

INVALID AND OLD-AGE PENSIONS APPROPRIATION.

No. 5 of 1944.

An Act to grant and apply out of the Consolidated Revenue Fund a sum for Invalid and Old-age Pensions.

[Assented to 3rd April, 1944.]

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows :—

Short title.

1. This Act may be cited as the *Invalid and Old-age Pensions Appropriation Act 1944*.

Commencement.

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

Appropriation
of £23,000,000
for invalid
and old-age
pensions.

3. There shall be payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, for the purposes of the Trust Account established under the *Audit Act 1901-1934* and known as the Invalid and Old-age Pensions Fund, the sum of Twenty-three million pounds for invalid and old-age pensions.

ENTERTAINMENTS TAX ASSESSMENT.

No. 6 of 1944.

An Act to amend the *Entertainments Tax Assessment Act 1942*.

[Assented to 3rd April, 1944.]

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
and citation.

1.—(1.) This Act may be cited as the *Entertainments Tax Assessment Act 1944*.

(2.) The *Entertainments Tax Assessment Act 1942** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Entertainments Tax Assessment Act 1942-1944*.

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

3. Section three of the Principal Act is amended—

Parts.

- (a) by inserting after the words “Part III.—Imposition of Tax.” the words “Part IIIA.—Objections and Appeals.”; and
- (b) by inserting after the words “Part IV.—Offences.” the words “Part IVA.—Prosecutions.”.

4. Section four of the Principal Act is amended—

Definitions.

- (a) by omitting the definitions of “admission”, “admission to an entertainment” and “payment for admission”;
- (b) by inserting before the definition of “die” the following definition:—

“‘Board of Review’ means a Board of Review constituted under the *Income Tax Assessment Act 1936-1943*;”;

- (c) by omitting the definition of “entertainments tax” and inserting in its stead the following definition:—

“‘entertainments tax’ or ‘tax’ means entertainments tax imposed as such by any Act and payable in accordance with this Act;”;

- (d) by adding at the end thereof the following sub-sections:—

“(2.) Any reference in this Act to admission to an entertainment shall be deemed to include a reference to—

- (a) permission to view as a spectator, or to be a member of an audience at, any entertainment;
- (b) in relation to an entertainment being an amusement—

(i) permission to participate in the amusement; and

(ii) permission to use equipment or facilities provided by the proprietor of the entertainment to enable persons to participate in the entertainment, other than permission which is obtained by inserting a coin in an automatic slot machine designed to provide entertainment;

- (c) provision of any meal or other refreshment which is deemed, under section sixteen of this Act, to be an entertainment or part of an entertainment; and

- (d) admission to any place in which an entertainment is held, or any part of any such place.

* Act No. 41, 1942.

“(3.) Any reference in this Act to payment for admission to an entertainment shall be deemed to include a reference to—

- (a) any payment made by a person as a booking fee for admission to an entertainment ;
- (b) any payment, subscription or contribution which entitles the person making it, whether with or without any additional payment, to admission to an entertainment ;
- (c) any payment made by a person, who has been admitted to one part of a place of entertainment, for admission to another part thereof for admission to which a payment involving tax or more tax is required ; and
- (d) any payment which, under any of the provisions of this Act, is deemed to be payment for admission to an entertainment.”.

5. After section ten of the Principal Act the following section is inserted :—

Transfer from
part of place of
entertainment
to another
part.

“10A. When a person is admitted to any part of a place of entertainment and is subsequently admitted to another part or other parts of the place of entertainment, such amount of tax shall be payable on any such subsequent admission as is equal to the difference between the total tax paid in respect of the previous admission or admissions and the total tax which would have been payable if all the payments for admission had been made as one payment for a single admission.”.

6. Section eleven of the Principal Act is repealed and the following section inserted in its stead :—

Admission to
entertainments.

“11.—(1.) In any case in which the payment for admission of any person to an entertainment is subject to entertainments tax, that person shall not be admitted to the entertainment except with a stamped ticket, or a ticket stamped with a stamp, not before used, denoting that the proper entertainments tax has been paid, unless the proprietor of the entertainment has made arrangements approved by the Commissioner for recording, and furnishing returns of, the payments for admission to the entertainment and has given security up to an amount and in a manner approved by the Commissioner for the payment of the tax.

“(2.) In any case in which any amount is collected or received as or for entertainments tax by the proprietor of an entertainment or his agent, the amount so collected or received shall, until payment to the Commonwealth, be held by the proprietor or his agent as property of the Commonwealth, and the Commissioner may sue for and recover any such amount.”.

Penalty for
late payment.

7. Section thirteen of the Principal Act is amended—

- (a) by inserting in sub-section (1.), after the word “eleven”, the words “, or of section sixteen c,” ; and
- (b) by omitting sub-section (2.).

8. After section thirteen of the Principal Act the following section is inserted :—

“ 13A. Any proprietor who—

- (a) understates in any return furnished by him the amount of entertainments tax properly payable by him ; or
- (b) contrary to this Act admits a person for payment to an entertainment without a stamped ticket, or a ticket stamped with a stamp, not before used, denoting that the proper entertainments tax has been paid,

Additional
tax where tax
short paid.

shall be liable to pay as additional tax—

- (c) double the amount of the difference between the tax properly payable and the tax payable upon the basis of the return furnished ; or
- (d) double the amount of the difference between the tax properly payable in respect of the admission of that person, and the tax paid in respect of that admission,

as the case may be, or the sum of One pound, whichever is the greater :

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

9. Section sixteen of the Principal Act is omitted and the following sections are inserted in its stead :—

“ 16.—(1.) Where any meal or other refreshment is provided for persons who have been or are to be admitted to an entertainment—

- (a) if the Commissioner has, before the holding of the entertainment, given notice in writing in accordance with the next succeeding sub-section that he is of the opinion that the provision of the meal or other refreshment is subordinately related to the entertainment—

Meals and
refreshments
with
entertainments.

- (i) where the payment for admission to the place of entertainment entitles the admitted person to the meal or other refreshment, or where the ordinary conditions of admission to the place of entertainment require that the admitted person shall pay for such a meal or other refreshment, the provision of the meal or other refreshment shall, for the purposes of this Act, be deemed to form part of the entertainment, whether it is provided by the proprietor of the entertainment or by some other person, and the amount charged for the meal or other refreshment (whether combined with any other charge for admission to the entertainment in one composite amount or charged separately) shall be deemed to be part of the payment for admission to the entertainment, or payment for admission to the entertainment, as the case may be ; or

(ii) where sub-paragraph (i) of this paragraph does not apply to the meal or other refreshment, the provision of the meal, or of each item or group of items of refreshment for which a separate charge is provided, shall be deemed to be an entertainment, of which the person providing the meal or other refreshment, whether he is the proprietor of the principal entertainment or not, is, for the purposes of this Act, the proprietor ; or

(b) in any case to which paragraph (a) of this sub-section does not apply, if the Commissioner has, before the holding of the entertainment, given notice in writing in accordance with the next succeeding sub-section—

(i) that he is of the opinion that the total amount to be charged for admission to the entertainment and for the meal or other refreshment should be apportioned as between the meal or other refreshment and the entertainment, or, if separate charges are to be made for the meal or other refreshment and for admission to the entertainment, that the relative amounts of the charges are such that entertainments tax would be evaded ; and

(ii) specifying what portion of the payment for the meal or other refreshment and the entertainment combined, or for the meal or other refreshment, as the case may be, is, in his opinion, justly attributable to the meal or other refreshment,

the remainder of the payment or payments shall, for the purposes of this Act, be deemed to be payment for admission to the entertainment.

“(2.) A notice under the last preceding sub-section shall be served—

(a) in any case to which sub-paragraph (i) of paragraph (a), or paragraph (b), of that sub-section applies—on the proprietor of the entertainment ; and

(b) in any case to which sub-paragraph (ii) of paragraph (a) of that sub-section applies—on the person providing the meal or other refreshment.

“(3.) In any case in which, upon the giving of a notice under paragraph (a) of sub-section (1.) of this section (including a notice which could, apart from this sub-section, be given by virtue of section sixteen B of this Act) the provisions of sub-paragraph (ii) of that paragraph would apply, the Commissioner shall not give such a notice if the proprietor of the entertainment or the person providing the meals or other refreshments has satisfied him that the average of the sum of the amounts which will be paid, or have been paid, by

each patron of the entertainment as payment for admission to the entertainment and for meals or other refreshments will not be, or was not (as the case may be), in excess of Three shillings.

“(4.) Any decision of the Commissioner for the purposes of the last preceding sub-section shall be final and conclusive, and shall not be subject to objection, review or appeal.

“16A.—(1.) This section may be applied, in accordance with the next succeeding sub-section, where any proprietor conducts—

Amusement
parks, &c.

(a) a single amusement where, in the opinion of the Commissioner, it is customary for a substantial number of the patrons of an amusement of that kind to pay, at any one visit to the place where the amusement is conducted, amounts totalling not less than one shilling for admission more than once to the amusement; or

(b) a group of amusements where, in the opinion of the Commissioner, it is customary for a substantial number of the patrons of a group of amusements of that kind to pay, at any one visit to the place where the group of amusements is conducted, amounts totalling not less than one shilling for more admissions than one to one of the amusements or to more than one of the amusements.

“(2.) Where the Commissioner has given notice in writing to a proprietor of an amusement or group of amusements specified in sub-section (1.) of this section that this section shall apply to that amusement or group of amusements, the rates of entertainments tax payable on payments made, after the service of the notice, for admission to that amusement, or to any of the amusements included in the group of amusements, as the case may be, shall be the rates declared by the Parliament to be the rates of entertainments tax in cases to which the provisions of this section apply.

“(3.) In this section ‘amusement’ does not include an amusement consisting of an automatic slot machine designed to provide entertainment.

“16B. Where there is held any entertainment which has not been registered as required by section twenty-seven of this Act, or in respect of which the proprietor has not furnished complete and accurate information as required by or under this Act or the regulations, a notice under sub-section (1.) of section sixteen or under section sixteen A of this Act may be served at any time after the holding of the entertainment, and the person on whom the notice is served shall be liable to pay so much of any tax which would have been payable had the notice been served before the holding of the entertainment as has not been paid.

Notices under
sections 16
and 16A where
entertainment
not registered.

“16C. A proprietor of an entertainment who is liable to pay entertainments tax in respect of payments specified in section sixteen or section sixteen A of this Act shall make arrangements, approved by the Commissioner, for furnishing returns of those payments and shall give security to an amount and in a manner approved by the Commissioner for payment of the tax.

Arrangements
for returns.

Commissioner
may make
assessments.

“ 16D.—(1.) Where—

- (a) any person makes default in furnishing any return ; or
- (b) the Commissioner is not satisfied with the return made by any person ; or
- (c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished, or been liable to furnish, a return) is liable to pay tax which he has not paid,

the Commissioner may, at any time, cause an assessment to be made of the tax or further tax which, in his judgment, should be paid, and that person shall be liable to pay the tax or further tax so assessed, except in so far as he establishes on objection that the assessment is excessive.

“(2.) Any person who becomes liable to pay tax by virtue of an assessment made under the last preceding sub-section shall also be liable to pay, by way of additional tax, double the amount of that tax or the amount of One pound, whichever is the greater :

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

“(3.) As soon as conveniently may be after an assessment is made, the Commissioner shall cause notice in writing of the assessment and of the additional tax payable to be given to the person liable to pay the tax or further tax.

“(4.) The amount of tax or further tax, and additional tax, specified in the notice shall be payable on or before the date specified in the notice.

“(5.) The omission to give any such notice shall not invalidate the assessment made by the Commissioner.”.

Entertainments
exempted from
tax.

10. Section seventeen of the Principal Act is amended by inserting in paragraph (d), before the word “ erection ”, the word “ purchase,”.

11.—(1.) After section eighteen of the Principal Act the following sections are inserted in Part III. :—

Refund of tax
overpaid.

“ 18A. Without limiting the operation of section eighteen of this Act, where the Commissioner finds in any case that tax has been overpaid, and is satisfied that the tax has not been passed on by the proprietor of the entertainment to some other person, or, if passed on to some other person, has been refunded to that person by the proprietor, the Commissioner may refund the amount of tax found to be overpaid.

Additional tax
not payable
where offence
prosecuted.

“ 18B. Where a prosecution has been instituted in respect of an offence against this Act or the regulations, additional tax arising out of the act or omission which is the subject of the prosecution shall not be payable unless and until the prosecution is withdrawn.”.

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

12. The Principal Act is amended by inserting after Part III. the following Part :—

“PART IIIA.—OBJECTIONS AND APPEALS.

“18C.—(1.) A proprietor who is dissatisfied with any assessment made by the Commissioner under this Act may, within forty-two days after service of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies. Objections.

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

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

“(4.) A proprietor who is dissatisfied with the decision of the Commissioner, may, within thirty days after the service by post of notice of that decision, request the Commissioner in writing to refer the decision to a Board of Review for review.

“18D.—(1.) Where a proprietor has, in accordance with the last preceding section, requested the Commissioner to refer the decision to a Board of Review, the Commissioner shall, if the request is accompanied by a fee of One pound (which shall be refunded to the proprietor if the assessment is reduced either by amendment or as a result of the decision of the Board or of the High Court) refer the decision to a Board not later than thirty days after receipt of the request. Reference to Board of Review.

“(2.) A proprietor shall be limited on the review to the grounds stated in his objection.

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

“(4.) The Board, on review, shall give a decision and may either confirm the assessment or reduce, increase or vary the assessment.

“18E. A Board of Review shall have power to review such decisions of the Commissioner as are referred to it under this Act and, for that purpose, shall have all the powers and functions of the Commissioner when making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of the Board, and the decisions of the Board upon review, shall for all purposes (except for the purposes of sub-section (4.) of section eighteen c and of section eighteen f of this Act) be deemed to be assessments determinations or decisions of the Commissioner. Powers of Board.

“18F. The Commissioner or a proprietor may appeal to the High Court from any decision of a Board of Review under this Part which, in the opinion of the High Court, involves a question of law, and a Appeal to High Court.

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

Pending appeal
not to delay
payment of tax.

“ 18G.—(1.) The fact that an appeal or reference is pending shall not, in the meantime, interfere with or affect the assessment the subject of that appeal or reference, and tax and additional tax may be levied and recovered on the assessment as if no appeal or reference were pending.

“(2.) If the assessment is altered on appeal or reference, a due adjustment shall be made, for which purpose amounts paid in excess shall be dealt with in accordance with section eighteen A of this Act, and amounts short paid shall be recoverable as arrears.”.

Power to officer
to enter
place of
entertainment.

13. Section nineteen of the Principal Act is amended by omitting sub-section (2.).

Failure to pay
tax in
accordance
with
arrangements.

14. Section twenty of the Principal Act is amended by inserting after the word “ eleven ” the words “ or section sixteen c ”.

15. The Principal Act is amended by inserting after Part IV. the following Part :—

“ PART IVA.—PROSECUTIONS.

Institution of
prosecutions.

“ 25A.—(1.) A prosecution for recovery of a pecuniary penalty in respect of any offence against this Act or the regulations may be instituted in the name of the Commissioner or a Deputy Commissioner and, where it relates to a particular entertainment or entertainments, may, at the option of the prosecutor, be instituted either—

- (a) in a court of summary jurisdiction having jurisdiction at the place where, for the purposes of this Act, the entertainment or entertainments should be registered ; or
- (b) in a court of summary jurisdiction having jurisdiction at the place where the entertainment or entertainments is or are held or is or are intended to be held.

“(2.) Where a prosecution has been instituted by an officer in the name of the Commissioner or a Deputy Commissioner, the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted on the authority of the Commissioner or the Deputy Commissioner, as the case may be.

“(3.) 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.

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

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

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

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

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

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

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

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

“ (4.) This section shall not apply to—

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

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

16.—(1.) After section twenty-six of the Principal Act the following sections are inserted :—

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

- (a) to furnish him with such information as he requires ; or
- (b) to attend and give evidence before him or before any officer authorized by him in that behalf,

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

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

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

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

- (a) refuse or fail to furnish any information which he has been required to furnish, or furnish any information which is false or misleading in any particular; or
- (b) refuse or neglect duly to attend and give evidence as required, or to answer truly and fully any question put to him, or to produce any book or papers required of him, by or in pursuance of any such requirement.

Penalty : One hundred pounds.

Access to books,
&c.

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

Stamp duty
not payable on
securities.

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

Obstructing
officers.

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

Penalty : Fifty pounds.”.

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

Regulations.

17. Section twenty-eight of the Principal Act is amended—

- (a) by omitting from paragraph (d) the word “and” (last occurring); and
- (b) by inserting after paragraph (d) the following paragraph :—
 “(da) for prescribing that prosecutions in respect of offences against any regulation may be commenced at any time, or within a specified time; and”.