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**‘THROUGH THE DREADFUL CIRCUMSTANCES
OF FATE, A BROKEN MAN’: ANTON
REZNICEK, WAR AND AUSTRALIAN LAW,
1911-1930**

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**‘THROUGH THE DREADFUL CIRCUMSTANCES OF FATE,
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This article examines the life of Anton Reznicek, an Austrian man who came to Australia to test a patented diving suit and was forced to remain in the country as a result of the outbreak of World War I. It traces Reznicek’s arrival, internment and deportation, and the 11-year campaign of correspondence he undertook seeking to receive either the restoration of, or remuneration under, his Australian patent rights. Reznicek’s story is unique on account of the fact that, through his choices, he managed to interact with, or be affected by, a majority of the most significant laws enacted in Australia during the war. This article pieces together a story scattered across archival records, newspaper articles and personal documents, providing an important case study into the individual legal experience in World War I Australia.

1 INTRODUCTION

Almost without exception, both historical and current legal biography has focused on the lives and the stories of great men, those who distinguished themselves in careers as lawyers and judges.¹ This is not the story of one of those men. It features the names of a few of them, both in Australia and internationally: Sir Robert Garran, Solicitor-General for the Commonwealth of Australia; Winston Churchill, then Secretary of State for the Colonies; and Georg Franckenstein, then Austrian Minister to London and in part responsible for Austria’s post-World War I (‘WWI’) economic and societal resurgence. But these men are merely bit players in this story. Rather, this article examines the experiences of Anton Reznicek, a man whose life might be otherwise without note but for the result of a series of unfortunate incidents at a most inopportune time, and the ultimately devastating effect that Australian law had on his life.

* Senior Lecturer, Faculty of Law, UNSW Sydney. The title quotation comes from a letter sent by Anton Reznicek: see National Archives of Australia: A456, W16/3/154 ‘Auton [sic] Reznicek Protection of Invention for deep-water diving’, letter from Anton Reznicek to the Governor-General of the Commonwealth of Australia, 6 March 1923, 1 (‘I am a septuagenarian, and through the dreadful circumstances of fate, a broken man.’)

In his memoir, one of those great men, Robert Garran, commented in passing on the laws that will play a central part in this story, and the role that had he had played in their creation:

Silent leges inter arma [roughly translated as, ‘in times of war, laws are silent’], ran the maxim – but that was before the days of total war. In World War I the laws were very vocal. The War Precautions Act and the other war legislation were only a beginning prearranged for such an emergency. It was the regulations under these Acts that immersed my Department. As soon as it was found that the High Court would give us plenty of scope, our regulations factory, spurred on by all the departments, began running full speed. It dealt largely with the enemy within the gates, and with persons of enemy origin – most of whom were good citizens, but a few of whom were bad and all of whom were under observation. Steps were taken to secure their registration, to watch their activities, to control their dealings in property; and, where necessary, to annul their contracts, and take possession of their stock-in-trade and of their patents and trade marks.²

There are two points that must be made here regarding Garran’s comments. First, it is only relatively recently, nearly a century after the cessation of WWI, that scholars, legal and otherwise, have begun to examine the scope and effect of the infamous *War Precautions Act 1914* (Cth). This is despite the fact that, during WWI, the ‘regulations factory’ created under that statute enabled restrictions to be placed on nearly every aspect of the Australian home front, on everything from the use of the word ‘Anzac’ to the price of bread.³ For the most part, this scholarship has focused on the operation of the laws rather than the individual,⁴ though there have been some exceptions in the case of noteworthy persons, such as suffragette Adela Pankhurst.⁵

Second, Garran’s comments, made decades after the war, fail to acknowledge the substantial and long-lasting impact that those regulations had on the individual, particularly, as he mentions, ‘persons of enemy origin’. Anton Reznicek was one such individual, having travelled from Austria to Australia to develop a business idea. As he noted in a 1919 letter: ‘I went to Australia for 7 months ... I was there 8 years.’⁶ Had he known that trip would coincide with the first outbreak of global war and result in his internment; the loss of his personal and intellectual property; and an 11-year battle of correspondence with the United Kingdom (‘UK’) and Australian governments, he may have elected to stay home. Reznicek both interacted with and was affected by many of the most significant laws passed in Australia during this period, making his experiences an important and unique case study.

What makes Reznicek additionally interesting, particularly for legal biography and legal history research, is that he was what might be termed an ‘unreliable narrator’⁷ of his own experiences. This article draws on a myriad of resources in piecing together the ordeals of Anton Reznicek, including legislation, newspaper articles, patent records, internment files, government correspondence and memos, police reports and Reznicek’s own letters. Of these materials, it is Reznicek’s personal letters that are the least reliable source, often presenting either a mistaken or blatantly false view of that author’s experiences, subsequently counteracted or disproven by government officials who thoroughly investigated all claims made. Despite this, Reznicek was, to quote William Shakespeare, arguably ‘more sinned against than sinning’, and what might be termed his ‘legal biography’ remains an important case study on the impact of law on ‘persons of enemy origin’ on the Australian home front in WWI.

This article proceeds as follows. Part 2, ‘Invention to Internment’, examines the early life of Anton Reznicek and the invention that brought him from Austria to Australia in 1911. It then maps the outbreak of WWI and the enactment of a number of increasingly restrictive laws that ultimately resulted in Reznicek’s internment in a New South Wales concentration camp in 1915.⁸ Part 3, ‘Internment to Intellectual Property’, explores Reznicek’s subsequent deportation from Australia and how, for the next 11 years, Reznicek engaged in a campaign of correspondence against the Australian and UK governments, accusing them, and a number of other parties, of depriving him of certain intellectual property rights. Part 4 concludes this article with a reflection on the usefulness of a broader conception of legal biography for legal history and legal research more generally.

2 INVENTION TO INTERNMENT

Only the simplest details are known about the early life of Anton Reznicek, as might be expected. He was born 19 November 1853 in Moravia, then part of the Austrian Empire, later part of the Austro-Hungarian Empire, today part of the Czech Republic. Reznicek married on 8 August 1885; he and wife Marianne subsequently welcomed two children, in 1886 and 1888, both born in Vienna.⁹

Reznicek trained and worked as a ‘Goldsmith and Jeweller’, and around 1899 to 1900 became involved in the trade of pearls.¹⁰ His first journey to Australia occurred in 1902, where, in his own words, he travelled to Thursday Island and was shocked at ‘how daily the divers were dying’ while trying to extract pearls.¹¹ In 1907 he applied to the Australian government to procure a lease to extract pearls from waters off the coast of Kiriwina, but this was ultimately withdrawn on account of its potential to disrupt local food supplies.¹²

Those experiences on Thursday Island, however, set in course a series of events that resulted in Reznicek creating a ‘diving apparatus’ designed to reduce diver mortality. The

project began in 1904; Reznicek would claim, 20 years later, that he invested all his ‘capital, to the amount of about £25,000, in the invention in question’.¹³ It also culminated in two significant events in the 1910 to 1911 period.

First, Reznicek applied to register his invention for patent protection in a number of countries, including Austria and Australia. Under the *Patents Act 1903* (Cth) there was no issue with Reznicek seeking to register a patent in that jurisdiction, despite having no address or place of business in Australia: section 32(1) of the Act provided that ‘[a]ny person whether a British subject or not may make an application for a patent.’ The application, made in Austria on 29 August 1910, was received in Australia on 29 August 1911 and acceptance was advertised on 10 September 1912. A number of figures included as part of the complete specification appear below:

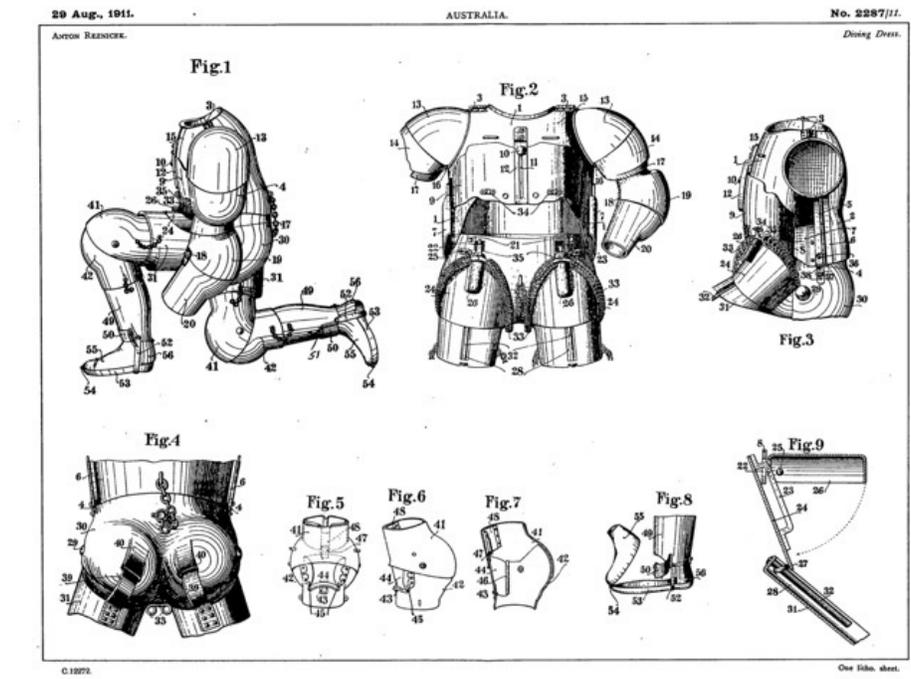


Fig 1: From the complete specification for Patent 2287/11

Second, after lodging his patent applications, Reznicek commenced a course of action that would substantially affect and alter the course of his life: Reznicek travelled to Australia, to commence experiments on his diving apparatus at a range of depths. He arrived in the country in early October 1911 on the *Zieten* and proceeded to Thursday

Island in November that same year.¹⁴ According to Reznicek's later correspondence with the UK government, these experiments went well: '[t]he divers said they did not know they were in water[,] they saw it only with this apparatus are millions to be made'.¹⁵ That success also allegedly earned Reznicek some enemies, with local fishermen seeing the benefits of the suit and refusing to engage or interact with Reznicek, for fear the suit would usurp their trade.¹⁶

Reznicek ultimately returned to Sydney, New South Wales, in late 1912, stating he received a similar reception to that on Thursday Island. The suit tested well, with an officer of the Australian Navy apparently viewing the suit and telling Reznicek that 'it is a wonderful invention and a great success, one of the greatest invention[s] of the century.'¹⁷ Again, however, Reznicek claimed that the success attracted the ire of locals. It is unclear whether Reznicek did attract as many enemies as he stated but, most significantly, he was still in residence in Australia when, on 4 August 1914 Britain declared war on Germany.

Within a week of Australia pledging to follow Britain into war, on 10 August 1914 the Commonwealth of Australia *Gazette* provided that 'all persons who are subjects of the German Empire and who are resident in the Commonwealth' were required to register their residence at his or her local police station.¹⁸ Ernest Scott, in his official history of the Australian home front, stated that at the time of the 1911 census there were about '32,990 persons who were born in Germany' resident in Australia, not taking into account other 'inhabitants of German origin'.¹⁹ It was not long before those residents were joined in this task — a few days later war was declared against the Austro-Hungarian empire, Reznicek's own people.

In Australia, the Austro-Hungarian community was significantly smaller than the German population; Scott provided that '2,774 [individuals] born in Austria-Hungary' were included as part of the 1911 census.²⁰ Under an additional *Gazette* notice citizens of that empire, resident in Australia, were similarly instructed to 'report themselves to the officer of police nearest to the place in which such persons reside and to supply to such officer particulars as to their names, places of residence, and occupations or businesses'.²¹ Local police would record these details on 'a "yellow form"'.²² On his yellow form, Reznicek's occupation was recorded as 'Inventor, Diving Apparatus'; that information would have meant little to the officers overseeing his registration, but, within the context of this article, takes on great significance.²³

This was the first of many experiences that Reznicek would have with the laws, regulations and orders of the Australian government as WWI progressed. Indeed, almost immediately following his registration, Reznicek made a perhaps unusual but not unique decision, taking advantage of the current operation of the *Naturalization Act 1903* (Cth) and applying to become a naturalised British subject.

Section 5 of that statute provided that, where '[a] person resident in the Commonwealth ... who intends to settle in the Commonwealth' had 'resided in Australia

continuously for two years immediately preceding the application’, that person could make an application ‘for a certificate of naturalization.’ Anton Reznicek, having been in Australia for nearly three years, was permitted to make such an application and approval was granted; he became naturalised British subject number 20119.²⁴ Upon a grant of naturalisation, section 8 of the *Naturalization Act* stated that person would ‘be entitled to all political and other rights powers and privileges and be subject to all obligations to which a natural-born British subject is entitled’.

Such ‘rights powers and privileges’ ultimately meant little for Reznicek and other foreign citizens who elected to become naturalised British subjects in the early days of WWI. During that period there was a surge in naturalisation requests, mostly made by German and Austro-Hungarian citizens like Anton Reznicek.²⁵ It was estimated in *The Sydney Morning Herald* that, within two weeks of Britain’s declaration of war on Germany, ‘between 100 and 150 applications’ were being made every day.²⁶

This practice of naturalisation that Reznicek had been able to invoke, however, was soon quelled by the government²⁷ as the Australian community began to turn against German and Austro-Hungarian individuals. In the words of Fischer, a ‘vision of an internal enemy arose’.²⁸ With this view came increased restriction on the movement and liberties of individuals falling within this category, supported by numerous regulations created under the *War Precautions Act*.²⁹ Section 5 of that Act as passed provided that:

The Governor-General may by order published in the Gazette make provision for any matters which appear necessary or expedient with a view to the public safety and the defence of the Commonwealth, and in particular –

- (a) for prohibiting aliens, either generally or as regards specific places, and either absolutely or except under specified conditions and restrictions, from landing or embarking in the Commonwealth;
- (b) for deporting aliens from the Commonwealth;
- (c) for requiring aliens to reside and remain within certain places or districts;
- ...
- (f) for applying to naturalized persons, with or without modifications, all or any provisions of any order relating to aliens;
-³⁰

The term ‘Alien enemy’ was defined in the *Aliens Restriction Order 1915* as ‘any alien over the age of thirteen years whose Sovereign or State is at war with His Majesty’; a ‘Naturalized subject of enemy origin’ was also defined as an individual ‘who has become a British subject by naturalization; and who at any time previous to his naturalization was a subject of any Sovereign or State who or which is at war with His Majesty’.³¹ Order 3 provided an individual falling into either category could not leave Australia;

Anton Reznicek was now unable to escape a country he had originally only intended to visit for 7 months.

With the law restricting his movements and the Australian community unwilling to give work to individuals of ‘enemy origin’, Reznicek once again became part of an unusual, but unfortunately not unique, category of men: he elected to be interned in one of the concentration camps the government had created for enemy aliens.³² When Reznicek entered Liverpool Concentration Camp voluntarily on 23 November 1915, anti-German and anti-Austro-Hungarian sentiment had reached new levels. As Scott noted in his official history of the home front, this backlash resulted in:

many Germans ... [being] thrown out of employment, and, without a means of livelihood, [many] offered themselves for voluntary internment; and the Government was compelled to take charge of them, since it was clearly impossible to leave them to starve.³³

A full examination of the myriad of issues surrounding internment in WWI is beyond the scope of this article, but a few words must be said about *who* was interned during this period and over the course of WWI.³⁴ It was not the case that any individual with some German or Austrian heritage or residency was immediately interned — Scott estimated that ‘6,739 men, 67 women, and 84 children [were] interned in Australia during the war’.³⁵ Some, like Reznicek, were interned voluntarily, with no other option for maintaining a life in the community. The majority of those interned, however, were not there on account of any sort of choice; for example, German residents from a number of other jurisdictions and sailors on vessels in the region were also interned in Australian concentration camps.³⁶ Most found themselves interned as a result of regulation 54 of the *War Precautions Regulations 1915 (Cth)*,³⁷ enacted pursuant to the *War Precautions Act*, discussed above:

54. (1) Any person authorized for the purpose by the competent naval or military authority, or any police constable, or officer of Customs, may arrest without warrant any person—

- (a) whose behaviour is of such a nature as to give reasonable grounds for suspecting that he has acted, or is acting, or is about to act, in a manner prejudicial to the public safety or the defence of the Commonwealth; or
- (b) upon whom may be found any article, book, letter, or other document, the possession of which gives grounds for such a suspicion; or
- (c) who is known or suspected to have committed an offence against the Act.

(2) The Military Board may authorize a competent military authority to intern as a prisoner of war any alien enemy arrested under this Regulation.

This provision, to quote Williams, resulted in internment on the basis of ‘the maliciousness of petty officialdom, or ... rumour-mongering by a business competitor, local politician or community elder with a grudge to settle or a profit in mind.’³⁸

A separate regulation was included in the *War Precautions Regulations* to deal with naturalised subjects: under regulation 55(1) the Minister of State for Defence was granted the power to approve the internment of ‘any naturalized person’ where the Minister suspected that individual was ‘disaffected or disloyal’, until the end of hostilities. Of the German internees, approximately 700 were naturalised British subjects.³⁹ Franz Wallach, a naturalised Brit since the turn of the century, launched a challenge in the Supreme Court of Victoria against his internment under this provision, with the Supreme Court finding Wallach’s internment impermissible.⁴⁰ Yet, with a modification of the law and a High Court challenge, the Commonwealth government was subsequently successful in both its internment of Wallach and naturalised British subjects more generally.⁴¹

Reznicek was given internment number 3123 but, more significantly, he was given photograph number 2118.⁴² All internees were photographed upon arrival, a process that Fischer has described as ‘a humiliating experience which intensified their feeling of being treated like common criminals by the Australian government.’⁴³ Reznicek’s photograph at internment appears below; the associated National Archives of Australia record lists Reznicek’s name as ‘Anton Reznick’, one of the many, incorrect, variations on the spelling of his surname during his experiences with Australia.

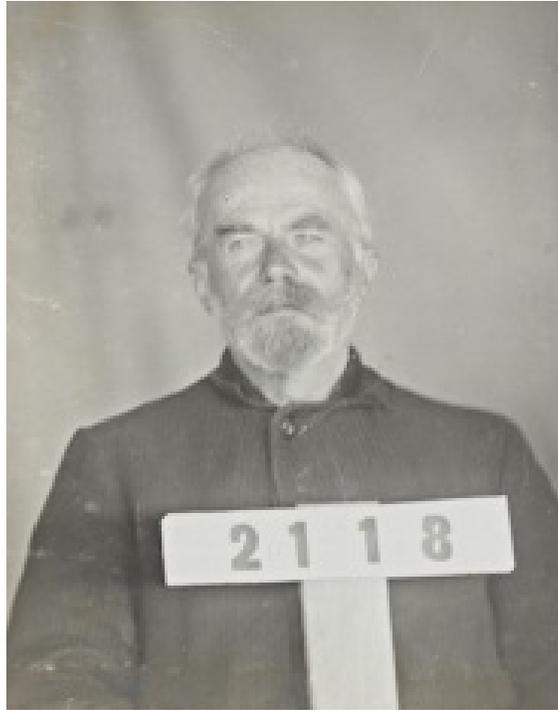


Fig 2: Anton Reznicek. From the National Archives of Australia (D3597, 2118).

Apart from some limited correspondence, which will be discussed below, few details are known about the nearly four years that Reznicek spent in the German Concentration Camp in Liverpool. What is clear, however, is that life for any individual, at any concentration camp within Australia, was harsh and difficult. As Fischer has noted:

life at Holsworthy [where Reznicek was located] was rough and uncomfortable. With more than 6000 internees, the camp was oppressively overcrowded. There were only basic sanitary facilities, and the accommodation offered little protection[.] ... There was little space and less privacy.⁴⁴

That impingement on personal space, combined with the boredom produced by confinement, created a strained and frustrating atmosphere.⁴⁵ Some internees were able to undertake ‘manual labour’ in exchange for what Scott has described as ‘pocket money’⁴⁶ — in his 60s and as an elderly internee, however, Reznicek would have been considered too old to work.

There were also legal problems within the camp where Reznicek was interned — a group known as ‘the Black Hand’ was responsible for criminal activity, including multiple assaults on fellow internees, and two internees were shot.⁴⁷ A number of protests were held by internees in response to those actions,⁴⁸ but the mood was otherwise calm. The Liverpool Concentration Camp was arguably one of the better of these venues within Australia: for example, the Torrens Island Concentration Camp in South Australia was shut down and its internees transferred to Liverpool following the discovery of systematic and sadistic abuse by the camp’s commanding officer, George Edward Hawkes.⁴⁹

Beyond the material produced on internment and Reznicek’s eventual deportation record, little documentation was produced either by or about Reznicek during the four years he spent at Liverpool Concentration Camp. However, in mid-1917, Reznicek was permitted to send a number of letters on account of a pressing legal matter: the expiration of Patent 2287/11, the Australian patent granted for Reznicek’s diving dress. Pursuant to section 64(1) of the *Patents Act*, although the grant of a patent lasted 14 years, a patentee was required to pay a regular ‘renewal fee’ or else the patent would lapse.⁵⁰ For Reznicek, the required fee was £5 — money that, after two years in a concentration camp, he simply did not have. As a result, Reznicek was permitted to write to the Commissioner of Patents to request an extension of ‘payment till the war will be over.’⁵¹

After making inquiries regarding Reznicek’s status as ‘a subject of a state at war with the King’ and ‘prisoner of war’, and his current financial position (the Lieutenant-Colonel, Commandant, Concentration Camps, confirmed that ‘Prisoner of war Reznicek has no income what-so-ever’),⁵² the Commissioner of Patents decided to invoke regulation 8 of the *Patents (Temporary) Regulations 1914 (Cth)*.⁵³ That provision allowed the Commissioner of Patents to grant an extension for, in this case, payment of a fee where the patentee was unable to do so on account of ‘circumstances arising from the present state of war’.⁵⁴ Later correspondence would indicate that Reznicek had received an extension for the payment of his patent renewal fee until 4 November 1919.⁵⁵

That date would eventually cause considerable problems given that, a little over two months before it fell, Anton Reznicek was deported from Australia, on 20 August 1919, almost immediately after being notified that such an event was to occur.⁵⁶

3 INTERNMENT TO INTELLECTUAL PROPERTY

In the course of his official history of the Australian home front, Scott remarks that, ‘[o]f the 6,739 men, 67 women, and 84 children interned in Australia during the war, 58 escaped; 201 men and one woman died during internment’.⁵⁷ As WWI drew to a close, the Commonwealth government faced a decision as to what to do with this large group of interned individuals that the country simply did not want. In early 1919, in New South Wales, members of the Returned Sailors and Soldiers’ Imperial League voted in “protest

against the release ... of any enemy aliens” and suggested immediate expulsion from the Commonwealth; ““their free presence ... [being] an insult to all returned men and a menace to the community.””⁵⁸

While Australia may not have wanted them, many German, Austrian and other individuals of ‘enemy origin’ also did not want to remain in Australia, having been mistreated by that country over the course of a long internment. As Fischer has commented, these internees preferred the difficulties of a post-war Europe and ‘were ... ready to turn their backs on Australia’.⁵⁹ According to Scott, ‘5,276 [individuals], the large majority of them previously residents in Australia, were sent back’.⁶⁰ The first ship, *Tras-os-Montes*, departed on Australia on 9 July 1919, for London and Rotterdam.⁶¹ There were more than 1000 former internees on board, from the camp where Reznicek was still interned. Later, the Commonwealth would introduce severe restrictions on the process of naturalisation in response to the problems posed by former ‘enemy aliens’, requiring applicants to have been resident within the British Empire for at least five years, be ‘of good character and ... [have] an adequate knowledge of the English language’.⁶²

Shortly after that first ship of deportees departed, Anton Reznicek signed a *pro-forma* document stating that he wished to be repatriated to Germany but, less than a month later, he contacted the Minister for Home Affairs stating that he wished to maintain his British citizenship and planned to return to Australia.⁶³ This did not occur; Reznicek was deported on 20 August, two months shy of a four-year internment, and he never returned to Australia. Instead, within two months of settling in Germany, Reznicek commenced a decade-long campaign of correspondence, in an effort, as he initially believed, to exploit his patent rights.

On 28 December 1919, Reznicek sent the first of a series of letters, culminating in multiple messages between himself and the UK Foreign Office over a three-year period. This was despite the fact that, initially, the Foreign Office quickly responded to Reznicek stating that it was not able to assist him in such a matter.⁶⁴ Over the course of this correspondence Reznicek alleged that he had been the victim of robbery and deception as a result of the conduct of a man named George Irving Stagg, and wanted the assistance of the Foreign Office in rectifying this matter and paying to him monies allegedly owed by the UK government.

According to Reznicek, he met Stagg in Sydney, in 1915 but before his internment in November that year. On account of increased wartime naval activity, Reznicek had made ‘four improvements’ to his diving dress, which he disclosed to George Stagg.⁶⁵ He asked Stagg to apply for a patent for him in England, but was apparently told by Stagg and a Sydney patent attorney that this was inadvisable. It was claimed a patent would never be granted to an individual with such a foreign surname at such a time⁶⁶ (pursuant to wartime intellectual property legislation in force in the UK, and discussed in relation to Australia below, Reznicek’s Austrian heritage would have likely precluded the grant of

the patent). Reznicek had previously granted power to Stagg to act as his ‘authorised agent’ and, according to a letter Stagg sent to Reznicek in June 1919, he made some progress with the diving dress in the UK.⁶⁷ Indeed, Reznicek claimed he had heard ‘from a sure source, that Stagg has granted a licence for an imitation of my invention.’⁶⁸ In one letter, he requested that the Foreign Office advise him ‘where I can ascertain under what conditions Mr. Stagg sold my invention and improvements to the British Admiralty’.⁶⁹

In the final letter in this initial surge of correspondence, dated 15 December 1921, Reznicek mentioned that patent 2287/11 was still valid in Australia, and he desired ‘to sell it ... to the Australian Government as my invention is there regarded as being ... of the greatest importance.’⁷⁰ Possibly as the result of such a claim, Winston Churchill, then Secretary of State for the Colonies, sent the complete bundle of Reznicek’s correspondence to the Governor-General on 17 January 1922. The bundle reached the Department of Defence and the Attorney-General’s Department where, upon receipt, Sir Robert Garran sent the material to the Commissioner of Patents for a report on Reznicek’s patent. Garran would likely later come to regret his involvement with the Reznicek matter, given it continued for the next eight years.

The Commissioner of Patents was able to deal with the Reznicek patent quickly; it had expired when Reznicek failed to pay the fee by the extended deadline of 4 November 1919.⁷¹ The information quickly made its way back to the Governor-General, to the Secretary of State for the Colonies and the Foreign Office, and then to Reznicek, who was unsatisfied by the response. Reznicek appealed to the Foreign Office, commenting that ‘owing to my internment, and the loss of all my property I am reduced to extreme poverty ... I come away empty-handed’.⁷² He requested the assistance of the Foreign Office in achieving the following:

- (a) to facilitate the restoration of my patent
- (b) to be so good as to take steps to the end that I may obtain possession of the sums earned by patent, and
- (c) to set in train, if possible, negotiations for the purchase of my patent by the Australian authorities.⁷³

Once again this letter set in motion a chain of messages in both the UK and Australia; once it arrived in Australia, it was dealt with summarily by Robert Garran, who stated that ‘[t]he whole trouble appears to have been caused through Reznicek (who left Australia for Europe at the end of August, 1919) not making arrangements before leaving to pay a fee’.⁷⁴ In this response Garran’s exasperation is clear, but it is also clear that Reznicek, who had been interned for almost four years, was in no position to pay the patent fee; did not understand the system in place in Australia; and most importantly, did not simply ‘leave Australia for Europe’, but was deported, with an intention of returning.

This was reflected in a letter dated 6 March 1923, when Reznicek began communicating directly with the Australian authorities. As he wrote to the Governor-General:

According to the advice of the Foreign Office I should have attended to my patent before my departure from Australia but I would point out that we internees had no previous idea as to our repatriation so far as I remember, except 2 days before the date of departure. How, therefore, should have I been able to put my matters in order? Who would have helped me? Was I not an internee without rights and power.⁷⁵

What is additionally interesting, however, is that in this letter, Reznicek mentions, for the first time in this whole correspondence, ‘a soldier named R. Billington’ who, Reznicek stated ‘wanted to become proprietor of’ patent 2287/11.⁷⁶ Reznicek returned to ‘Billington’ again in future letters, even claiming that:

There was a diver named Robert Billington who tried my apparatus. ... In order to get hold of my apparatus in some other manner he made a false claim against me. ... Not satisfied with that, however, Billington caused my internment in order to get hold of my patent, for he had seen what had been done with my invention, which was taken to London by Stagg.⁷⁷

Reznicek further stated that he and ‘Billington’ were involved in a lawsuit, which, according to Reznicek, the judge sent ‘to the Minister for settlement.’⁷⁸

The soldier that these letters refer to was Robert Billinton,⁷⁹ and he did make an application to the Commonwealth government to exploit Reznicek’s Australian patent. That application lapsed, however, because Billinton’s circumstances changed considerably over the course of the war, to the point where Billinton arguably would not have been physically able to undertake the deception Reznicek attributes to him.

In May 1919, Robert Billinton made an application to the Attorney-General’s Department for the ‘avoidance or suspension’ of a patent for a diving dress, granted to Anton Reznicek. This regime, for dealing with enemy-owned intellectual property during the war, was created under section 3(1) of the *Patents, Trade Marks and Designs Act 1914* (Cth), where power was granted to the Governor-General in part ‘to make regulations’ for the purpose of ‘avoiding or suspending in whole or in part any patent or licence the person entitled to the benefit of which is the subject of any State at war with the King’. Under the *Patents (Temporary) Regulations* — the same regulations through which Reznicek received an extension of time to pay his patent renewal fee — the

Minister, though more specifically the Attorney-General, could ‘avoid’ or ‘suspend’ a patent in favour of any applicant, where the following circumstances were met:

- (a) That the patentee or licensee is a subject of a State at war with the King;
- (b) That the person applying intends to manufacture, or cause to be manufactured, the patented article, or to carry on, or cause to be carried on, the patented process; and
- (c) That it is in the general interests of the Commonwealth or of a section of the community, or of a trade, that such article should be manufactured or such process carried on as aforesaid.⁸⁰

Billinton’s application was the last to be made under this regime; in total, during WWI, ‘20 individual applications were made for the suspension of 15 Commonwealth patents, 2 state patents, and 3 patent applications’.⁸¹ While the application was advertised in *The Australian Official Journal of Patents*,⁸² according to the Commissioner of Patents the application ‘lapsed contemporaneously with the ceasing of the patent.’⁸³ There is no indication of whether Billinton took any course of action with the diving dress but, given his circumstances at the time, it is unlikely that he proceeded.

Prior to the war Billinton was a diver, based in Sydney,⁸⁴ and thus it is likely that he and Reznicek did cross paths in that city at some point. Following his enlistment in 1915, Billinton became a member of the Light Horse Brigade and, later, in the course of combat in Ypres, Belgium, he was hit by enemy fire and permanently blinded.⁸⁵ While convalescing in hospital in the UK, Billinton continually attracted the attention and ire of authorities on account of his poor behaviour towards staff and fellow patients, resulting in his eventual return to Australia and a medical discharge from service.⁸⁶ In early 1919, just ahead of making his application to the Attorney-General’s Department, he married Brisbane-based Daisy Calow;⁸⁷ before the year was over, newspapers reported that the pair were seeking a divorce after Billinton ‘refused to live’ with his wife and wished to return to the UK.⁸⁸ On the basis of these events, it is therefore unlikely that he was able to cause much of the treachery Reznicek alleged that Billinton committed.

In the letter where he detailed his experiences with ‘Billington’, Reznicek concluded by stating that he desired ‘compensation for the licenses granted [for exploitation of the patent], and for the use of my patent, and for the London deception, further, compensation for the illegal four years detention, amounting to £170,000, which is not too highly put.’⁸⁹ George S Knowles, then undertaking Garran’s role of Solicitor-General, dismissed such a claim,⁹⁰ but this did not deter Reznicek, who continued to correspond with the Foreign Office and Australian government as the 1920s progressed. As before, Garran dealt with these inquiries, going so far as to state that, with regard to certain allegations made by Reznicek about his time in Australia, ‘I have no knowledge of the facts, but suggest that the statements are probably untrue.’⁹¹

With this avenue effectively terminated, Reznicek moved his attention to the work of the Austrian Clearing Office, making a request through that organisation for remuneration for the loss of a number of personal effects; that organisation subsequently transferred it to the Australian authorities. In a letter from Australia House, London, to the Public Trustee, Melbourne,⁹² Reznicek's requests were summarised as follows:

<u>Claim No. 30.</u>	Clothing underwear, and armour equipment for deep sea.
<u>Claim No. 31.</u>	Numerous pearls, together with cash amount K.100,000
<u>Claim No. 32.</u>	1 Patent covering equipment for deep sea diving. ⁹³

A more detailed list was subsequently provided when the Investigation Branch of the Attorney-General's Department became involved:

Clothing	2,000 kronen
Arms	5,000 do.
Linen	1,000 do.
Watch and Chain	1,000 do.
Various tools and 2 Oxygen mask apparata	30,000 do.
Deep sea telephone	50,000 do.
Rubber dress	90,000 do.
Hose tackle, etc.	50,000 do.
Head piece tackle	50,000 do.
Value of already gathered pearls and cash	100,000 do. ⁹⁴

As would be expected, the Investigation Branch was thorough in its inquiries, but from the outset it was clear that Reznicek would not be receiving any compensation. It was noted in one letter that 'Reznick's [sic] inability to pay the sum of £5 to the Patents Office does not seem to accord with the possession of assets'.⁹⁵ If Reznicek had also had such cash available to him, it is unlikely he would have needed to be voluntarily interned; as one Inspector commented, '[t]he association of this man's name with voluntary internees implies destitution at the time of internment which is not in accord with the present claim.'⁹⁶

Reznicek's case was soon concluded, and at the place where the inspiration for his original invention occurred: Thursday Island. After an additional message was received from Reznicek claiming that his diving dress could be found at Hotel Metropole,

Thursday Island, police investigated the matter but those interviewed confirmed suspicions that this was incorrect. In fact, one officer wrote that ‘all these people stated without exception that claimant was considered here to be a “crank”, and that no reliance could be placed on his statements.’⁹⁷ After reading Reznicek’s correspondence, and in light of the work of the Australian authorities, it is perhaps hard to disagree with such a comment.

4 CONCLUSION

In evaluating the issues surrounding the pursuit of legal biography and legal history, Sugarman has commented that:

The bulk of legal biographies have focused on the lives of the elite; most often white, male, higher-court judges. Women, artisan and working-class society, people of colour, and other “outsiders” tend to receive short shrift, as do lower-court judges, court officials, litigants, the diverse audiences of the law beyond the judiciary and lawyers.⁹⁸

This article has in part sought to rectify this omission through an examination of the legal biography of one of these ‘outsiders’. Anton Reznicek was not a ‘great man’ like those he interacted with — Garran, Churchill or Franckenstein — and, while his legal story can be pieced together, the conclusion of his life’s story, his date of death, remains unknown.

Reznicek could not have imagined the course that his life would take when he had an idea for a ‘diving dress’ in 1904. Although that patented invention, which motivated so many of his decisions, never created the personal, professional or pecuniary satisfaction that Reznicek desired, his legacy — his life and letters — today provide a substantial and significant case study of the individual legal experience in World War I Australia.

¹ See generally R Gwynedd Parry, ‘Is legal biography really legal scholarship?’ (2010) 30(2) *Legal Studies* 208–229; David Sugarman, ‘From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-legal Scholarship’ (2015) 42 *Journal of Law and Society* 7–33.

² Robert Randolph Garran, *Prosper the Commonwealth* (Angus and Robertson, 1958) 222 (emphasis in original).

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- ³ Some scholarship was produced during WWI, often penned by future parliamentarians and judges: see for example Robert Gordon Menzies, 'War Powers in the Constitution of the Commonwealth of Australia' (1918) 18 *Columbia Law Review* 1–20; TR Bavin and HV Evatt, 'Price-Fixing in Australia during the War' (1921) 3 *Journal of Comparative Legislation and International Law* 202–212.
- ⁴ See for example Peter M McDermott RFD, 'Internment During the Great War – A Challenge to the Rule of Law' (2005) 28 *University of New South Wales Law Journal* 330–363; Catherine Bond, "This is not a Bill to legalize looting": Wartime Regulation of Enemy-Owned Intellectual Property in Australia' [2015] 2 *Intellectual Property Quarterly* 79–105; Jo Hawkins, 'Anzac for Sale: Consumer Culture, Regulation and the Shaping of a Legend, 1915-21' (2015) 46 *Australian Historical Studies* 7–26; Caroline Dick, 'Anti-Shouting Law: A War-Time Sumptuary Impulse Tied Up With Slouch Hats and Khaki' (2016) 16 *Legal History* 59–78; Catherine Bond, *Anzac: The Landing, The Legend, The Law* (Australian Scholarly Publishing, 2016).
- ⁵ See Jocelyne A Scutt, 'Police, Prosecution, Courts and Wartime Demonstrations: Adela Pankurst in the Australian High Court' (2011) 23 *The Denning Law Journal* 65–91; see also Diane Kirkby, 'Neither "Militarism" nor "Patriotic Motherhood": Gender, Law and Citizenship in a Nation at War, Australia 1914-18' [2015] 2 *law&history* 177–201; Tony Cunneen, "'Judges' Sons Make the Final Sacrifice": The Story of the Australian Judicial Community in the First World War' (2017) 91 *Australian Law Journal* 302–312.
- ⁶ National Archives of Australia (hereafter 'NAA'): A456, W16/3/154 'Auton [sic] Reznicek Protection of Invention for deep-water diving', letter from Anton Reznicek, 28 December 1919, 1.
- ⁷ See Wikipedia, 'Unreliable narrator' <https://en.wikipedia.org/wiki/Unreliable_narrator>.
- ⁸ It is recognised that there are significant issues surrounding use of the term 'concentration camp', given that, since World War II, the term has been most commonly used in reference to camps for labour and liquidation in Nazi Germany. However, this article adopts the term 'concentration camps' by virtue of the fact that this was what such internment camps were named and referred to in Australia during WWI and therefore such adoption is historically accurate. For example, when Anton Reznicek contacted the Commissioner of Patents while interned at Liverpool, his letter was headed 'Concentration Camps, Australia. Prisoner of War Letter.' See NAA: ST1233/1, N8652 'Anton Reznicek [Reznezick] [Interned] [Box 50]', letter from Anton Reznicek to the Commissioner of Patents, 24 August 1917.
- ⁹ Many of these details were provided by Reznicek on his 'yellow form', completed when enemy aliens reported to their local police stations to register their residence in the country, or for the purposes of his internment documentation. See NAA: ST1233/1, N8652 'Anton Reznicek [Reznezick] [Interned] [Box 50]'.
- ¹⁰ See NAA: A456, W16/3/154, letter from Anton Reznicek, 28 December 1919, 1.
- ¹¹ NAA: A456, W16/3/154, letter from Anton Reznicek, 27 September 1923 (translation), 1.
- ¹² See generally NAA: A1, 1908/1445 'Papua. Lease of Pearling Waters to A. Reznicek'.
- ¹³ NAA: A456, W16/3/154, letter from Anton Reznicek to the Under-Secretary of State, Foreign Office, 26 May 1924, 1.

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- ¹⁴ See NAA: K269, 9 OCT 1911 ZIETEN 'Incoming passenger list to Fremantle "Zieten" arrived 9 October 1911'; NAA: A456, W16/3/154, letter from Anton Reznicek, 28 December 1919, 1.
- ¹⁵ NAA: A456, W16/3/154, letter from Anton Reznicek, 28 December 1919, 1.
- ¹⁶ Ibid.
- ¹⁷ Ibid.
- ¹⁸ Commonwealth of Australia, *Gazette*, No 55, 10 August 1914, 1381.
- ¹⁹ Ernest Scott, *The Official History of Australia in the War of 1914-1918, Vol XI Australia During the War* (Angus & Robertson, 1936) 105.
- ²⁰ Ibid.
- ²¹ Commonwealth of Australia, *Gazette*, No 56, 13 August 1914, 1383.
- ²² Gerhard Fischer, *Enemy Aliens: Internment and the Home Front Experience in Australia 1914-1920* (University of Queensland Press, 1989) 74.
- ²³ See NAA: ST1233/1, N8652 'Anton Reznicek [Reznezick] [Interned] [Box 50]'.
- ²⁴ See generally NAA: ST1233/1, N8652 'Anton Reznicek [Reznezick] [Interned] [Box 50]'; NAA: A1, 1919/11228 'Anton Reznicek – Naturalization'.
- ²⁵ 'Naturalisation. Rush of Applicants', *The Sydney Morning Herald* (NSW), 5 August 1914, 12 <<http://nla.gov.au/nla.news-page1278805>>; Scott, above n 19, 108.
- ²⁶ 'Naturalisation. German Rush. An Interesting Point', *The Sydney Morning Herald* (NSW), 14 August 1914, 8 <<http://nla.gov.au/nla.news-page1278927>>.
- ²⁷ 'Naturalisation. The German Question', *The Sydney Morning Herald* (NSW), 3 November 1914, 10 <<http://nla.gov.au/nla.news-page1277545>>.
- ²⁸ Fischer, above n 22, 4.
- ²⁹ John Moses, 'Reflections on the internment of persons of German origin in Australia during two world wars: context and arguments' (2005) 91 *Journal of the Royal Australian Historical Society* 93, 93.
- ³⁰ The *War Precautions Act 1914* was subject to multiple amendments over the early years of the war: see *War Precautions Act 1915* (Cth); *War Precautions Act (No 2) 1915* (Cth); *War Precautions Act 1916* (Cth).
- ³¹ Commonwealth of Australia, *Gazette*, No 45, 27 May 1915, 977–9, *Aliens Restriction Order 1915, Order 2* 'Interpretation'.
- ³² See NAA: A456, W16/3/154, letter from Anton Reznicek, 28 December 1919, 1 ('I went voluntarily 23 of November 1915 in the Camp.')
- ³³ Scott, above n 19, 112; see also Moses, above n 29, 98; Fischer, above n 22, 81.

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- ³⁴ See, for example, McDermott, above n 4.
- ³⁵ Scott, above n 19, 137.
- ³⁶ Moses, above n 29, 99.
- ³⁷ *War Precautions Regulations 1915* (Cth), Statutory Rules 1915, no 130.
- ³⁸ John F Williams, *German Anzacs and the First World War* (UNSW Press, 2003) 4.
- ³⁹ *Ibid.*
- ⁴⁰ *R v Lloyd; ex parte Wallach* [1915] VLR 476.
- ⁴¹ *Lloyd v Wallach* (1915) 20 CLR 299.
- ⁴² See NAA: C440, REGISTER 1 OF 1 'Investigation Branch New South Wales, Register of World War I Internees in NSW', Register No 1.
- ⁴³ Fischer, above n 22, first page of insert of photographs.
- ⁴⁴ Gerhard Fischer, 'Fighting the War at Home: The Internment of Enemy Aliens in Australia During World War I' in Nadine Helmi and Gerhard Fischer, *The Enemy at Home: German Internees in World War I Australia* (UNSW Press, 2011) 17, 37.
- ⁴⁵ Fischer, above n 22, 205.
- ⁴⁶ Scott, above n 19, 132.
- ⁴⁷ *Ibid* 128–9.
- ⁴⁸ Fischer, above n 22, 182.
- ⁴⁹ See generally Rebecca Martin, 'The Torrens Island Internment Camp: law, history and the treatment of "enemy aliens" in South Australia in World War One' (2014) 42 *Journal of the Historical Society of South Australia* 53–70; Peter Monteath, Mandy Paul and Rebecca Martin, *Interned: Torrens Island 1914-1915* (Wakefield Press, 2014); Michael Wohltmann, *A Future Unlived: A forgotten chapter in South Australia's history* (Digital Print Australia, 2016). Many years later, Commonwealth Governor-General Sir William Deane apologised to the German-Australian community for this disservice. See Gerhard Fischer, 'German experience in Australia during WW1 damaged road to multiculturalism', *The Conversation* (online), 22 April 2015 <<https://theconversation.com/german-experience-in-australia-during-ww1-damaged-road-to-multiculturalism-38594>>.
- ⁵⁰ *Patents Act 1903* s 64(2).
- ⁵¹ NAA: ST1233/1, N8652, letter from Anton Reznicek to the Commissioner of Patents, 24 August 1917.
- ⁵² NAA: ST1233/1, N8652, letter from the Commissioner of Patents to the State Commandant, Military Headquarters, Sydney, NSW, 4 September 1917; letter from Lieutenant-Colonel, Commandant, Concentration Camps, 12 September 1917.

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- ⁵³ *Patents (Temporary) Regulations 1914* (Cth), Statutory Rules 1914, no 174.
- ⁵⁴ *Ibid* reg 8(a).
- ⁵⁵ NAA: A456, W16/3/154, Memorandum for the Secretary, Attorney-General's Department, from the Commissioner of Patents, 4 April 1922.
- ⁵⁶ NAA: C440, REGISTER 1 OF 1 'Investigation Branch New South Wales, Register of World War I Internees in NSW', Register No 1.
- ⁵⁷ Scott, above n 19, 137.
- ⁵⁸ 'Soldiers' Grievances. Emphatic Resolutions', *The Sydney Morning Herald* (NSW), 3 January 1919, 7 <<http://nla.gov.au/nla.news-page1256237>>.
- ⁵⁹ Fischer, above n 22, 297.
- ⁶⁰ Scott, above n 19, 137.
- ⁶¹ 'Deported Enemy Aliens. Tras-os-Montes Departs', *The Sydney Morning Herald* (NSW), 10 July 1919, 7 <<http://nla.gov.au/nla.news-page1254348>>.
- ⁶² See *Nationality Act 1920* (Cth) s 7(1); see generally pt III 'Naturalization of Aliens'.
- ⁶³ NAA: A1, 1919/11228, letter from Anton Reznicek to the Minister for Home Affairs, 8 August 1919.
- ⁶⁴ NAA: A456, W16/3/154, letter from Gerald Spencer to Anton Reznicek, 28 January 1920.
- ⁶⁵ NAA: A456, W16/3/154, letter from Anton Reznicek, 15 December 1921 (translation).
- ⁶⁶ *Ibid*.
- ⁶⁷ *Ibid*.
- ⁶⁸ *Ibid*.
- ⁶⁹ NAA: A456, W16/3/154, letter from Anton Reznicek to the Foreign Office, 21 July 1921 (translation).
- ⁷⁰ NAA: A456, W16/3/154, letter from Anton Reznicek, 15 December 1921 (translation).
- ⁷¹ NAA: A456, W16/3/154, Memorandum for the Secretary, Attorney-General's Department, from the Commissioner of Patents, 4 April 1922.
- ⁷² NAA: A456, W16/3/154, letter from Anton Reznicek to the Under Secretary of State, Foreign Office, 11 August 1922, 2 (translation).
- ⁷³ *Ibid*.
- ⁷⁴ NAA: A456, W16/3/154, Memorandum for the Secretary, Prime Minister's Department, from RR Garran, 9 November 1922.

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- ⁷⁵ NAA: A456, W16/3/154, letter from Anton Reznicek to the Governor-General of the Commonwealth of Australia, 6 March 1923, 1.
- ⁷⁶ Ibid.
- ⁷⁷ NAA: A456, W16/3/154, letter from Anton Reznicek, 27 September 1923, 2 (translation).
- ⁷⁸ Ibid.
- ⁷⁹ Multiple parties, including Reznicek, use the surname 'Billington', but it appears from service records and newspaper articles that the correct surname was 'Billinton'. See NAA: B2455, BILLINTON R 'Billinton Robert : SERN 1531 : POB Leeds England : POE Warwick Farm NSW : NOK Denny Bella'.
- ⁸⁰ *Patents (Temporary) Regulations 1914* (Cth), Statutory Rules 1914, no 174, reg 3(1).
- ⁸¹ Bond, above n 4, 88 (citations omitted).
- ⁸² See *The Australian Official Journal of Patents*, 20 May 1919, vol 30 no 18, 476.
- ⁸³ NAA: A456, W16/3/154, Memorandum for the Secretary, Attorney-General's Department, from the Commissioner of Patents, 4 April 1922.
- ⁸⁴ See, for example, 'In Wynyard Park. Ranger Flees For His Factotum', *Truth* (Sydney, NSW), 18 August 1912, 11 <<http://nla.gov.au/nla.news-page16125821>>.
- ⁸⁵ See NAA: B2455, BILLINTON R, letter from Robert 'Billington' [sic] to A Fisher, 28 January 1918.
- ⁸⁶ See NAA: B2455, BILLINTON R, letter from the Agent-General for New South Wales to General T Griffiths, Australian Imperial Force, 25 January 1918; letter from the Surgeon-General, DMS AIF to Commandant, Administrative Headquarters, AIF, 8 February 1918.
- ⁸⁷ 'Billinton-Calow', *The Sun* (Sydney, NSW), 20 April 1919, 17 <<http://nla.gov.au/nla.news-page24407336>>.
- ⁸⁸ 'After Few Months Husband Leaves Wife', *The Evening News* (Sydney, NSW), 26 November 1919, 4 <<http://nla.gov.au/nla.news-page12338285>>.
- ⁸⁹ NAA: A456, W16/3/154, letter from Anton Reznicek, 27 September 1923, 4 (translation).
- ⁹⁰ NAA: A456, W16/3/154, letter from George S Knowles to the Secretary, Prime Minister's Department, 15 February 1924.
- ⁹¹ NAA: A456, W16/3/154, letter from RR Garran to the Secretary, Prime Minister's Department, 7 January 1925.
- ⁹² During both WWI and the post-war period, the Public Trustee was responsible for all enemy-owned property. See *Trading with the Enemy Act 1914* (Cth) s 2A, as amended by the *Trading with the Enemy Act 1916* (Cth).
- ⁹³ NAA: ST1233/1, N8652, letter from CC Brown, Official Secretary, Australia House to the Public Trustee, Melbourne, 27 June 1928.

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- ⁹⁴ NAA: ST1233/1, N8652, letter from Inspector, Attorney-General's Department, Investigation Branch, Melbourne to Inspector Longfield Lloyd, Sydney, 10 December 1928.
- ⁹⁵ NAA: ST1233/1, N8652, letter from the Inspector, Investigation Branch to the Inspector, Commonwealth Investigation Branch, Melbourne, 14 December 1928.
- ⁹⁶ NAA: ST1233/1, N8652, letter from the Inspector, Investigation Branch to the Inspector-in-Charge, Commonwealth Investigation Branch, Brisbane, 28 January 1930.
- ⁹⁷ NAA: B741, V/5634 'Anton Reznizek [sic] – Inquiry from Public Trustee', WJ Carseldine, Thursday Island, 3 April 1930.
- ⁹⁸ Sugarman, above n 1, 13 (citations omitted).