

## CHRISTMAS ISLAND.

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**No. 41 of 1958.**

An Act to provide for the Acceptance of Christmas Island as a Territory under the Authority of the Commonwealth and to provide for the Government of that Territory.

[Assented to 2nd September, 1958.]

**Preamble.**

**W**HEREAS Christmas Island (being the island referred to in section four of this Act) is governed and administered as a separate colony in pursuance of the Christmas Island Order in Council, 1957, made by the Queen by virtue and in exercise of the powers conferred upon Her by the Imperial Acts entitled the Straits Settlements (Repeal) Act, 1946, and the British Settlements Acts, 1887 and 1945 :

AND WHEREAS by the *Christmas Island (Request and Consent) Act 1957* the Parliament of the Commonwealth requested, and consented to, the enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place Christmas Island under the authority of the Commonwealth and making provision for matters incidental to the placing of that Island under that authority :

AND WHEREAS the Government of the Commonwealth has also requested, and consented to, the enactment by the Parliament of the United Kingdom of such an Act :

AND WHEREAS by the Imperial Act entitled the *Christmas Island Act, 1958*, it is provided that Her Majesty may, by Order in Council, direct that Christmas Island shall, on such date as may be specified in the Order, be placed under the authority of the Commonwealth :

AND WHEREAS by the Constitution it is provided that the Parliament may make laws for the government of any territory placed by the Queen under the authority of and accepted by the Commonwealth:

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

#### PART I.—PRELIMINARY.

1. This Act may be cited as the *Christmas Island Act 1958*. Short title.

2.—(1.) Part I. of this Act shall come into operation on the day on which this Act receives the Royal Assent. Commencement.

(2.) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

(3.) The date so fixed shall be the date on which Christmas Island is placed under the authority of the Commonwealth in pursuance of the Imperial Act entitled the *Christmas Island Act, 1958*.

(4.) Notwithstanding the preceding provisions of this section, Ordinances may be made under Division 2 of Part III. of this Act, and regulations may be made for the purposes of Part V. of this Act, at any time after the day on which this Act receives the Royal Assent as if the whole of this Act had come into operation on that day, but any Ordinance or regulations made before the date fixed under sub-section (2.) of this section shall not, except as provided by the next succeeding sub-section, have any force or effect until the date so fixed.

(5.) Where an Ordinance made before the date fixed under sub-section (2.) of this section provides for the making of an appointment to an office—

- (a) an appointment to that office, to take effect on the date so fixed, may be made at any time after notice of the making of the Ordinance is published in the *Gazette* and shall take effect accordingly; and
- (b) an oath or affirmation in relation to the appointment may be made and subscribed before the date so fixed and shall, from and including that date, have effect as if it had been made and subscribed on that date.

**Parts.**

3. This Act is divided into Parts, as follows :—

Part I.—Preliminary (Sections 1–4).

Part II.—Acceptance of Christmas Island (Sections 5–6).

Part III.—Legislation.

Division 1.—Laws (Sections 7–8).

Division 2.—Legislative Powers of the Governor-General (Sections 9–10).

Part IV.—The Judicial System (Sections 11–14).

Part V.—Application of Australian Citizenship to certain Residents of the Territory (Sections 15–16).

Part VI.—Miscellaneous (Sections 17–23).

**Definitions.**

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

“ Christmas Island ” means the Island of that name situated in the Indian Ocean in or about latitude ten degrees thirty minutes south and longitude one hundred and five degrees forty minutes east ;

“ Ordinance ” means an Ordinance made under this Act ;

“ the proclaimed date ” means the date fixed by Proclamation under sub-section (2.) of section two of this Act ;

“ the Supreme Court ” means the Supreme Court of the Territory ;

“ the Territory ” means the Territory of Christmas Island.

#### PART II.—ACCEPTANCE OF CHRISTMAS ISLAND.

**Acceptance of Christmas Island.**

5. Christmas Island is declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth and shall be known as the Territory of Christmas Island.

**Transfer of rights, liabilities, &c., to Commonwealth.**

6.—(1.) All property, rights and powers in or in connexion with Christmas Island which, immediately before the proclaimed date, were held or enjoyed by or on behalf of the Queen in right

of the United Kingdom or of the Colony of Christmas Island, or by or on behalf of the Government of the United Kingdom or of the Colony of Christmas Island, shall, from and including that date, be deemed to be held or enjoyed by or on behalf of the Commonwealth.

(2.) Subject to the next succeeding sub-section, all liabilities and obligations incurred before the proclaimed date by or on behalf of the Government of the United Kingdom, the Government of the Colony of Singapore or the Government of the Colony of Christmas Island in or in connexion with Christmas Island and subsisting immediately before that date shall, from and including that date, be deemed to have been incurred by or on behalf of the Commonwealth.

(3.) The last preceding sub-section does not apply to or in relation to liabilities or obligations of the Government of the United Kingdom or of the Colony of Singapore for or in respect of—

- (a) the servicing or repayment of public loans raised by the Government of the Colony of Singapore ;
- (b) the payment of pensions or retiring allowances in respect of service in Christmas Island ;
- (c) the repayment of deposits with the Christmas Island branch of the Post Office Savings Bank of the Colony of Singapore or interest on those deposits ; or
- (d) the meeting of deficiencies in assets of the Central Provident Fund of the Colony of Singapore required by the Central Provident Fund Ordinance of that Colony to be met out of the general revenues of that Colony.

(4.) In this section, “property” includes movable and immovable property.

### PART III.—LEGISLATION.

#### *Division 1.—Laws.*

7.—(1.) Subject to this Act and to any other Act extending to the Territory (whether enacted before, on or after the proclaimed date), the laws in force in the Colony of Christmas Island immediately before the proclaimed date shall continue in force in the Territory by virtue of this Act and not otherwise.

Continuance of existing laws.

(2.) The laws continued in force by virtue of the last preceding sub-section may be altered, amended or repealed by Ordinances or laws made under Ordinances.

Application of  
Commonwealth  
Acts.

8.—(1.) An Act or a provision of an Act (whether enacted before, on or after the proclaimed date) is not, except as otherwise provided by that Act or by another Act, in force, as such, in the Territory, unless expressed to extend to the Territory.

(2.) Except as provided by this Act, an Ordinance shall not be made so as to affect the application of its own force in, or in relation to, the Territory of an Act or a provision of an Act.

*Division 2.—Legislative Powers of the Governor-General.*

Legislative  
powers of the  
Governor-  
General.

9.—(1.) Subject to this Act, the Governor-General may make Ordinances for the peace, order and good government of the Territory.

(2.) Notice of the making of an Ordinance shall be published in the *Gazette*, and an Ordinance shall, unless the contrary intention appears in the Ordinance, come into operation on the date of publication of the notice.

(3.) This section does not authorize the making of an Ordinance imposing a penalty in respect of an act or an omission occurring before the date of publication in the *Gazette* of notice of the making of the Ordinance.

Tabling of  
Ordinances in  
Parliament.

10.—(1.) Every Ordinance shall be laid before each House of the Parliament within fifteen sitting days of that House after the day on which the Ordinance is made and, if it is not so laid before each House of the Parliament, is, and shall be deemed to have been, void and of no effect.

(2.) If either House of the Parliament passes a resolution (of which notice has been given at any time within fifteen sitting days after the day on which the Ordinance was laid before that House) disallowing an Ordinance or a part of an Ordinance, the Ordinance or part so disallowed thereupon ceases to have effect.

(3.) If, at the expiration of fifteen sitting days after the day on which notice of a resolution to disallow an Ordinance or a part of an Ordinance has been given in either House of the Parliament in accordance with the last preceding sub-section, the resolution has not been withdrawn or otherwise disposed of, the Ordinance or the part of the Ordinance, as the case may be, shall thereupon be deemed to have been disallowed.

(4.) Where an Ordinance or a part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance has the same effect as a repeal of the Ordinance or the part of the Ordinance, as the case may be, except that, if a provision of the Ordinance or of the part of the

Ordinance amended or repealed a law in force immediately before that provision came into operation, the disallowance revives the previous law from and including the date of the disallowance as if the disallowed provision had not been made.

(5.) If an Ordinance or a part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, and an Ordinance containing a provision being the same in substance as a provision so disallowed, or deemed to have been disallowed, is made within six months after the date of the disallowance, that provision is void and of no effect, unless—

- (a) in the case of an Ordinance, or a part of an Ordinance, disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed ; or
- (b) in the case of an Ordinance, or a part of an Ordinance, deemed to have been disallowed—the House of the Parliament in which notice of the resolution to disallow the Ordinance or part was given has approved, by resolution, the making of a provision the same in substance as the provision deemed to have been disallowed.

#### PART IV.—THE JUDICIAL SYSTEM.

11.—(1.) There shall be a Supreme Court of the Territory, which shall be known as the Supreme Court of Christmas Island. Supreme Court.

(2.) The Supreme Court shall be constituted as provided by Ordinance.

(3.) The Supreme Court is a superior court of record.

12. The jurisdiction, practice and procedure of the Supreme Court shall be as provided by or under Ordinance. Jurisdiction,  
&c., of the  
Supreme Court.

13. Courts and tribunals for the Territory, in addition to the Supreme Court, may be established by Ordinance. Establishment  
of other courts.

14.—(1.) The High Court has jurisdiction, with such exceptions and subject to such conditions as are provided by Ordinance, to hear and determine appeals from all judgments, decrees, orders and sentences of the Supreme Court. Appeals to be  
High Court.

(2.) It may be provided by Ordinance that such an appeal may be by case stated, with the legal argument, if any, attached to the case in writing, and that it shall not be necessary in any such case for the parties to appear either personally or by counsel.

PART V.—APPLICATION OF AUSTRALIAN CITIZENSHIP TO CERTAIN RESIDENTS OF THE TERRITORY.

Right of certain residents to elect to become Australian citizens.

15.—(1.) A person (not being an Australian citizen) who, immediately before the proclaimed date, was a British subject ordinarily resident in Christmas Island, may make a declaration, in the prescribed manner and within the prescribed time, that he wishes to become an Australian citizen.

(2.) Upon the registration, as prescribed, of a declaration made by a person under the last preceding sub-section, that person shall be deemed to have become an Australian citizen upon the proclaimed date.

(3.) The registration of a declaration made by a person under sub-section (1.) of this section does not operate so as to render unlawful anything done before the date of the registration that would have been lawful if the declaration had not been made and registered.

(4.) For the purpose of sub-section (1.) of this section, the prescribed time is—

- (a) in the case of a person who is under the age of twenty-one years at the proclaimed date—two years after the date on which he attains that age ; and
- (b) in any other case—two years after the proclaimed date.

Meaning of "ordinarily resident".

16. For the purposes of the last preceding section, a person shall be deemed to have been ordinarily resident in Christmas Island immediately before the proclaimed date if, immediately before that date—

- (a) he had his home in Christmas Island ; or
- (b) Christmas Island was the place of his permanent abode notwithstanding that he was temporarily absent from it,

but a person shall be deemed not to have been so resident if, immediately before that date, he was resident in Christmas Island for a special or temporary purpose only.

PART VI.—MISCELLANEOUS.

Appointment of officers.

17.—(1.) Notwithstanding the *Public Service Act 1922-1958*, provision may be made by Ordinance for and in relation to the appointment and employment of persons for the purposes of the government of the Territory.

(2.) Where a person appointed or employed under an Ordinance was, immediately before his appointment or employment, an officer of the Public Service of the Commonwealth—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under the Ordinance shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c) the *Officers' Rights Declaration Act* 1928–1953 applies as if this Act and this section had been specified in the Schedule to that Act and he were an officer employed by an authority created by this Act.

(3.) Nothing in this section shall be deemed to prevent the appointment or employment of persons under the *Public Service Act* 1922–1958 in its application to the Territory.

18.—(1.) Provision may be made by Ordinance—

- (a) for authorizing the making of arrangements by the Minister with the Government or an authority of a place outside the Territory (including a State or Territory of the Commonwealth) for or in relation to—
  - (i) the removal from the Territory to that place of persons who have been sentenced to imprisonment by a court having jurisdiction in respect of the Territory, for the purpose of serving their sentences in that place; or
  - (ii) the removal from the Territory to that place of persons suffering from leprosy, or persons found to be of unsound mind, for the purpose of detention and treatment in that place; and
- (b) for or in relation to the carrying out of any such arrangements and the custody and detention of persons during their removal in pursuance of the arrangements.

Arrangements  
in relation to  
prisoners,  
mental patients,  
&c.

(2.) For the purposes of the last preceding sub-section, where the Governor-General has commuted to a term of imprisonment the sentence of a person who has been sentenced to death by a court having jurisdiction in respect of the Territory, that person shall be deemed to have been sentenced to imprisonment for that term by a court having jurisdiction in respect of the Territory.

(3.) Nothing in this section affects the application, in respect of the Territory, of the *Removal of Prisoners (Territories) Act* 1923–1957.

Currency and  
legal tender.

19.—(1.) Until otherwise provided by Ordinance and notwithstanding anything contained in any other law of the Commonwealth, currency notes and coins that were legal tender in Christmas Island immediately before the proclaimed date may continue to be used, and shall continue to be legal tender, in the Territory.

(2.) A tender of payment of money in coins, being a tender which, if the Territory were part of the Commonwealth, would be a legal tender by virtue of the *Coinage Act* 1909–1947, is a legal tender in the Territory.

(3.) Nothing in this section shall be taken—

- (a) to prevent the use of Australian notes in the Territory or affect the operation of section forty of the *Commonwealth Bank Act* 1945–1953 in the Territory; or
- (b) to authorize the taking or sending out of the Territory of Australian currency or foreign currency otherwise than in accordance with the *Banking Act* 1945–1953 and the regulations under that Act.

Grant of  
pardon,  
remission, &c.

20.—(1.) The Governor-General, acting with the advice of the Minister, may, by warrant under his hand, grant to a person convicted by a court of the Territory exercising criminal jurisdiction a pardon, either free or conditional, or a remission or commutation of sentence, or a respite, for such period as he thinks fit, of the execution of sentence, and may remit fines, penalties and forfeitures imposed or incurred under a law in force in the Territory.

(2.) Where an offence has been committed in the Territory, or where an offence has been committed outside the Territory for which the offender may be tried in the Territory, the Governor-General, acting with the advice of the Minister, may, by warrant under his hand, grant a pardon to an accomplice who gives evidence that leads to the conviction of the principal offender, or of any of the principal offenders.

Exemption from  
Customs duties  
of goods  
produced in the  
Territory.

21. Duties of Customs are not chargeable on goods imported into Australia from the Territory if the goods—

- (a) are the produce or manufacture of the Territory ;
- (b) have been shipped in the Territory for export to Australia; and
- (c) are not goods which, if manufactured or produced in Australia, would be subject to a Duty of Excise.

Audit.

22. The accounts of the Territory shall be subject to inspection and audit by the Auditor-General for the Commonwealth.

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

- (a) making provision for and in relation to sittings of the Supreme Court in a State or Territory of the Commonwealth other than the Territory of Christmas Island for the purpose of hearing and determining a matter, otherwise than in the exercise of its criminal jurisdiction, if the Court is satisfied that the hearing of the matter outside the Territory is not contrary to the interests of justice; and
  - (b) prescribing penalties, not exceeding a fine of Fifty pounds or imprisonment for three months, for offences against the regulations.
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