Ib. s. 670.

74.—(1.) If the trial was had in a State in which the principal seat of the Court is not situated, the proper officer of the Court by

(a) In *R. v. O'Donoghue* the High Court answered questions reserved by a Court of a State but expressed doubts as to whether, after the amending Act of 1915, the High Court still had jurisdiction over questions reserved by State Courts. *R. v. O'Donoghue*, (1917) 23 C.L.R. 9. Held by the Full Court of the Supreme Court of South Australia that a question may be stated by the trial Judge even after a case has gone to the High Court on appeal and been referred back to the Full Court. *R. v. Snow*, 1918 S.A.L.R. 173. (Special leave to appeal refused by the High Court. *R. v. Snow*, (1918) 25 C.L.R. 377.) *Per* Rich, Dixon, Evatt and McTiernan JJ., concerning two counts before the Supreme Court of South Australia, charging offences under the *Bankruptcy Act* 1924-1930: "The question of validity of these counts was reserved for the consideration of this Court by the presiding Judge, who, we think, had authority to do so under s. 18 of the *Judiciary Act* 1903-1934, if not under s. 72." *R. v. Adams*, (1935) 53 C.L.R. 563 ; 8 A.B.C. 97 ; 41 A.L.R. 421.

which the question reserved was determined shall certify the judgment of the Court under his hand and the seal of the Court to the proper officer of the Court in which the trial was had, who shall enter the same on the original record.

(2.) If the convicted person is in custody, the proper officer of the Court by which the question reserved was determined shall also forthwith transmit another certificate of the same tenor under his hand and the seal of the Court to the superintendent of the prison or other person who has the custody of the convicted person. The certificate shall be a sufficient warrant to all persons for the execution of the judgment if it is certified to have been affirmed or as it is certified to be amended, and execution shall thereupon be executed upon the judgment as affirmed or amended: And if the judgment is set aside or arrested the certificate shall be a sufficient warrant for the discharge of the convicted person from further imprisonment under that judgment, and in that case the superintendent is required forthwith to discharge him from imprisonment under that judgment, and if he is at large on bail the recognisance of bail shall be vacated at the next criminal sitting of the Court in which the trial was had: And if that Court is directed to pronounce judgment, judgment shall be pronounced at the next criminal sitting of the Court at which the convicted person appears to receive judgment.

75. A conviction cannot be set aside upon the ground of the improper admission of evidence^(a) if it appears to the Court that the evidence was merely of a formal character or not material, nor upon the ground of the improper admission of evidence adduced for the defence.

Certain errors not to avoid conviction.
Qd. Cr. Code, s. 671.

76.—(1.) When the Court before which an accused person is convicted on indictment for an offence against the laws of the Commonwealth arrests judgment at the trial, the Court shall on the application of counsel for the prosecution state a case for the consideration of a Full Court of the High Court or a Full Court of the Supreme Court of the State in manner hereinbefore provided.

Appeal from arrest of judgment.
Ib. s. 672.

(2.) On the hearing of the case the Full Court may affirm or reverse the order arresting judgment. If the order is reversed the Court shall direct that judgment be pronounced upon the offender, and he shall be ordered to appear at such time and place as the Court directs to receive judgment, and any Justice of the Peace may issue his warrant for the arrest of the offender.

(3.) An offender so arrested may be admitted to bail by order of the Court which may be made in Court or in Chambers, at the time when the order directing judgment to be pronounced is made or afterwards.

(a) Held by the Full Court of the Supreme Court of South Australia that this section does not apply to a misdirection to a jury and that a new trial should therefore be ordered whether or not the verdict would probably be the same. *R. v. Snow*, 1918 S.A.L.R. 173. (Special leave to appeal refused by the High Court, *R. v. Snow*, (1918) 25 C.L.R. 377.)

No other
appeal.

77. Except as aforesaid, and except in the case of error apparent on the face of the proceedings, an appeal shall not without the special leave of the High Court be brought to the High Court from a judgment or sentence pronounced on the trial of a person charged with an indictable offence against the laws of the Commonwealth.

PART XI.—SUPPLEMENTARY PROVISIONS.

Appearance of Parties.

Appearance by
barrister or
solicitor,
U.S. 747.

78. In every Court exercising federal jurisdiction the parties may appear personally or by such barristers or solicitors as by the laws and rules regulating the practice of those Courts respectively are permitted to appear therein.

Application of Laws.

State laws to
govern where
applicable,
Ib. 721.

79. The laws of each State, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State in all cases to which they are applicable.^(a) ^(b)

Common law to
govern.
Ib. 722.

80. So far as the laws of the Commonwealth are not applicable or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law of England as modified by the Constitution and by the statute law in force in the State in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the Constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters.^(b)

(a) Held by the High Court that where the law of the State required that claims before a Justice should be brought within six months, the Justice had no jurisdiction to hear a claim made under a Commonwealth Act brought after that period. *Federated Sawmill Timberyard and General Woodworkers' Association (Adelaide Branch) v. Alexander*, (1912) 15 C.L.R. 308; 19 A.L.R. 22. See also footnote (e) to s. 68 (2), *supra*. Per L^ow^e J., of the Supreme Court of Victoria: "applicable" means "able to be applied". *In re Hancock's Golden Crust Pty. Ltd.'s Trade Mark*, 1929 V.L.R. 17; 35 A.L.R. 40. Section 20 (3.) of the *Bankruptcy Act 1924-1933* provides for the stating of a question by a Court exercising bankruptcy jurisdiction for the opinion of the High Court. As to whether s. 79 of the *Judiciary Act*, by importing the procedure of the *Judicature Act of Queensland*, permits a question to be stated for the opinion of the Full Court of Queensland by a Judge exercising bankruptcy jurisdiction, see *Re Wiltshire*, 1934 St. R. Qd. 215; 7 A.B.C. 51. In that case the Full Court referred the case back to the Judge without deciding the point.

Held by the High Court that notwithstanding the provisions of s. 46 of the *Commonwealth Conciliation and Arbitration Act 1904-1946* the refusal of a magistrate to apply the provisions of s. 82 (2) of the *Justices Act 1902-1940* (N.S.W.) providing for imprisonment in default of payment of a fine and costs was erroneous in point of law and an appeal would lie under s. 101 of that Act. *De Vos v. Dady*, (1947) 73 C.L.R. 509; 53 A.L.R. 209; 21 A.L.J. 57.

Held by the Supreme Court of Victoria that a Judge of the Supreme Court exercising Federal jurisdiction may, by the combined effect of this section and s. 44 of the *Supreme Court Act 1928* (Victoria) reserve a case for the consideration of the Full Court. *In re Alstergren and Nosworthy*, 1947 V.L.R. 23; 53 A.L.R. 85. Per the High Court (Dixon J.): As a result of this section a provision such as s. 5 of the *Arbitration Act 1928* of the State of Victoria is applicable in the Federal jurisdiction of the High Court, and s. 2 of the *Colonial Courts of Admiralty Act 1890* carries into the Admiralty jurisdiction of the High Court the power to stay proceedings conferred by the said s. 5. *Huddart Parker Ltd. v. The Mill Hill*, [1950] A.L.R. 918.

(b) As to whether these sections apply to the High Court see *Mitchell v. Barker*, (1918) 24 C.L.R. 365; 24 A.L.R. 64; *Lady Carrington Steamship Co. Ltd. v. Commonwealth*, (1921) 29 C.L.R. 596, per Higgins J., at p. 601, and *Cohen v. Cohen*, (1929) 42 C.L.R. 91, at p. 99; 35 A.L.R. 204, at p. 207.

See also on the application of these sections to the High Court *Musgrave v. Commonwealth*, (1937) 57 C.L.R. 514; 43 A.L.R. 614; 11 A.L.J. 153.

As to whether on an action for libel against the Commonwealth brought in the High Court the law to be applied is the law of the State where the defamatory statement was published or the law of the State in which the action is brought, see *Musgrave v. Commonwealth*, (1937) 57 C.L.R. 514; 43 A.L.R. 614; 11 A.L.J. 153.

81. The Justices of the High Court, and the Judges and magistrates of the several States who are empowered by law to authorize arrests for offences against the laws of the Commonwealth, shall have the like authority to hold to security of the peace and for good behaviour in matters arising under the laws of the Commonwealth as may be lawfully exercised by any Judge or Magistrate of the respective States in other cases cognisable before them.

Security of the peace and for good behaviour.
U.S. 727.

Venue.

82. Suits to recover pecuniary penalties and forfeitures under the laws of the Commonwealth may be brought either in the State or part of the Commonwealth where they accrue or in the State or part where the offender is found.

Venue in suits for penalties.
U.S. 732.

83. Suits to recover taxes accruing under any revenue law of the Commonwealth may be brought either in the State or part of the Commonwealth where the liability for the tax occurs or in the State or part where the debtor resides.

Venue in suits for taxes.
U.S. 733.

84. Proceedings on seizures made on the high seas for forfeiture under any law of the Commonwealth may be prosecuted in any State into which the property seized is brought. Proceedings on such seizures made within any State or part of the Commonwealth shall be prosecuted in the State or part where the seizure is made, except in cases when it is otherwise provided by law.

Venue in suits for forfeiture.
U.S. 734.

85. All property taken or obtained by any officer or person under the authority of any revenue law of the Commonwealth shall be deemed to be in the custody of the law, and subject only to the orders and judgments of the Courts having jurisdiction thereof under this or any Act.

Property seized as forfeited.
U.S. 934.

Rules of Court.

86.^(a) The Justices of the High Court or a majority of them may make Rules of Court necessary or convenient to be made for carrying into effect the provisions of this Act or so much of the provisions of any other Act as confers jurisdiction on the High Court or relates to the practice or procedure of the High Court, and in any particular for the following matters, that is to say :—

Rules of Court.
Amended by No. 5, 1906, s. 3 ; and No. 5, 1937, s. 2.

- (a) Appointing and regulating the sittings of the High Court and of the Justices ;
- (b) Regulating procedure pleading and practice in the High Court in civil or criminal matters in the exercise both of its original and of its appellate jurisdiction ;

(a) Section 5 of the *Judiciary Act 1937*, by which this section was amended, provides as follows :—

" 5. All Rules of Court made by the Justices of the High Court, or a majority of them, under the powers conferred by any provision repealed by this Act, which were in force immediately prior to the commencement of this Act, shall continue in force as if this Act had not been passed and shall for all purposes, including the purpose of amendment or annulment, be deemed to be Rules of Court made under the powers conferred by section eighty-six of the *Judiciary Act 1903-1934* as amended by this Act."

- (ba) regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given ;
- (c) Regulating any matters relating to the duties of the officers of the High Court and of the Marshal and his Deputies and officers ;
- (d) Prescribing the forms to be used for the purposes of the proceedings of the High Court ;
- (e) Prescribing and regulating the fees to be charged by practitioners practising in the High Court for the work done by them in relation to proceedings in the Court and for the taxation of their bills of costs, either as between party and party or as between solicitor and client ;
- (f) Prescribing the fees to be collected by the officers of the High Court and by the Marshal and his officers in respect of proceedings in the Court or of the execution of the process thereof ;
- (g) Prescribing the extent to which the provisions of this Act shall be applicable to the Courts of Territories of the Commonwealth ;
- (ga) Providing for the admission of persons to practise as barristers or solicitors in any federal Court, and prescribing the conditions of and qualifications for admission, and continuance of the right to practise as aforesaid ;
- (h) Generally regulating all matters of practice and procedure in the High Court and other federal Courts, and so far as is necessary in Courts of federal jurisdiction.

Tabling of
Rules of Court.
Substituted by
No. 5, 1937,
s. 3.

87.—(1.) All Rules of Court made in pursuance of the last preceding section shall—

- (a) be notified in the *Gazette* ;
- (b) take effect from the date of notification or from a later date specified in the Rules ; and
- (c) be laid before each House of the Parliament within fifteen sitting days of that House after the making of those Rules.

(2.) If either House of the Parliament passes a resolution, of which notice has been given within fifteen sitting days after the Rules have been laid before the House, disallowing any Rule, that Rule shall thereupon cease to have effect.

Pt. XII. (ss. 88-94) added by No. 34, 1910, s. 3, and repealed by No. 45, 1934, s. 2 (3.), 4th Schedule.

(a) * * * * *

(a) Part XII. (ss. 88-94), which provided for the reference of Constitutional questions to the High Court by the Governor-General, was added by the *Judiciary Act* 1910, s. 3. Held by the High Court (Knox *C.J.*, Gavan Duffy, Powers, Rich and Starke *J.J.* ; Higgins *J.* dissenting) that s. 76 (1) of the Constitution does not empower the Parliament to confer upon the High Court jurisdiction to determine abstract questions of law involving the interpretation of the Constitution and that ss. 88 and 93 were therefore invalid. *In re Judiciary and Navigation Acts*, (1921) 29 C.L.R. 257 ; 27 A.L.R. 193. The Part was repealed by the *Statute Law Revision Act* 1934.

THE SCHEDULE.

Section 65.

FORM OF CERTIFICATE OF JUDGMENT.

Nokes *v.* Commonwealth [*or as the case may be*].—I hereby certify that A.B.,
of _____, &c., did on the _____ day of _____,
obtain a judgment of the High Court in his favour, and that by such judgment
the sum of £ _____ was awarded to him.

C.D., Registrar.

JUDICIARY (DIPLOMATIC REPRESENTATION) ACT
1942.^(a)

An Act to enable a Justice of the High Court to accept
and hold a certain Office.

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 *Judiciary (Diplomatic Representation) Act 1942.*^(a)

Commence-
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Authority to
accept and
hold certain
office.

3. Notwithstanding anything contained in the *Judiciary Act 1903-1940*, if His Majesty shall see fit to appoint the Honourable Owen Dixon to be Envoy Extraordinary and Minister Plenipotentiary for the Commonwealth of Australia in the United States of America, he may accept that appointment and hold the same as well as the office of a Justice of the High Court of Australia and his service as Envoy Extraordinary and Minister Plenipotentiary for the Commonwealth of Australia in the United States of America shall for all purposes count as service in the office of a Justice.

^(a) No. 2, 1942; assented to, and commenced, on 8th May, 1942. See s. 2.

JURY EXEMPTION ACT 1905-1950.^(a)An Act to Exempt certain Persons holding Public Positions
in the Commonwealth from Serving as Jurors.

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 *Jury Exemption Act 1905-1950*.^(a)

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

2. The following persons shall be exempt from serving as jurors
whether summoned so to serve under the law of the Commonwealth
or of a State :—

Exemption of
certain persons
holding public
positions from
serving as
jurors.

The Governor-General.

The members of the Federal Executive Council.

The Justices of the High Court and of other Courts created
by the Parliament.

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

The Senators and the Members of the House of Represen-
tatives.

The Officers of the Public Service of the Commonwealth.

Persons who are employees of the Commonwealth Railways
Commissioner under the *Commonwealth Railways Act*
1917.^(b)

Added by
No. 26, 1922,
s. 2.

3.—(1.) Notwithstanding anything contained in the last pre-
ceding section, an officer of the Public Service of the Commonwealth
shall not be exempt from serving as a juror in any Territory forming
part of the Commonwealth, when summoned so to serve under the
law of the Commonwealth or of such Territory, unless he is a person
exempted under this section from so serving.

Application of
Act to
Territories.

Added by
No. 59, 1932,
s. 2.

(2.) For the purposes of the last preceding sub-section, the
Governor-General may make regulations exempting from serving
as jurors such persons or persons holding such offices or classes of
offices as are specified in the regulations.

(a) The *Jury Exemption Act 1905-1950* comprises the *Jury Exemption 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>Jury Exemption Act 1905</i>	1905, No. 2 ..	17th August, 1905 ..	17th August, 1905
<i>Jury Exemption Act 1922</i>	1922, No. 26 ..	18th October, 1922 ..	18th October, 1922
<i>Jury Exemption Act 1932</i>	1932, No. 59 ..	5th December, 1932	5th December, 1932
<i>Statute Law Revision Act 1950</i>	1950, No. 80 ..	16th December, 1950	31st December, 1950

(b) As to exemption of members of the Defence Force from serving as jurors see s. 43
of the *Defence Act 1903-1950*; similarly as to masters of ships and seamen, see s. 147 of the
Navigation Act 1912-1950.

KALGOORLIE TO PORT AUGUSTA RAILWAY ACT 1911-1950.^(a)

An Act to provide for the Construction of a Railway from Kalgoorlie in the State of Western Australia to Port Augusta in the State of South Australia, the acquisition of the necessary land, the appointment of officers, the making of charges, and the appropriation of money in connexion with such Railway.

Preamble.

WHEREAS by the Constitution it is enacted that the Parliament may make laws for the peace order and good government of the Commonwealth with respect to railway construction and extension in any State with the consent of that State :

And whereas by an Act called *The Northern Territory Surrender Act* 1907 the State of South Australia has consented to and authorized the construction by the Commonwealth of a railway westerly from any point on the Port Augusta railway through South Australia to any point on the western boundary of South Australia by a route to be determined by the Parliament of the Commonwealth :

And whereas it is desirable to authorize the construction and working of a railway from Kalgoorlie in the State of Western Australia to Port Augusta in the State of South Australia, which railway includes the said railway authorized to be constructed by the *Northern Territory Surrender Act* 1907 :

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

1. This Act may be cited as the *Kalgoorlie to Port Augusta Railway Act* 1911-1950.^(a)

(a) The *Kalgoorlie to Port Augusta Railway Act* 1911-1950 comprises the *Kalgoorlie to Port Augusta Railway Act* 1911 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>Kalgoorlie to Port Augusta Railway Act</i> 1911	1911, No. 7 ..	12th December, 1911	12th December, 1911
<i>Kalgoorlie to Port Augusta Railway Act</i> 1912	1912, No. 3 ..	7th August, 1912	7th August, 1912
<i>Commonwealth Railways Act</i> 1917	1917, No. 31..	22nd September, 1917	22nd September, 1917
<i>Statute Law Revision Act</i> 1950	1950, No. 80 ..	16th December, 1950	31st December, 1950

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

Definitions.

“ the Minister ” means the Minister of State for Home Affairs ;

“ the Railway ” means the railway authorized by this Act.

3.—(1.) Upon an Act of the Parliament of the State of Western Australia being passed^(a) consenting to legislation by the Parliament of the Commonwealth with respect to the construction of the portion of the Railway included in the State of Western Australia or consenting to the construction of that portion of the Railway by the Commonwealth, the Minister may, subject to this Act, construct a Railway from Kalgoorlie in the State of Western Australia to Port Augusta in the State of South Australia.

Power to construct the Railway.

(2.) The construction of the Railway shall not be commenced until the States of Western Australia and South Australia respectively have granted or agreed to grant to the satisfaction of the Minister such portions of the Crown lands of the State as are in the opinion of the Minister necessary for the purposes of the construction, maintenance, and working of the Railway.

4. The route of the Railway shall be described in the Schedule, but the Minister may make such deviations as are reasonable for the better construction and working of the Railway.

Route of the Railway.

5. The gauge of the Railway shall be four feet eight and a half inches.

Gauge of line.

* * * * *

Sections 6-17 repealed by No. 31, 1917, s. 3 and Schedule.

* * * * *

Sections 18, 19 and 20 repealed by No. 80, 1950, s. 3 and First Schedule.

(a) The necessary Act, entitled the *Transcontinental Railway Act* 1911, was passed by the Parliament of the State of Western Australia, and assented to on 9th January, 1912. (See W.A. Act No. 6, 1912.)

THE SCHEDULE.

Commencing at Kalgoorlie the line follows the existing railway to Kanowna for a little over 6 miles, thence bearing generally south-easterly to the township of Bulong ; thence for about 17 miles in the same general direction, being situated near the Westralia Timber Company's tramway ; thence running almost due east adjacent to the 31st parallel of latitude for about 357 miles ; thence on a bearing north 79 degrees east until the South Australian border is reached at

THE SCHEDULE—*continued.*

about 461 miles 77 chains 89 links from centre of Kalgoorlie station platform; thence in the State of South Australia the line runs in the direction 10 degrees north of east, cutting Cornish's line in latitude 30 degrees 28 minutes, and striking the sandhill country 170 miles east from the Border and $3\frac{1}{4}$ miles south from Ooldea Well; thence through the sandhills for 108 miles in a general easterly direction, passing about $\frac{1}{2}$ of a mile south of Wynbring Rock; thence in a direct course to the north side of Kychering Hills, and continuing in a straight line to the western boundary of the Wilgena Station, which is crossed at a point $3\frac{1}{2}$ miles north of Pinding Rockhole; thence in an easterly direction to Tarcoola. From Tarcoola the line runs easterly to near Wilgena Hill continuing in a south-easterly direction, and passing about 1 mile north of the Wilgena head station; thence running easterly skirting the south-west end of Lake Moolkra and passing along the north side of the hill near Earea Dam, to about 885 miles from Kalgoorlie, $\frac{1}{2}$ a mile south of Coondambo head station, thence passing immediately south of Lake Hart; thence to a crossing of Eucolo Creek at about 931 $\frac{1}{2}$ miles from Kalgoorlie; thence ascending and following the open tableland to a point opposite Lake Windabout where it descends and crosses that Lake at about 969 miles, continuing in a generally south-eastern direction past Oakden Hills head station at Bellamy's Well, passing Gibson's Camp at 1,007 miles, No. 1 Tank at 1,029 $\frac{1}{2}$ miles, and leaving the main north-west track from Port Augusta near the 14-mile dam, contouring the southern slope of the high ground on the west side of Spencer's Gulf, crossing the head of the Gulf at Yorkey's Crossing at about 1,055 miles, and thence passing along the eastern shores of Spencer's Gulf reaching the township of Port Augusta at about 1,059 miles 73 chains, thence proceeding to a point near the intersection of Tassie-street and Thompson-street, thence crossing Mackay-street, Jervois-street, Langford-street, and Flinders-terrace, crossing the west corner of the old cemetery and entering the Park Lands finally joining the Quorn-Port Augusta Railway at about 1,061 miles 76 chains from Kalgoorlie and about 30 chains from the centre of Port Augusta platform.

A branch line to Port Augusta wharves leaves the main line to the right between Caroline-street and Tassie-street at about 1,061 miles 1 chain from Kalgoorlie, joining the existing wharf lines.

LANDS ACQUISITION ACT 1906-1936.^(a)

An Act relating to the Acquisition by the Commonwealth of Land required for Public Purposes and for dealing with Land so acquired and for other purposes connected therewith.^{(b)(c)}

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 *Lands Acquisition Act* 1906-1936.^(a) Short title.
Short title amended.
No. 32, 1918,
s. 2.
Commence-
ment.
2. This Act shall commence on a day to be fixed by proclamation.^(a)
3. The *Property for Public Purposes Acquisition Act* 1901 is repealed.
4. This Act is divided into Parts, as follows :—

Part I.—Preliminary. Parts.
Cf. No. 13,
1901, s. 1.
 Part II.—Acquisition of Land.
 Division 1.—Modes of Acquisition.
 Division 2.—Acquisition by Agreement.
 Division 3.—Acquisition by Compulsory Process.

(a) The *Lands Acquisition Act* 1906-1936 comprises the *Lands Acquisition Act* 1906 as amended. Particulars of the Principal Act and of the amending Acts are set in the following table :—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Lands Acquisition Act</i> 1906	1906, No. 13	12th October, 1906	1st July, 1907 (<i>see Gazette</i> , 1907, p. 903)
<i>Lands Acquisition Act</i> 1916	1916, No. 12	30th May, 1916 ..	30th May, 1916
<i>Lands Acquisition Act</i> 1932	1932, No. 5..	26th March, 1932 ..	26th March, 1932
<i>Statute Law Revision Act</i> 1934	1934, No. 45	6th August, 1934 ..	6th August, 1934
<i>Lands Acquisition Act</i> 1936	1936, No. 60	28th November, 1936	28th November, 1936

(b) As to application of this Act in the Territory for the Seat of Government, *see Seat of Government Acceptance Act* 1909-1938, s. 10 (*infra*). As to its application in the Northern Territory, *see Northern Territory (Administration) Act* 1910-1949, s. 9 (*infra*).

(c) It was held by the High Court in *Grace Brothers Pty. Ltd. v. The Commonwealth*, (1946) 72 C.L.R. 269; 52 A.L.R. 209; 20 A.L.J. 78, that this Act is not invalid because of the provisions of ss. 28, 29 and 40 thereof (which are within the power of the Commonwealth Parliament under the Constitution to legislate with respect to the acquisition of property on just terms) or because it does not appropriate moneys to pay compensation assessed under the Act.

Part III.—Powers in Relation to Lands.

Part IV.—Compensation.

Division 1.—Right to Compensation.

Division 2.—Claims for Compensation.

Division 3.—Determination of Disputed Claims for Compensation.

Division 4.—Determination of Compensation where no Claim made.

Division 5.—Payment of Compensation.

Part V.—Mortgages, Encumbrances, and Leases.

Division 1.—Mortgages.

Division 2.—Encumbrances.

Division 3.—Leases.

Part VI.—Miscellaneous.

Definitions.

Cf. No. 13,
1901, s. 2.Definition of
"Convey"
amended by
No. 45, 1934,
s. 2 (3.), 4th
Schedule.Amended by
No. 45, 1934,
s. 2 (3.), 4th
Schedule.

5. In this Act unless the contrary intention appears—

"Convey" means convey, transfer, or release ;^(a)"Crown Land"^(b) means any land the property of a State, whether reserved or dedicated for any public purpose or not, but does not include any estate or interest granted by the State to any person ;

"Encumbrance" includes any rent-service, rent-charge, chief or other rent, or other charge or encumbrance upon land, other than a mortgage ;

"Land"^(b) includes any estate or interest in land (legal or equitable), and any easement,^(c) right, power, or privilege over, in, or in connexion with land, and also includes Crown land, but does not include public parks vested in or under the control of municipal or local authorities and dedicated to or reserved for the recreation of the people, or such other lands dedicated to or reserved for the use and enjoyment of the people as have been specified by a Commonwealth or State Proclamation ;

"Lease" includes an agreement for a lease ;

"Owner" includes, with respect to land, any person who under this Act is enabled to sell or convey the land to the Commonwealth, and means, with respect to Crown land, the State to which the land belongs ;^(d)

(a) Prior to the amendment effected by the *Statute Law Revision Act 1934*, the word "release" read "lease". Held by the High Court (Higgins, Gavan Duffy, Powers and Rich J.J. ; Griffith C.J. and Isaacs J. dissenting) that the word "convey" in s. 8 did not include "lease". *R. v. Registrar of Titles for Victoria; Ex parte The Commonwealth*, (1915) 20 C.L.R. 379 ; 21 A.L.R. 435.

(b) Meaning of "Crown land" and "land" discussed by the High Court (especially by Isaacs J.) in *Commonwealth v. New South Wales*, (1923) 33 C.L.R. 1. See also footnote (a) to s. 15 (1), *infra*.

(c) The question of the inclusion of easements, rights, &c., not regarded as such at common law was considered by the High Court in *Commonwealth v. Registrar of Titles (Vict.)*, (1918) 24 C.L.R. 348 ; 1918 V.L.R. 228 ; 24 A.L.R. 106 ; but the Court reached its decision on the grounds that the right there considered was an easement at common law. (N.B.—So far as this case deals with enforcing registration it should be read subject to *Commonwealth v. New South Wales*, *supra*, which held s. 20 to be *ultra vires*.)

(d) See footnote (b) to s. 37, *infra*.

"Public purpose" means any purpose in respect of which the Parliament has power to make laws, but shall not include the acquisition of territory for the Seat of Government of the Commonwealth under the Constitution ;

"Special Act" means any Act authorizing the carrying out of any public work in connexion with any public purpose ;

"The High Court" means the High Court of Australia or a Justice thereof ;

"The Supreme Court" means the Supreme Court of the State in which the land, in reference to which the expression is used, is situated, or a Judge thereof.

6. Where the Governor of a State agrees with the Governor-General for the sale or lease of any Crown land to the Commonwealth, any instrument or assurance executed by the Governor for granting conveying or leasing the land to the Commonwealth accordingly shall (by force of this Act, and notwithstanding anything in the law of the State) be valid and effectual to vest the land in the Commonwealth according to the tenor thereof.

Sale or lease of land by Governor of State to Commonwealth.

7. Where under this Act a State may make a claim, or give any notice, or do or suffer any act, matter, or thing, or be made subject to any liability, the claim may be made or notice given, or act, matter, or thing done or suffered by, or the liability may be enforced against the Minister for Lands of the State, or such other Minister of the Crown for the State as the Governor of the State, with the advice of the Executive Council thereof, appoints.

Minister of State may act for State.
Cl. No. 13,
1901, s. 48.

8. Any person seised, possessed, or entitled to any land, particularly any—

- (a) corporation ;
- (b) tenant in tail or for life ;
- (c) married woman seised in her own right or entitled to dower ;
- (d) guardian ;
- (e) committee of a lunatic or idiot ;
- (f) trustee or feoffee in trust ;
- (g) executor or administrator ;
- (h) person for the time being entitled to the receipt of the rents and profits of any land in possession or subject to any estate in dower ; or
- (i) lessee for life, or for life and years, or for years, or for any less interest ;

Persons under disability may sell land to Commonwealth.
No. 13, 1901,
s. 4 (1).

may (by force of this Act and notwithstanding anything to the contrary in any law, deed of settlement, memorandum, or articles

of association, deed, or instrument) sell and convey^(a) the land to the Commonwealth, and may enter into any agreement for that purpose.

Extent of
power to sell.
No. 13, 1901,
s. 4 (2).

9. The power to sell and convey land may be exercised—

- (a) by any person (other than a married women entitled to dower, or a lessee for life, or for life and years, or for years, or for any less interest) not only on behalf of himself and his heirs, executors, administrators, and successors, but also on behalf of every person entitled in reversion, remainder, or expectancy after him, and in defeasance of the estate of every person so entitled ; and
- (b) in the case of a married women, whether she is of full age or not, as if she were of full age and a feme sole ; and
- (c) in the case of a guardian, on behalf of his ward, and to the same extent as the ward could have done if he were not under a disability ; and
- (d) in the case of a committee of a lunatic or idiot, on behalf of the lunatic or idiot, and to the same extent as the lunatic or idiot could have done if he were not under a disability ; and
- (e) in the case of trustees, executors, or administrators, on behalf of their cestui que trusts (whether persons under a disability or not) to the same extent as the cestui que trusts could have done if they were not under a disability.

Application of
purchase money
or compensa-
tion where
parties not
entitled to sell.

10.—(1.) Where any land is sold or conveyed to the Commonwealth by or acquired from any person who was not entitled to sell or convey the land to the Commonwealth except under this Act, the purchase money or compensation may be applied as follows :—

- (a) With the consent of all parties interested, the purchase money or compensation may be paid to a trustee subject to such trusts as are declared by a deed of trust approved by the Attorney-General ; or
- (b) The purchase money or compensation may be paid to a Registrar of the High Court or the Master-in-Equity or other proper officer of the Supreme Court to be applied in accordance with any order of the Court.

(2.) The High Court or the Supreme Court may, on the application of any person interested, order any purchase money or compensation to be applied as follows :—

- (a) in the discharge of any debt or encumbrance affecting the land, or affecting other land settled therewith to the same or the like uses, trusts, and purposes ; or

(a) See footnote (a) to the definition of "convey" in s. 5, *supra*.

- (b) in the purchase of other land, or of Government securities of the Commonwealth, or of a State, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the land in respect of which the purchase money or compensation was paid; or
- (c) if the purchase money or compensation has been paid in respect of any buildings acquired under the authority of this Act—in removing or replacing the buildings or substituting others in their stead; or
- (d) in such manner as the High Court or the Supreme Court directs; or
- (e) in payment to any person becoming absolutely entitled to the purchase money or compensation.

(3.) Provided that where the purchase money or compensation does not exceed Fifty pounds it may be paid to the persons who would for the time being have been entitled to the rents and profits of the land.

(4.) Where any infant, lunatic, or idiot is interested in or entitled to receive any purchase money or compensation his consent to any application or disposition of the purchase money or compensation may be given by a committee or guardian on his behalf or the purchase money or compensation may be paid to his committee or guardian.

11.—(1.) The High Court or the Supreme Court may, on the application of any person interested, order that any purchase money or compensation paid or deposited in respect of any land acquired under this Act shall be invested or applied in such manner as the Court considers will give to the parties interested therein, as nearly as may be, the same benefit as they would have had from the land if it had not been acquired under this Act.

Power of Court to make orders as to purchase money
No. 13, 1901, s. 25.

(2.) The costs of and incident to any application under this section, or to any investment ordered under this section, shall be in the discretion of the Court.

Ib. s. 26.

12. If any question arises respecting the title to any land in respect whereof any purchase money or compensation is payable under this Act, the person in possession of the land as being the owner thereof, or in receipt of the rents of the land as being entitled thereto, at the time of the land being acquired by the Commonwealth, shall be deemed to have been entitled to the land, until the contrary is shown; and unless the contrary is so shown, the person so in possession and all persons claiming under him or consistently with his possession shall be deemed entitled to the purchase money or compensation, and it shall be paid and applied accordingly.

Person in possession to be deemed the owner.
Cf. Ib. s. 27.

PART II.—ACQUISITION OF LAND.

Division 1.—Modes of Acquisition.

Modes of
acquisition.

13. The Commonwealth may acquire any land^(a) for public purposes—

- (a) by agreement with the owner ; or
- (b) by compulsory process.

Division 2.—Acquisition by Agreement.

Acquisition by
agreement.
Cf. No. 13,
1901, s. 3.

14.—(1.) The Governor-General may approve of the acquisition by the Commonwealth of any land by agreement with the owner.

(2.) The Minister may, in any case where the interest proposed to be acquired is a lease for a term not exceeding three years at a rental not exceeding Fifty pounds per annum, approve of the acquisition by the Commonwealth of the lease of the land by agreement with the owner.^(b)

(3.) The Attorney-General may thereupon, for and on behalf of the Commonwealth, execute or accept any conveyance or document, or enter into any covenant or agreement, and do any thing necessary, for the purpose of effecting the acquisition of the land.^(c)

Division 3.—Acquisition by Compulsory Process.

Approval of
acquisition.
No. 13, 1901,
s. 6 (1).

15.—(1.) The Governor-General may direct that any land^(a) may be acquired by the Commonwealth from the owner by compulsory process.

Notification
of acquisition.
Ib. s. 6 (2).

(2.) The Governor-General may thereupon, by notification published in the *Gazette*, declare that the land has been acquired under this Act for the public purpose therein expressed.

Notification to
be laid before
Parliament.
Ib. s. 6 (3).

(3.) A copy of the notification shall be laid before both Houses of the Parliament within fourteen days after its publication in the

(a) Held by Knox *C.J.*, Isaacs and Starke *J.J.*, and, excepting that he dissented as to the inclusion of royal metals, Higgins *J.*, that unalienated Crown land and land granted by the Crown with reservations vest in the Commonwealth for an absolute and unrestricted estate in fee simple, freed and discharged from all reservations, rights, royalties, conditions and obligations of any kind whatsoever. *Commonwealth v. New South Wales*, (1923) 33 C.L.R. 1 ; 29 A.L.R. 401. Held by the Supreme Court of New South Wales that the land is acquired as property and not as Commonwealth territory and that therefore the Metropolitan District Court had not lost jurisdiction to hear an action for tort in respect of an act committed on land so acquired by the Commonwealth. *Kingsford Smith Air Services Ltd. v. Garrison*, (1938) 55 W.N. (N.S.W.) 122.

(b) As to whether this sub-section is confined to existing leases, see *R. v. Registrar of Titles for Victoria* ; *Ex parte The Commonwealth*, (1915) 20 C.L.R. 379 ; 21 A.L.R. 435.

(c) Held by the High Court that a memorandum of transfer to the Commonwealth of any land required for a public purpose is not liable to stamp duty under a State Act. *Commonwealth v. New South Wales*, (1906) 3 C.L.R. 807 ; 12 A.L.R. 541. But held later that such duty is payable where, pursuant to s. 63, the Commonwealth is the transferor. *Commonwealth v. State of New South Wales*, (1918) 25 C.L.R. 325 ; 24 A.L.R. 253.

NOTE.—Section 2 of the *Lands Acquisition Act* 1912 (assented to 24th December, 1912) reads :—

“ 2. Any notification by the Governor-General made before the commencement of this Act, and purporting to be in pursuance of the *Lands Acquisition Act* 1906, and published in the *Gazette*, and declaring that any land therein mentioned has been acquired by the Commonwealth for Commonwealth purposes, shall be deemed to be sufficient for the purposes of that Act, and the lands specified therein shall be deemed to have been vested in the Commonwealth in accordance with s. 16 of that Act as from the date of the publication of the notification in the *Gazette*. ”

Gazette if the Parliament is then sitting, and if not then within fourteen days after the next meeting of the Parliament.

16.—(1.) Upon the publication of the notification in the *Gazette* the land described therein shall, by force of this Act—

Effect of notification to vest land in Commonwealth.

(a) be vested in the Commonwealth ; and

(b) be freed and discharged from all trusts, obligations, estates, interests, contracts, licences, charges, rates, and easements,

No. 13, 1901, s. 7.

to the intent that the legal estate therein, together with all rights and powers incident thereto or conferred by this Act, shall be vested in the Commonwealth.^(a)

(2.) Where the land described in the notification is Crown land of a State or is by virtue of any law of a State vested in any person on behalf of the Crown or for any public purpose, the notification shall also have the effect of cancelling any dedication or reservation to which the land was subject at the date of the publication of the notification.

Effect of notification in case of Crown land.
Ib. s. 8.

17. Upon the publication of the notification in the *Gazette*, the estate and interest of every person entitled to the land specified in the notification, and the title of the State to any Crown land specified in the notification, shall be taken to have been converted into a claim for compensation.

Conversion of estates and interests into claim for compensation.
Ib. s. 11 (1).

18.—(1.) Forthwith after the publication of the notification in the *Gazette*, the Minister shall cause a copy of the notification, together with a plan of the land, to be served upon the owners of the land or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known places of abode.

Notice to owner.
CL. ib. s. 13 (1), (2).

(2.) If the owner cannot after diligent inquiry be found, a copy of the notification, together with a plan of the land, shall be left with the occupier of the land, or if there is no occupier, shall be affixed upon some conspicuous part of the land.

19. Where the land is Crown land of a State which is dedicated for a public park or for the recreation or amusement of the public, and in all other cases except the following :—

Parliament may declare notification to be void.
Ib. s. 12 (1).

(a) where moneys have been appropriated out of the Consolidated Revenue Fund for or towards the purpose for which the land was acquired ; or

(b) where the Governor-General has sanctioned the construction or carrying out of the work or undertaking in respect of which the land was acquired, and public funds are legally available for the purpose ; or

^(a) See footnote (a) on previous page.

- (c) where the Minister certifies under his hand that the estimated value of the land does not exceed One hundred pounds.

either House of the Parliament may, within thirty days after a copy of the notification has been laid before it, pass a resolution that the notification shall be void and of no effect, and thereupon the notification shall be void and of no effect, and the land shall be deemed not to have been vested in the Commonwealth, and the owner of the land shall be entitled to compensation for any damage which he may have suffered by reason of the notification, or of the exercise of the powers of the Minister consequent thereupon.

Registration of
notification.
No. 13, 1901,
s. 61.

Amended by
No. 45, 1934,
s. 2 (2.), 4th
Schedule.

20. If a copy of the notification in the *Gazette*, certified under the hand of the Attorney-General, is lodged with the Registrar-General or Registrar of Titles or other proper officer of the State or part of the Commonwealth in which the land is situated, he may register it in the register and in the manner as nearly as may be in which dealings with land are registered, and may deal with and give effect to the notification as if it were a grant or conveyance or memorandum or instrument of transfer of the land to the Commonwealth duly executed under the laws in force in that State or part of the Commonwealth.^(a)

PART III.—POWERS IN RELATION TO LANDS.

Power to
examine lands.
Ib. s. 49 (1).

21. The Minister and all persons authorized by him may—

- (a) enter upon any land, and
- (b) make surveys, take levels, sink pits, and examine the soil, and
- (c) do any thing necessary for ascertaining the suitability of the land for any public purpose.

Power to
occupy lands
temporarily.
Ib. s. 53 (1).

22. Where any land has been purchased or taken under this Act for any public purpose, the Minister and all persons authorized by him may enter any land—

- (a) being within a distance of two hundred yards from the nearest boundary of the land so purchased or taken; and
- (b) not being a garden, orchard, or plantation, attached or belonging to a house, or a park, planted walk, avenue, or ground ornamentally planted; and
- (c) not being nearer to the dwelling house of the owner of the land than a distance of five hundred yards,

and may occupy the lands so entered so long as may be necessary for the purposes of any works connected with the carrying out of the public purpose.

^(a) Prior to the passing of the *Statute Law Revision Act 1934* the word "may" (twice occurring) read "shall". Held by the High Court (Knox C.J., Isaacs, Gavan Duffy and Starke J.J.; Higgins J. dissenting) that the section was *ultra vires* the Parliament. *Commonwealth v. New South Wales*, (1923) 33 C.L.R. 1; 29 A.L.R. 401.

23.—(1.) The Minister and all persons authorized by him may, in connexion with the carrying out of any public purpose, exercise on or in relation to any land occupied by him under this Part of this Act, all or any of the following powers :—

Power to take materials, make roads, &c., on adjacent lands.

No. 13, 1901, s. 53 (1) (2).

- (a) to take clay, stone, gravel, earth, timber, wood, or material or things required for carrying out the public purpose ;
- (b) to make cuttings or excavations ;
- (c) to deposit clay, stone, gravel, earth, timber, wood, or material ;
- (d) to manufacture goods or articles required for carrying out the public purpose ;
- (e) to erect workshops, sheds, and buildings of a temporary character ;
- (f) to make roads.

(2.) The power to take clay, stone, or earth shall not be exercised in respect of any stone or slate quarry brickfield or other like place commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same.

24.—(1.) Where the Minister or any person authorized by him enters any land and temporarily occupies it under the powers conferred by this Act, the Commonwealth shall pay to the owner or occupier of the land, as the case requires, a rent for the occupation of the land.

Rent for temporary occupation.
ib. s. 55.

(2.) The amount of rent and times of payment shall be settled by agreement between the Minister and the owner or occupier or, if they cannot agree, then, on the application of the Minister, by any Court having jurisdiction to entertain an action for compensation under this Act.

(3.) Nothing in this section shall take away the right of any person to compensation for damage sustained by reason of the exercise of any power under this Part of this Act.

25. The Minister shall, if required by the owner or occupier of the land so to do, separate any land occupied in pursuance of this Part of this Act from any adjoining land by a sufficient fence, with such gates as may be necessary for the convenient occupation of the land.

Fencing of lands.
Cf. ib. s. 54.

PART IV.—COMPENSATION.

Division 1.—Right to Compensation.

26. Where any land (other than Crown land) is acquired by compulsory process, the owner of the land shall, if deprived of

Right to compensation.
Cf. ib. ss. 9 (1), 11 (2).

the land in whole or in part, be entitled to compensation under this Act.^(a)

Compensation
for Crown
land.

No. 13, 1901,
ss. 9 (2), 45.

27.—(1.) Where any Crown land is acquired by compulsory process, the State shall be entitled to compensation under this Act.

(2.) The compensation shall be estimated as if the State were the proprietor of an estate in fee simple^(b) in the land, subject to any estate or interest which any person had in the land at the time of its acquisition by the Commonwealth.

(3.) The State shall not be entitled to compensation in respect of the loss of any rights of dominion, taxation, or revenue.

(a) Held by the High Court in an action for compensation under the *Property for Public Purposes Acquisition Act* 1901 (which has been repealed by this Act) that in assessing the value of land resumed under that Act the basis of valuation should be the price that a willing purchaser would at the date in question have had to pay to a vendor not unwilling, but not anxious, to sell. *Spencer v. Commonwealth*, (1907) 5 C.L.R. 418; 14 A.L.R. 253. This decision was applied to the provisions of this Act by the High Court in *Minister of State for Home Affairs v. Rostron*, (1914) 18 C.L.R. 634. *Per Isaacs and Rich JJ.* (quoting from the judgment of Lord Buckmaster in *Fraser v. City of Fraserburgh*, [1917] A.C. 187, at p. 194): "The value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired." *Minister for Home and Territories v. Lazarus*, (1919) 26 C.L.R. 159, at p. 165; 25 A.L.R. 200. This dictum was later applied by the High Court (*Powers J.*) in holding that where water was taken by the Commonwealth from land for the purposes of a railway the compensation should be determined on the value of the water to the sellers (irrespective of whether they were or were not using the water) and not by the special value of the water to the Commonwealth. Previous decisions, both English and Australian, on the question of compensation reviewed. *In re Teesdale Smith and Minister for Home and Territories*, (1920) 28 C.L.R. 513. Principles to be considered in estimating the value of buildings stated by the Supreme Court of Queensland, *Marks v. Commonwealth*, 1915 St. R. Qd. 135; 1915 Q.W.N. 22.

Held by the High Court (*Dixon J.*) that compensation is to be assessed at the value to the dispossessed owner. This is not necessarily the market value; for example, where the market value is restricted by such provisions as the National Security (Landlord and Tenant) Regulations, forbidding the taking of a premium in association with the transfer of a lease and limiting the rent payable, subject to a determination of the Fair Rents Board, to that payable on a prescribed date. *The Moreton Club v. Commonwealth*, (1948) 77 C.L.R. 253.

The effect of statutory controls of land sales upon the assessment of compensation, on compulsory acquisition of land, considered by the Supreme Court of South Australia (*Ligertwood J.*) in *W. H. Burford and Sons Ltd. v. Commonwealth*, (1949) S.A.S.R. 310; [1950] A.L.R. 308 and by the same Court (*Abbott J.*) in *Ellis and Others v. Commonwealth*, (1950) S.A.S.R. 30.

For a discussion as to the compensation payable to a lessee by reason of the cost to which he is put in respect of the removal and reinstatement of his business in new premises for which he had to pay an additional rent and which were too large for his present business and less suitable than the old premises, see *per* the Supreme Court of New South Wales (*Street J.*) in *Reo Motors Pty. Ltd. v. Commonwealth*, (1949) 66 W.N. (N.S.W.) 170.

Lessees of a room in a large office building situated in a busy area on the business of a coffee lounge which was patronized by occupants of, and persons using, the building. On the acquisition by the Commonwealth of the whole building the lessees became monthly tenants of the Commonwealth for some months and then went out of possession. The lessees claimed compensation for the interest of which the resumption had deprived them. Held by the High Court that compensation for the interest resumed should be based on the fact that the goodwill was local, not personal, and therefore attached to the land. *Commonwealth v. Reeve*, (1949) 78 C.L.R. 410; [1949] A.L.R. 561; 23 A.L.J. 336. The principles of assessing compensation applicable where a tenant's interest in the land resumed is taken or extinguished discussed. *Ibid.*

For observations on the value of the goodwill of a business carried on in a room leased on a monthly tenancy where the whole premises are compulsorily acquired see *Reeve v. The Commonwealth*, (1948) 78 C.L.R. 410; [1949] A.L.R. 561; 23 A.L.J. 336.

The basis of determining compensation was considered by the Supreme Court of South Australia (*Mayo J.*) in *Wilson Bros. Pty. Ltd. v. The Commonwealth*, 1948 S.A.S.R. 61, with particular reference to the acquisition of land with a special value to the owner by reason of its suitability as a site for a factory.

Evidence as to offers to buy or sell is not admissible to prove the value of the land acquired. *Wilson Bros. Pty. Ltd. v. The Commonwealth*, (*supra*).

(b) *Per Isaacs J.*: The words "estate in fee simple" in this section denote quantity of interest and have no reference to the "fee" denoting feudal tenure. *Commonwealth v. New South Wales*, (1923) 33 C.L.R. 1, at pp. 41-42; 29 A.L.R. 401, at p. 414.

28.^(a)—(1.) In determining the compensation under this Act, Compensation, how estimated. regard shall be had (subject to this Act) to the following matters :— Cf. No. 13, 1901, s. 19.

- (a) The value^(b) of the land acquired ;
- (b) The damage caused by the severance of the land acquired from other land of the person entitled to compensation ; and
- (c) The enhancement or depreciation in value of other land adjoining the land taken or severed therefrom of the person entitled to compensation by reason of the carrying out of the public purpose for which the acquired land was acquired.^(c)

(2.) The enhancement or depreciation in value shall be set off against or added to the amount of the value and damage specified in paragraphs (a) and (b) of sub-section (1.) of this section.

29.^(a)—(1.) The value of any land acquired by compulsory Value of land, how estimated. process shall be assessed as follows :—^(d) Ib. s. 19.

- (a) In the case of land acquired for a public purpose not authorized by a Special Act, according to the value of the land on the first day of January last preceding the date of acquisition ; and
- (b) In the case of land acquired for a public purpose authorized by a Special Act, according to the value of the land on the first day of January last preceding the first day of the Parliament in which the Special Act was passed.^(e)

(2.) The value of the land shall be assessed without reference to any increase in value arising from the proposal to carry out the public purpose.

30. If any person having a greater interest than as a tenant at will of any land acquired by compulsory process makes a claim for compensation in respect of any unexpired term or interest Production of lease where lessee claims greater interest than as tenant at will.

(a) See footnote (c) to the long title, *supra*.

(b) Held by the High Court (Williams J.) that in determining the value of the land for the purposes of this paragraph regard must not be had to prospective loss of income upon re-investment of the former owner's capital. *Cunningham v. The Commonwealth*, (1948) 79 C.L.R. 424 ; [1948] A.L.R. (Vol. 2) 385.

(c) Held by the Supreme Court of Queensland (Cooper C.J.) that rents received by the plaintiff, with the concurrence of the Commonwealth, after the acquisition by the Commonwealth may not be set off against the value of the land. *Marks v. Commonwealth*, 1915 St. R. Qd. 135 ; 1915 Q.W.N. 22. The Commonwealth acquired certain land adjacent to the proposed route of a railway for the purpose of obtaining water therefrom. Held by the High Court (Powers J.) that s. 28 (1) (c) refers not merely to the enhanced value to adjoining lands by sinking wells but by reason of the public purpose for which the land was acquired, viz., the construction and use of a railway. *In re Teesdale Smith and Minister for Home and Territories*, (1920) 28 C.L.R. 513.

(d) See footnote (a) to s. 26, *supra*.

(e) In regard to the date as at which the value of land acquired by compulsory process for the purposes of the Kalgoorlie to Port Augusta Railway is to be assessed, see *Kalgoorlie to Port Augusta Railway Act 1911-1912*, s. 19. In regard to such date in respect of land acquired for public purposes in the Territory for the Seat of Government, see *Seat of Government Acceptance Act 1909-1938*, s. 10 (*infra*). In regard to such date in respect of land acquired for public purposes in the Northern Territory, see *Northern Territory (Administration) Act 1910-1949*, s. 9 (*infra*).

Ib. s. 44.

under any lease, the Attorney-General may, by demand in writing, require him to produce the lease in respect of which the claim is made, or the best evidence thereof in his power.

If the demand is not complied with within twenty-one days after service thereof on the claimant, he shall be deemed to be a tenant holding from year to year, and shall not be entitled to further compensation than as such a tenant.

Compensation
for entry on
and occupation
of land.

No. 13, 1901,
ss. 49 (2), 55
(a) (e).

31.—(1.) Where, by reason of the execution of any powers under Part III. of this Act, the owner or occupier of any land suffers damage he shall be entitled to compensation under this Act.

(2.) Where the Minister or any person authorized by him enters into the temporary occupation of any land, the compensation shall include—

- (a) damage of a temporary as well as of a permanent character ; and
- (b) the value of all clay, stone, gravel, earth, timber, wood, materials, or things taken for carrying out the public purpose.^(a)

Division 2.—Claims for Compensation.

Claim for
compensation.
Ib. s. 13 (3).

Substituted by
No. 60, 1936,
s. 2.

32.—(1.) Any State or person claiming to be entitled to compensation under this Act may make a claim for compensation.

(2.) A claim for compensation shall—

- (a) be in accordance with such of the prescribed forms as is applicable to the case ;
- (b) set forth the total amount of compensation claimed and the amount (if any) attributable to each item in that prescribed form ; and
- (c) be served on the Minister.

(3.) A claim for compensation shall be deemed to be made when it has been served on the Minister.

Time for
making claim
for
compensation.
Ib. s. 13 (3).

33.—(1.) Except as allowed in sub-section (2) of this section, a claim for compensation shall be made within the following times :—

- (a) Where the claim is for land acquired, within one hundred and twenty days after the publication of the notification of acquisition ;
- (b) Where the claim is for damage suffered by reason of the exercise of any powers under Part III., within one hundred and twenty days after the completion of the acts in respect of which compensation is claimed.

(a) Held by the High Court (Powers J.) that where water was taken from land by the Commonwealth for the purposes of a railway, the compensation should be determined by the value of the water to the sellers (irrespective of whether they were or were not using the water) and not by the special value of the water to the Commonwealth. *In re Teesdale Smith and Minister for Home and Territories*, (1920) 28 C.L.R. 513.

(2.) The Minister, if he is satisfied that any claim for compensation is *bona fide*, may allow such further time for making it (whether the time for making it has expired or not) as he thinks just, and it may be made accordingly.

34.—(1.) Within one hundred and twenty days after a claim for compensation has been made, the Minister shall cause the claim to be examined and a report made to him as to the value of the land of the claimant and the amount of damage to which the claimant is entitled.

Procedure on claim for compensation being received.
Cf. No. 13,
1901, s. 14.

(2.) After the receipt of the report, the Minister shall—

Substituted by
No. 60, 1936,
s. 3.

- (a) notify the claimant that he admits the claim for compensation ;
- (b) notify the claimant that he admits the claim in respect of such items (if any) in the prescribed form as are specified in the notification, and that, in respect of each item in the prescribed form not so admitted, he offers such amount (if any) as is specified in the notification ; or
- (c) notify the claimant that he disputes the claim for compensation.

(3.) The claimant shall, within sixty days after the receipt of an offer by the Minister in pursuance of paragraph (b) of the last preceding sub-section, by notice in writing notify the Minister whether he does or does not accept the offer.

Substituted by
No. 60, 1936,
s. 3.

(4.) Where the Minister—

Inserted by
No. 60, 1936,
s. 3.

- (a) notifies the claimant in accordance with paragraph (a) of sub-section (2.) of this section—the compensation claimed shall be paid to the claimant on compliance with this Act ; or
- (b) notifies the claimant in accordance with paragraph (b) of sub-section (2.) of this section—the whole amount of the compensation shall be paid to the claimant, on compliance with this Act, if he accepts the amounts offered by the Minister as specified in the notification.

35. If—

- (a) the Minister offers the claimant an amount in satisfaction of the claim for compensation, and the claimant does not within sixty days after the receipt of the offer accept it ; or
- (b) the Minister notifies the claimant that he disputes the claim for compensation,

When claim becomes a disputed claim for compensation.

the claim for compensation shall be a Disputed Claim for Compensation.

Division 3.—Determination of Disputed Claims for Compensation.

Methods of
determining
disputed
claims.

36. Subject to this Act, a disputed claim for compensation may be determined as follows :—

- (a) By agreement between the Minister and the claimant ;
or
- (b) By an action for compensation by the claimant against the Commonwealth ; or
- (c) By a proceeding in a Federal or State Court on the application of the Minister.^(a)

Action for
Compensation.
Cf. No. 13,
1901, ss. 15,
16, 17.

37.—(1.) An action for compensation^(a) may be instituted by the claimant^(b) against the Commonwealth in the High Court or in any State Court of competent jurisdiction,^(c) and, subject to the following provisions, the action shall be heard and determined in the same manner as ordinary actions :—^(d)

- (a) The action shall be tried without a jury ;
- (b) The Court shall have no power to direct a reference to arbitration unless by consent of parties ;
- (c) If the Court is of opinion that the action might have been brought in a lower Court, costs, if awarded to the claimant, shall only be allowed on the scale applicable to costs in the lower Court, unless the Court certifies that special circumstances existed which made it proper to institute the action in the higher Court ;
- (d) The costs shall be in the discretion of the Court.

Added by
No. 60, 1936,
s. 4.

(2.) The plaintiff shall, in his statement of claim, declaration, or other like document, specify the total amount of compensation claimed and the amount (if any) attributable to each item in the claim made in pursuance of section thirty-two of this Act.

Added by
No. 60, 1936,
s. 4.

(3.) When an action for compensation has been instituted in respect of the acquisition of any parcel of land, the Court may, on the application of the Commonwealth, by order direct any other person who has claimed compensation in respect of the acquisition of that parcel of land, or who appears to have had, at the date of acquisition, an estate or interest in that parcel of land, to join as a plaintiff in the action within a time specified in the order.

(a) As to the principles applied by the Courts in assessing the value of land for the purpose of compensation, see footnote (a) to s. 26, *supra*.

(b) Held by the Supreme Court of Tasmania that on an application for compensation the question of beneficial interest in the land is not before the Court and that the action could be maintained by trustees. Their Honours suggested that in case of doubt the Commonwealth could pay the compensation into Court and leave the beneficiaries to get it out. *Seal and Others v. Commonwealth*, (1919) 15 Tas. L.R. 29.

(c) Held by the High Court that "State Court of competent jurisdiction" means a State Court having jurisdiction as to locality as well as to subject matter. Where, therefore, land acquired by the Commonwealth was previously situated in New South Wales but had, by virtue of the acquisition, become Federal Territory, the High Court held that the Supreme Court of New South Wales had no jurisdiction to entertain the action. *Commonwealth v. Woodhill*, (1917) 23 C.L.R. 482 ; 23 A.L.R. 325 ; 18 S.R. (N.S.W.) 110 ; 34 W.N. (N.S.W.) 173.

(d) Quære *per Isaacs J.*, whether on appeal to the High Court from the Supreme Court of New South Wales the High Court may do what the Judge of the Supreme Court might have done. *Hazeldell Ltd. v. Commonwealth*, (1924) 34 C.L.R. 442.

(4.) If any person so ordered fails to join as a plaintiff in the action within the time specified in the order, he shall be absolutely debarred from thereafter instituting any action against the Commonwealth for compensation in respect of the acquisition of that parcel of land.

Added by
No. 60, 1936,
s. 4.

(5.) When, by reason of the joinder of a new plaintiff or otherwise, the total compensation claimed in an action for compensation in a County Court, District Court, or Local Court exceeds the amount up to which that Court has jurisdiction, the action shall, on the application of the Commonwealth—

Added by
No. 60, 1936,
s. 4.

(a) to the High Court, be removed into the High Court; or

(b) to the Supreme Court, be removed into the Supreme Court,

and shall thereafter proceed in the court to which it is removed as if it had been instituted in that court.

(6.) If, in relation to the acquisition by the Commonwealth of any parcel of land, an action for compensation has been instituted in the High Court, and an action for compensation has also been instituted in another court, the action in that other court shall, on the application of the Commonwealth to the High Court, be removed into the High Court.

Added by
No. 60, 1936,
s. 4.

(7.) The proceedings in the action, and such documents (if any) relating thereto as are filed as of record in the court in which the action was instituted, shall be transmitted to the Registry of the High Court in the State or Territory in which the first-mentioned court is situated, or, if there is no such Registry, to the Principal Registry of the High Court.

Added by
No. 60, 1936,
s. 4.

(8.) The provisions of sections forty-one and forty-three of the *Judiciary Act 1903-1934* shall apply in relation to any action which is removed into the High Court in pursuance of sub-section (6.) of this section.

Added by
No. 60, 1936,
s. 4.

(9.) On the trial of the action the Court shall—

Added by
No. 60, 1936,
s. 4.

(a) determine the total amount of compensation which would be payable by the Commonwealth to the plaintiff for the parcel of land acquired if no amount for enhancement in value were set off in accordance with the provisions of sub-section (2.) of section twenty-eight of this Act;

(b) determine the amount (if any) attributable to each item in the prescribed form of claim;

(c) determine the amount of any enhancement in value to be set off in accordance with the provisions of sub-section (2.) of section twenty-eight of this Act; and

(d) where two or more persons are entitled to share in the compensation, determine the amount payable to each person and the manner in which it shall be paid.

Determination
of compensa-
tion on
application of
the Minister.

38.—(1.) If within six months after a claim for compensation became a disputed claim for compensation—

- (a) it has not been determined by agreement between the Minister and the claimant; or
- (b) it has not been referred to arbitration; or
- (c) no process in an action for compensation by the claimant against the Commonwealth to determine the claim has been served on the Minister,

the Minister may apply to the High Court, or to a State Court in which an action for compensation might be instituted, to determine the claim.

Substituted by
No. 60, 1936,
s. 5.

(2.) The Court shall, after such notice to such persons as it directs, hear the application, and—

- (a) determine the total amount of compensation which would be payable by the Commonwealth for the land acquired if no amount for enhancement in value were set off in accordance with the provisions of sub-section (2.) of section twenty-eight of this Act;
- (b) determine the amount (if any) attributable to each item in the prescribed form of claim;
- (c) determine the amount of any enhancement in value to be set off in accordance with the provisions of sub-section (2.) of section twenty-eight of this Act; and
- (d) where two or more persons are entitled to share in the compensation, determine the amount payable to each person and the manner in which it shall be paid.

Inserted by
No. 60, 1936,
s. 5.

(2A.) Where there are two or more claims in respect of the same parcel of land the claims shall be dealt with in the same application.

(3.) The Court may make such order as to costs as it thinks just.^(a)

Substituted by
No. 60, 1936,
s. 5.

(4.) The determination of the Court shall be final and conclusive and without appeal, and shall be binding upon all persons having any right to compensation in respect of the acquisition of the parcel of land, whether those persons are represented before the Court on the hearing of the application or not.

Division 4.—Determination of Compensation where no Claim made.

Procedure to
determine
compensation
where no
claim made.

39.—(1.) Where any land has been acquired by compulsory process, and no claim for compensation has been made within six months after the right to make the claim arose, and no application to the Minister for further time to make a claim has been granted or is pending, or if, such an application having been granted, no

(a) Held by the High Court (Rich J.) that where necessary the Taxing Officer may allow a fee to counsel to view the land. *Minister for Home Affairs v. Beale*, (1916) 22 C.L.R. 98; 22 A.L.R. 301.

claim has been made within the time limited by the Minister, the Minister may apply to a Court to determine the amount of compensation payable.

(2.) The application shall be made to the High Court or to the Supreme Court if the Minister considers the compensation awarded will amount to more than Five hundred pounds, but shall be made to a County, District, or Local Court if the Minister considers the compensation awarded will not amount to more than Five hundred pounds.

(3.) A County, District, or Local Court hearing any application under this section shall be constituted or presided over by a Judge, or a Police, Stipendiary, or Special Magistrate.

(4.) The Court shall, after such notice to such persons as it directs, hear the application, and—

Substituted by
No. 60, 1936,
s. 6.

- (a) determine the amount of compensation which would be payable by the Commonwealth for the land acquired if no amount for enhancement in value were set off in accordance with the provisions of sub-section (2.) of section twenty-eight of this Act ;
- (b) determine the amount of any enhancement in value to be set off in accordance with the provisions of sub-section (2.) of section twenty-eight of this Act ; and
- (c) where two or more persons are entitled to share in the compensation, determine the amount payable to each person and the manner in which it shall be paid.

(5.) The determination of the Court shall be final and conclusive and without appeal, and shall be binding on all persons having any right to compensation in respect of the acquisition of the land, whether represented before the Court on the hearing of the application or not.

Division 5.—Payment of Compensation.

40.^(a) Compensation shall bear interest at the rate of three per centum per annum from the date of the acquisition of the land, or the time when the right to compensation arose, until payment thereof is made to the claimant or until the amount thereof has been deposited in the Treasury.

Interest on
compensation.
Cf. No. 13,
1901, s. 20 (2).

Provided that, where the compensation awarded in an action for compensation, or determined in a judicial proceeding, is not more than the amount offered by the Minister in satisfaction of the claim for compensation, the compensation shall only bear interest to the date when the offer of the Minister is communicated to the claimant.

41. The compensation payable to a State in respect of any land acquired under this Act may, at the option of the Governor-General,

Payment of
compensation
to a State.

(a) See footnote (c) to the long title, *supra*.

Cf. ib. s. 46.

be paid in any of the following modes, that is to say—

- (a) by payment to the State of the amount of the compensation ; or
- (b) by the Commonwealth becoming responsible to the State for its liability for principal and interest in respect of such a part of the public debt of the State as is the actuarial equivalent of a three and one-half per cent. loan of the same currency and of the amount of the compensation.

Payment of
compensation
to claimant.
Cf. No. 13,
1901, s. 20 (1).

42. Any claimant or person entitled to any compensation shall, upon application to the Minister and upon making out to the satisfaction of the Attorney-General a title to the land in respect of which the compensation is payable, and upon executing such conveyances or assurances as the Attorney-General directs, be entitled to receive payment of the compensation.

Deposit of
compensation
in the
Treasury.
Ib. s. 23.

43.—(1.) If at the expiration of three months after the determination of the amount of compensation—

- (a) no application has been made for payment of the compensation ; or
- (b) an application has been made for payment of the compensation, but the applicant has, by reason of some default or delay on his part or by reason of failure on his part to make title, not received payment of the compensation,

the Minister may deposit the amount of compensation in the Treasury.

(2.) At the time of the depositing of the amount of compensation, the Minister shall also deposit in the Treasury a statement of the material facts relating to the matter.

Investment of
compensation
deposited in
Treasury.
Cf. ib. s. 24 (2).

44. The Treasurer may, if he thinks fit, and at the risk of the person entitled, invest the compensation deposited with him in the purchase of Government securities of the Commonwealth or of a State, and any interest received in respect thereof, less a fair charge to reimburse the Commonwealth for the costs of investment and management, shall be deemed to be part of the compensation.

Payment out of
compensation.
Cf. ib. s. 24.

45.—(1.) Any compensation deposited in the Treasury may be paid to any claimant—

- (a) upon the direction of the Attorney-General ; or
- (b) upon an order of the High Court or the Supreme Court, and upon the certificate of the Attorney-General that the claimant has complied with this Act to his satisfaction.

(2.) No direction shall be given by the Attorney-General under this section until the claimant has produced to him evidence of

title and has executed conveyances of his title or interest to the Commonwealth to the satisfaction of the Attorney-General.

(3.) No certificate under this section shall be given by the Attorney-General until the claimant has executed conveyances of his title or interest to the Commonwealth to the satisfaction of the Attorney-General.

(4.) In this section "compensation deposited in the Treasury" means compensation so deposited or the securities in which it has been invested or the proceeds of those securities together with any interest thereon which is deemed part of the compensation.

46. The High Court or the Supreme Court may, upon the application of any person claiming to be entitled to any compensation deposited in the Treasury and on proof of his title to its satisfaction, make an order that the person claiming is entitled to the compensation, and may make such other order in the premises as it thinks fit.

Order that claimant is entitled to compensation deposited in Treasury.
Cf. No. 13, 1901, s. 25.

47. All payments and deposits made on behalf of the Commonwealth by virtue of this Act shall be good and valid discharges to the Commonwealth, which shall not be bound to see to the application of any money so paid or deposited, or to see to the performance of any trusts.

Payments to be a good discharge.
Ib. s. 29.

PART V.—MORTGAGES, ENCUMBRANCES, AND LEASES.

Division 1.—Mortgages.

48.—(1.) If any land acquired under this Act by agreement is subject to a mortgage, the Minister may pay off the mortgage.

Power to redeem mortgages.
Ib. s. 30.

(2.) In order thereto the Minister shall give notice to the mortgagee that he intends at or before the expiration of six months from the date of the notice to pay off the mortgage and to pay to the mortgagee the amount to which he is entitled under this section.

(3.) The amount to which a mortgagee is entitled under this section shall be—

- (a) the principal secured by the mortgage ; and
- (b) the interest due at the date of the notice and six months additional interest ; and
- (c) the costs and charges (if any) due to the mortgagee under the mortgage ; and
- (d) the mortgagee's costs of discharging the mortgage and conveying his interest in the land to the Commonwealth ; and
- (e) in case the mortgage is paid off prematurely, a sum to meet the costs of reinvestment of the principal ; and
- (f) in case the mortgage is paid off prematurely and the rate of interest secured by the mortgage is higher than the interest which can reasonably be expected to

be obtained on the reinvestment, regard being had to the then current rate of interest, a sum to meet the loss sustained by the mortgagee by reason of the premature repayment of the principal.

(4.) The mortgagee shall thereupon, and upon payment or tender to him, within the time specified in the notice, of the amount to which he is entitled under this section, execute a discharge of the mortgage and any conveyance necessary to convey his interest in the land to the Commonwealth.

Execution of deed poll where mortgagee fails to convey.
No. 13, 1901, s. 31.

(5.) If a mortgagee fails to execute a discharge of the mortgage and any conveyance necessary to convey his interest in the land to the Commonwealth as required by this section, the Minister may assess the amount to which the mortgagee is entitled, and may deposit the amount in the Treasury with a statement of the facts relating to the deposit.

(6.) After the deposit has been made, the Attorney-General may, for and on behalf of the Commonwealth, execute a Deed Poll containing a description of the land in respect of which and describing the circumstances under which the deposit was made, and the names of parties concerned, and may cause the Deed Poll to be registered.

(7.) Upon the registration of the Deed Poll the land mentioned therein shall be freed and discharged from the mortgage, and all interest of the mortgagee in the land shall vest in the Commonwealth.

Rights of mortgagee on acquisition of land.

49. Where any land acquired by compulsory process is at the time of acquisition subject to a mortgage, the mortgagee may—

- (a) join with the mortgagor in making a claim for compensation ; or
- (b) make an independent claim for compensation ; or
- (c) by notice to the Minister, waive his rights to compensation.

Determination of amount of compensation.

50. Where any land acquired by compulsory process is at the time of acquisition subject to a mortgage, the amount of compensation shall be determined by agreement between the Minister and the mortgagor and the mortgagee.

In default of agreement the claims for compensation shall be determined in the same manner as disputed claims for compensation.

Compensation to a mortgagee.

51. The compensation to a mortgagee shall be estimated in accordance with the following principles :—

- (a) the mortgage shall be taken to be discharged as from the date of the acquisition of the land, to the extent to which the compensation payable in respect of the land is sufficient to satisfy the mortgage :

- (b) the mortgagee shall be entitled to interest at the rate secured by the mortgage for six months after the date of the acquisition of the land on so much of the principal as the compensation payable in respect of the land would, after payment of back interest and charges, be sufficient to satisfy :
- (c) the mortgagee shall also be entitled to the costs of discharging the mortgage and of conveying his interest in the land to the Commonwealth :
- (d) the mortgagee shall also be entitled, if the principal was not repayable (with or without notice) at the date of the acquisition of the land, to the costs of reinvesting any principal paid off, and, should a loss of interest reasonably be expected, regard being had to the rate of interest secured by the mortgage and the rate of interest likely to be obtained on the reinvestment, to compensation for loss of interest.

52.—(1.) The compensation in respect of the land shall be charged with the mortgage unless the mortgagee has waived his rights to compensation. Mortgagee to have a charge on compensation.

(2.) Upon payment or tender of the compensation or any part of it to the mortgagee, he shall execute a discharge of the mortgage to the extent to which the amount paid or tendered is sufficient to satisfy it.

(3.) The rights and remedies of the mortgagee shall not be affected as regards the remainder, if any, of the mortgage debt, or as regards any other land subject to the mortgage.

53. Where the mortgagee has waived his rights to compensation the acquisition of the land acquired shall not affect the mortgage as regards any other land subject thereto, or as regards his rights and remedies against the mortgagor. Rights of mortgagee not affected in certain cases.

Division 2.—Encumbrances.

54. If a part only of any land subject to any encumbrance is acquired under this Act, the apportionment of the encumbrance may be settled by agreement between the party entitled to the encumbrance, the owner of the land subject to the encumbrance, and the Commonwealth, or in default of agreement by the High Court or the Supreme Court, on the application of the Minister. Apportionment of charges where part of land only taken. Cf. No. 13, 1901, s. 38.

55.—(1.) If any land acquired under this Act, whether by agreement or by compulsory process, was, immediately prior to its acquisition, subject to any encumbrance jointly with any other land, and the land so acquired is released by virtue of this Act or any release or instrument from the encumbrance, then, subject to any agreement between the parties, the other land shall continue Encumbrance to continue as to land not taken. Cf. ib. s. 40.

to be subject to the whole of the encumbrance or part thereof as the case requires, and the party entitled to the encumbrance shall have the same rights and remedies in respect of the land continuing subject to the encumbrance or part thereof as he previously had in respect of the whole of the land.

(2.) If any encumbrance is released in pursuance of this Act, the Attorney-General shall, upon the deed or instrument creating or transferring the encumbrance being tendered to him for the purpose, sign a memorandum indorsed on the deed or instrument specifying the part of the land originally subject to the encumbrance which has been acquired under this Act, and—

- (a) how much, if any, of the encumbrance has been released and how much continues payable ; or
- (b) that the remaining land is thenceforward to remain exclusively charged with the whole of the encumbrance.

(3.) The memorandum shall be made and executed at the expense of the Commonwealth, and shall be *prima facie* evidence of the facts stated therein.

Division 3.—Leases.

Apportionment of rent where part of leased land acquired.
Cf. No. 13, 1901, s. 41.

56.—(1.) If a part of any land comprised in a lease for a term of years unexpired is acquired under this Act, the rent payable in respect of the land comprised in the lease shall be apportioned between the part so acquired and the part not acquired.

(2.) The apportionment shall be settled by agreement between the lessor, the lessee, and the Minister, or by the High Court or the Supreme Court.

(3.) After the apportionment has been settled—

- (a) the lessee shall as to all future accruing rent be liable only to the rent apportioned in respect of the part not acquired ; and
- (b) the lessor shall, as against the part not acquired, and as against the lessee, have the same rights and remedies for the rent so apportioned as he had, previously to the apportionment, for the whole rent ; and
- (c) all covenants, conditions, and agreements in the lease (except as to the amount of rent) shall remain in force with regard to the part not acquired.

PART VI.—MISCELLANEOUS.

Incorporation of Commonwealth.
Ib. s. 50.

57.—(1.) For the purposes of this Act the Commonwealth shall be a corporation by the name of “The Commonwealth of Australia,” with power to acquire and hold land.

(2.) All instruments, receipts, and other documents in relation to land to which the Commonwealth is a party may be executed by the Attorney-General for and on behalf of the Commonwealth.

(3.) Notice shall be taken of the signature of the Attorney-General to any instrument, executed by him for and on behalf of the Commonwealth, if the signature purports to be attested by the Secretary to the Attorney-General's Department, or by the Crown Solicitor of the Commonwealth, or by an officer acting for the Secretary to the Attorney-General's Department, and the Registrar-General, or Registrar of Titles, or other proper officer, of the State, or part of the Commonwealth in which the land referred to in the instrument is situate, may register any instrument so signed and attested without further proof of the Attorney-General's signature thereto or of the signature of the witness.

58. Where before the commencement of this Act, the Attorney-General has, for or on behalf of the Commonwealth, executed a conveyance or lease of any land vested in the Commonwealth, the conveyance or lease shall be as valid and effectual for all purposes whatever as if it had been executed after the commencement of this Act.

Conveyances and leases executed before commencement of Act.
No. 13, 1901, s. 60 (2).

59. If—

(a) any person in possession of any land acquired by the Commonwealth under this Act refuses to give up possession of the land, or hinders the Minister or any person authorized by the Minister from taking possession of the land ; or

Warrant to enforce possession of land.
Ib. s. 52.

(b) any person in occupation of any land refuses to permit the Minister or any person authorized by the Minister to enter upon the land,

a Justice of the High Court may, on the application of the Attorney-General, grant a warrant authorizing the Marshal to deliver the possession of the land or to enforce the entry on the land.

60. All persons claiming any purchase money or compensation shall, at their own expense, when required, produce to the Attorney-General all deeds and documents relating to or evidencing their title to the land in respect of which such purchase money or compensation is payable, and particulars of any damage claimed by them.

Claimants to produce title.
Ib. s. 28.

61.—(1.) In the case of all land acquired under this Act, the Commonwealth shall bear all costs, charges, and expenses—

Costs of conveyances, &c.

(a) of all conveyances and assurances of the land and of any outstanding interests therein ; and

Cf. ib. ss. 57, 58.

(b) of making out and furnishing such abstracts and attested copies as the Attorney-General requires.

(2.) If the Attorney-General and the party entitled do not agree to the amount of the costs, they shall be taxed by the Registrar or other proper officer of the High Court or of the Supreme Court upon the application of either party.

(3.) The expense of taxing the costs shall be borne by the Commonwealth, unless on the taxation one-sixth part of the costs or more is disallowed, in which case the expense shall be borne by the party whose costs are taxed, and be deducted from the amount of his costs against the Commonwealth.

(4.) The Commonwealth shall forthwith pay to the party entitled the amount which the Registrar or other officer certifies to be due in respect of the costs.

Mining leases
and licences.

62.—(1.) The Governor-General may authorize the grant of a lease or licence to any person to mine for any metals or minerals on any land the property of the Commonwealth.

(2.) Subject to the regulations, the laws of the State in which the land is situate relating to mining shall, so far as applicable, apply to leases and licences under this section and to mining carried on by virtue thereof.

(3.) The Governor-General may enter into any arrangement with the Governor in Council of any State for carrying this section into effect by State officers.

Vesting of
lands in
Common-
wealth
authorities.

Inserted by
No. 12, 1916,
s. 2 and
amended by
No. 5, 1932,
s. 2.

62A. Any land which has been acquired by the Commonwealth under this Act, or which is vested in, or has been acquired by, the Commonwealth under, or in pursuance of, section eighty-five of the Constitution, may, if the Governor-General thinks fit, and upon such terms as he directs, be transferred to and vested in any authority incorporated by any law of the Commonwealth.

Power to
dispose of
superfluous
lands.

Cf. No. 13,
1901, s. 51.

63.—(1.) If any land acquired or deemed to have been acquired under this Act, or under any Act repealed by this Act, is not required for any public purpose—

(a) the Governor-General may authorize the disposal of it as he thinks fit;^(a) or

(b) where the estimated annual value of the land does not exceed Fifty pounds, the Minister may authorize the leasing of the land for such period not exceeding three years and on such terms and conditions as he thinks fit,

and the land may be disposed of accordingly.

(2.) A return of all land disposed of under this section, showing the manner of its disposal, shall be laid before both Houses of the Parliament within thirty days after the disposal if the Parliament is then sitting, and if not then within thirty days after the next meeting of the Parliament.

Land acquired
before com-
mencement
of Act.

Ib. ss. 47, 60
(1).

64. Any land which, before the commencement of this Act, has been acquired by the Commonwealth from any State or person,

(a) See footnote (c) to s. 14 (3), *supra*.

or has by virtue of section eighty-five of the Constitution become vested in the Commonwealth, shall for the purposes of this Act be deemed to have been acquired under this Act, and to be vested in the Commonwealth as if acquired under this Act.

65. Any notice, claim, or document required by this Act to be served on the Minister or on any person may be served by post.

Service by
post.

66. The Governor-General may, by proclamation, set apart for or dedicate to any public purpose any land which is vested in the Commonwealth, or in any officer or person on behalf of the Commonwealth; and may, by proclamation, revoke, cancel, or alter the setting apart or dedication.

Power to
dedicate lands.
No. 13, 1901,
s. 62.

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

Regulations.
Ib. s. 63.

LAND TAX ACT 1910-1941.^(a)An Act to impose a Progressive Land Tax upon Unimproved Values.^(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 :—

Short title.

1. This Act may be cited as the *Land Tax Act 1910-1941*.^(a)

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

Incorporation.

2. The *Land Tax Assessment Act 1910* shall be incorporated and read as one with this Act.^(c)

Imposition of land tax.

3. Land tax is imposed at the rates declared in this Act.

Rate of land tax.

4.—(1.) The rate of the land tax, when the owner is not an absentee, shall be as set out in the First Schedule to this Act.

(2.) The rates of the tax, when the owner is an absentee, shall be as set out in the Second Schedule to this Act.

(a) The *Land Tax Act 1910-1941* comprises the Acts set out in the following table :—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Land Tax Act 1910</i> ..	1910, No. 21 ..	16th November, 1910	16th November, 1910
<i>Land Tax Act 1914</i> ..	1914, No. 28 ..	21st December, 1914	21st December, 1914
<i>Land Tax Act 1927</i> ..	1927, No. 29 ..	22nd December, 1927	22nd December, 1927
<i>Land Tax Act 1938</i> ..	1938, No. 45 ..	30th November, 1938	28th December, 1938
<i>Land Tax Act 1940</i> ..	1940, No. 16 ..	27th May, 1940 ..	24th June, 1940
<i>Land Tax Act 1941</i> ..	1941, No. 50 ..	3rd December, 1941	31st December, 1941

The *Land Tax Act 1910* was also amended by the *Land Tax Act 1918* (No. 30 of 1918); the *Land Tax Act 1919* (No. 10 of 1919); and by the *Land Tax Act 1920* (No. 45 of 1920), but these three Acts were all repealed by the *Land Tax Act 1922* (No. 17 of 1922), s. 3 of which reads as follows :—

“3. The *Land Tax Act 1918*, the *Land Tax Act 1919*, and the *Land Tax Act 1920* are repealed :

Provided that nothing in this section shall affect any assessment made or to be made in respect of the financial year ending on the thirtieth day of June One thousand nine hundred and twenty-two or any prior financial year.”

(b) Held by the High Court that this Act does not deal with any other subject of taxation than land, and does not in that respect infringe s. 55 of the Constitution. Held, further, that this Act, read with the *Land Tax Assessment Act 1910*, which is incorporated with it, does not contain any provisions which, if they are invalid as being beyond the power of the Parliament, are not severable from the rest of the Act under the rule already laid down by the High Court; and that the Act as a whole is valid. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

(c) Held by the High Court that the incorporation into this Act of the *Land Tax Assessment Act 1910*, which was not assented to until the following day, is effectual, and this Act with that incorporation is in substance and in form an Act imposing taxation, and not an Act to prevent the holding of large quantities of land by single persons. *Osborne v. Commonwealth* (*supra*).

4A.^(a) In addition to the land tax payable under the preceding provisions of this Act, there shall be payable in respect of land, the taxable value of which is in excess of Twenty thousand pounds, a super tax equal to—

Additional tax on land.

Inserted by No. 29, 1927, s. 2.

Repealed by No. 45, 1938, s. 3.*

Inserted by No. 50, 1941, s. 2.

(a) twenty per centum of the amount of land tax payable under the preceding provisions of this Act in respect of that land ; or

(b) one per centum of the amount of the excess of the taxable value of that land over Twenty thousand pounds,

whichever is the lesser amount.

5. Land tax shall be levied for the financial year beginning on the first day of July, One thousand nine hundred and ten and each financial year thereafter.

Levy of land tax.

Amended by No. 45, 1938, s. 4.

SCHEDULES.†

Substituted by No. 16, 1940, s. 2.‡

FIRST SCHEDULE.

RATE OF TAX WHEN OWNER IS NOT AN ABSENTEE.

For so much of the taxable value as does not exceed £75,000 the rate of tax per pound shall be One penny and one eighteen thousand seven hundred and fiftieth of one penny where the taxable value is One pound, and shall increase uniformly with each increase of One pound in the taxable value by One eighteen thousand seven hundred and fiftieth of one penny.

For every pound of taxable value in excess of £75,000 the rate of tax shall be Ninepence.

The rate of tax for so much of the taxable value as does not exceed £75,000 may be calculated from the following formula :—

R = rate of tax in pence per pound.

V = taxable value in pounds.

$$R = \left\{ 1 + \frac{V}{18,750} \right\} \text{pence.}$$

(a) Section three of the *Land Tax Act* 1941, by which Act this section was inserted, reads as follows :—

“ 3. The amendment effected by this Act shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and forty-one, and for each financial year thereafter.”

* Section 7 of the *Land Tax Act* 1938 reads as follows :—

“ 7. The amendments effected by sections two, three and five of this Act shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-eight and for each financial year thereafter.”

† Section 6 of the *Land Tax Act* 1938 reads as follows :—

“ 6. For all purposes connected with assessments for any financial year prior to the financial year commencing on the first day of July, One thousand nine hundred and thirty-eight, the Schedules to the *Land Tax Act* 1910 and the Schedules enacted in substitution for those Schedules by the *Land Tax Act* 1914 shall be deemed to be amended, and to have at all times been amended, by omitting the word ‘sterling’ wherever it occurs.”

‡ Section 3 of the *Land Tax Act* 1940, by which Act this Schedule was substituted, reads as follows :—

“ 3. The amendments effected by this Act shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and forty, and for each financial year thereafter.”

SCHEDULES—*continued*.

SECOND SCHEDULE.

Substituted by
No. 16, 1940,
s. 2.[†]

RATE OF TAX WHEN OWNER IS AN ABSENTEE.

For so much of the taxable value as does not exceed £5,000 the rate of tax per pound shall be One penny. For so much of the taxable value as exceeds £5,000 but does not exceed £80,000 the rate of tax per pound shall be Twopence and one eighteen thousand seven hundred and fiftieth of one penny where the excess is One pound, and shall increase uniformly with each increase of One pound in the taxable value by One eighteen thousand seven hundred and fiftieth of one penny.

For every pound of taxable value in excess of £80,000 the rate of tax shall be Tenpence.

The rate of tax for so much of the taxable value as exceeds £5,000 and does not exceed £80,000 may be calculated from the following formula :—

R = rate of tax in pence per pound.

E = excess of taxable value over £5,000 in pounds.

$$R = \left\{ 2 + \frac{E}{18,750} \right\} \text{pence.}$$

[†] See footnote ‡ on previous page.