

Loan (Defence)

No. 133 of 1968

An Act to approve the raising by way of Loan of Moneys in the Currency of the United States of America and to authorize the expending of those Moneys for Defence Purposes, and for purposes connected therewith.

[Assented to 9 December 1968]

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

1. This Act may be cited as the *Loan (Defence) Act 1968*. Short title.
2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
- 3.—(1.) In this Act, “the Loan Agreement” means the agreement entered into between the Commonwealth and the Export-Import Bank of the United States a copy of which is set out in the Schedule to this Act. Interpretation.
(2.) For the purposes of this Act—
 - (a) the promissory notes delivered by the Commonwealth under the Loan Agreement shall be deemed to form part of the Loan Agreement; and
 - (b) a payment in accordance with the Loan Agreement by the Export-Import Bank of the United States of moneys in discharge of a liability of the Commonwealth shall be taken to be the loan of an amount equal to those moneys by the Export-Import Bank of the United States to the Commonwealth.
4. The borrowing by the Treasurer, on behalf of the Commonwealth, in accordance with the Loan Agreement, of moneys in the currency of the United States of America not exceeding in the whole Seventy-five million dollars is approved. Approval of borrowing.
5. The proceeds of borrowing under the Loan Agreement may be issued and applied for defence purposes. Expenditure of loan moneys.
6. The expenses of borrowing and all moneys payable by the Commonwealth under the Loan Agreement, including moneys payable in respect of interest or by way of repayment of moneys borrowed, shall be paid out of the Consolidated Revenue Fund, which is appropriated to the extent necessary for the purposes of this section. Payment of moneys out of Consolidated Revenue Fund.

Exemption
from taxation.

7.—(1.) Notwithstanding anything contained in any law of the Commonwealth or of a State or Territory of the Commonwealth, whether passed or made before or after the commencement of this Act—

- (a) the execution, issue and delivery of the Loan Agreement or of any promissory note provided for by that agreement; and
- (b) the payment of moneys referred to in paragraph A of Article VIII of that agreement,

shall be exempt from all taxes, duties, fees, restrictions and other charges as agreed in that Article.

(2.) Nothing in this section excludes or limits the application of section 6B of the *Loans Securities Act 1919–1968*.

National Debt
Sinking Fund
Act not to
apply.

8. The *National Debt Sinking Fund Act 1966–1967* does not apply in relation to moneys borrowed under the Loan Agreement.

THE SCHEDULE

Section 3.

THIS AGREEMENT, made and entered into the 2nd day of October, 1968, by and between the Commonwealth of Australia (hereinafter called “Borrower”) and the Export-Import Bank of the United States (hereinafter called “Eximbank”), an agency of the United States of America,

WITNESSETH:

WHEREAS, the Borrower has entered or will enter into arrangements (hereinafter called “Purchase Arrangements”) with the Department of Defense, United States of America (hereinafter called “DOD”), and with various United States suppliers, for the purchase of 24 F111C aircraft, spares, associated equipment, and services (said purchases being hereinafter collectively called “Purchase Program”); and

WHEREAS, the Borrower has requested Eximbank to establish a line of credit in its favor to assist the Borrower in financing payments required to be made by the Borrower to the DOD and to United States suppliers under the Purchase Arrangements for or towards the acquisition in the United States of that portion of the Purchase Program which consists of (i) equipment, components, and articles produced or manufactured in the United States to the extent that at least ninety-five per cent (95%) of the value thereof has been added by labor or material exclusively of United States origin; and (ii) services of United States origin (the items in (i) and (ii) hereof being hereinafter collectively called “Eligible Items”); and

WHEREAS, the establishment of the line of credit requested will facilitate exports and imports and the exchange of commodities between the United States of America and Australia;

Now, THEREFORE, the parties hereto agree as follows:

ARTICLE I

Line of Credit

Eximbank hereby establishes in favor of the Borrower a line of credit (hereinafter called “Credit”) in the principal amount of Seventy-Five Million Dollars (U.S. \$75,000,000), United States currency, against which Eximbank will make disbursements from time to time, subject to the terms and conditions hereinafter set forth, to assist the Borrower in financing payments required to be made by the Borrower under Purchase Arrangements satisfactory to Eximbank for or towards the acquisition in the United States of that portion of the Purchase Program which consists of Eligible Items.

THE SCHEDULE—*continued*

ARTICLE II

Repayment of Credit

The Borrower covenants and agrees to repay the principal amount of the Credit, and to pay interest thereon, subject to the following terms and conditions:

- (a) *Principal and Interest.* The Borrower shall repay the disbursements under the Credit in fourteen (14) approximately equal installments, the first of which shall be due and payable on the 31st day of December following the close of the fiscal year of Eximbank in which such disbursements were made with the remaining thirteen installments due and payable successively semiannually thereafter. In addition to the foregoing amounts, the Borrower shall pay interest semiannually on the 30th day of June and the 31st day of December at the rate of six per cent (6%) per annum on the principal amount of the Credit disbursed and outstanding from time to time, said interest to accrue from the dates of the respective disbursements under the Credit and to be computed on the basis of the actual number of days using a 365-day factor. Interest shall not be charged for the date on which any principal payment is made on the amount of such principal payments. All payments of principal and interest hereunder shall be made in United States currency at the principal office of The Chase Manhattan Bank in the City of New York, State of New York, United States of America in Federal Reserve Bank of New York funds.
- (b) *Promissory Notes.* Further to evidence the obligation of the Borrower to pay the amount specified in subparagraph (a) of this Article, the Borrower shall within thirty (30) days following the close of each fiscal year of Eximbank issue and deliver to Eximbank a negotiable promissory note in the form of Annex "A" to this Agreement in the principal amount of the disbursements made under the Credit by Eximbank during the preceding fiscal year. Each note shall be dated as of the last day of July of the year preceding the year of issue, printed or lithographed on one side of one sheet of bank note or safety paper and be in form and substance satisfactory to Eximbank. Although notes shall bear interest from their date of issue, appropriate adjustment will be made so that interest is charged only from the dates of the respective disbursements. (The term "Notes" shall mean the promissory note or notes evidencing the principal amount of the disbursements under the Credit outstanding at any one time.)
- (c) *Prepayments.* The Borrower shall have the right, upon payment of all accrued charges for interest, to repay at any time in advance of maturity, without premium or penalty, all or part of the principal amount of the Credit at the time outstanding, and of the Notes; provided, that any such prepayments shall be applied to the Notes in the inverse order of their issue and to the installments of said Notes in the inverse order of their maturity.
- (d) *Application of Payments.* All payments made by the Borrower on or in respect of the principal and interest on the Credit, and of the Notes, shall be applied first to accrued interest and then to the repayment of principal.
- (e) *Commitment Fee.* The Borrower shall on the 30th day of June and the 31st day of December of each year pay to the order of Eximbank at the principal office of The Chase Manhattan Bank in the City of New York, State of New York, United States of America in Federal Reserve Bank of New York funds a commitment fee computed at the rate of one-half of one per cent ($\frac{1}{2}$ of 1%) per annum on the undisbursed, uncanceled or unexpired balance of the Credit outstanding, using a 365-day factor; said commitment fee to accrue from October 5, 1968, through June 30, 1971.

ARTICLE III

Disbursement Procedures

A. *Disbursements to DOD.* When all conditions precedent to the first utilization of the Credit have been fulfilled, Eximbank will upon receipt of the following in form and substance satisfactory to it, make disbursements from time to time on behalf of the Borrower to the account of the DOD for the purpose of financing payments required to be made by the Borrower (i) under Purchase Arrangements satisfactory to Eximbank and (ii) in conformity with the purposes for which the Credit has been established:

- (1) *Request.* A request signed by a duly authorized representative of the Borrower for a disbursement in the amount specified in the statement required by subparagraph (2) below;

THE SCHEDULE—*continued*

- (2) *DOD Statement.* A statement of the DOD (a) identifying the Purchase Arrangement(s) under which disbursement is being requested by the Borrower; (b) verifying that the amount of the requested disbursement is due under said Purchase Arrangement(s) and specifying the due date thereof; and (c) certifying that the amount of the requested disbursement will be applied for or towards the acquisition in the United States of Eligible Items;
- (3) *Additional Information.* Such additional documents and information as Eximbank may from time to time reasonably request.

B. Disbursements to United States Suppliers. When all conditions precedent to the first utilization of the Credit have been fulfilled, Eximbank will upon receipt of the following in form and substance satisfactory to it, make disbursements from time to time on behalf of the Borrower to the account of United States suppliers at commercial banks in the United States designated by such suppliers and acceptable to Eximbank for the purpose of financing payments required to be made by the Borrower (i) under Purchase Arrangements satisfactory to Eximbank and (ii) in conformity with the purposes for which the Credit has been established:

- (1) *Request.* A request signed by a duly authorized representative of the Borrower for a disbursement in the amount specified in the statement required by subparagraph (2) below;
- (2) *Supplier Statement.* A statement of the United States supplier or suppliers (a) identifying the Purchase Arrangement(s) under which disbursement is being requested by the Borrower; (b) verifying that the amount of the requested disbursement is due under said Purchase Arrangement(s) and specifying the due date thereof, and (c) certifying that the amount of the requested disbursement will be applied for or towards the acquisition in the United States of Eligible Items;
- (3) *Additional Information.* Such additional documents and information as Eximbank may from time to time reasonably request.

However, Eximbank will not make disbursements under this paragraph B of less than Ten Thousand Dollars (U.S.\$10,000) United States currency, per United States supplier.

C. Disbursements to Borrower. When all conditions precedent to the first utilization of the Credit have been fulfilled, Eximbank will, upon receipt of the following in form and substance satisfactory to it, make disbursements from time to time to the account of the Borrower at a commercial bank in the United States designated by the Borrower and acceptable to Eximbank to reimburse the Borrower for payments made by the Borrower to the DOD or the United States supplier or suppliers (i) under Purchase Arrangements satisfactory to Eximbank and (ii) in conformity with the purposes for which the Credit has been established:

- (1) *Request.* A request signed by a duly authorized representative of the Borrower for a disbursement in the amount specified in the statement required by subparagraph (2) below;
- (2) *Statement.* A statement or statements of the DOD or the United States supplier or suppliers, as the case may be, (a) identifying the Purchase Arrangement(s) under which disbursement is being requested by the Borrower; (b) verifying that the amount of the requested disbursement was paid under said Purchase Arrangement(s); and (c) certifying that an amount equal to the amount of the requested disbursement has been or will be applied for or towards the acquisition in the United States of Eligible Items;
- (3) *Additional Information.* Such additional documents and information as Eximbank may from time to time reasonably request.

D. Report. Within thirty (30) days following the close of each fiscal year of Eximbank, the Borrower shall submit or cause to be submitted to Eximbank an expenditure report which shall set forth on a cumulative basis through the close of such fiscal year of Eximbank, an itemized statement of (1) all expenditures in connection with the Purchase Program, said expenditures to be segregated as between those financed by Eximbank under this Agreement and those financed out of other funds, as well as between United States currency and other currencies, and (2) the amount (hereinafter called "Excess Disbursements") if any, by which the aggregate of all funds disbursed by Eximbank under this Agreement exceeds the aggregate of such funds utilized through the close of such fiscal year of Eximbank for or towards the acquisition in the United States of that portion of the Purchase Program which consists of

THE SCHEDULE—*continued*

Eligible Items financed under this Agreement, irrespective of whether such Excess Disbursements shall have been caused by (a) the utilization of such funds for or towards other than the acquisition of Eligible Items, (b) adjustments or refunds, or (c) any reason of whatsoever nature; said report to be satisfactory in form and substance to Eximbank, and to bear or be accompanied by evidence of the approval of a duly authorized representative of the Borrower.

E. *Repayment of Excess Disbursements.* The Borrower shall on the first repayment date of principal following the due date of each report required by paragraph C of this Article, make a repayment to Eximbank in advance of maturity on the principal amount of the Credit and the Notes at the time outstanding in an amount equal to the aggregate of the Excess Disbursements outstanding as of the close of the fiscal year of Eximbank immediately preceding the due date of the aforementioned report; provided that:

- (1) any such repayment as aforesaid shall be applied ratably to the outstanding installments of principal of the Credit and the Notes falling due subsequent to the repayment date in question; and
- (2) the Borrower shall be entitled to exchange for each outstanding Note a new Note conforming to the requirements of subparagraph (b) of Article II hereof and in substantially the form of Annex "A" to this Agreement in a principal amount equal to the principal amount of this surrendered Note less the aggregate of any repayments of principal made upon the surrendered Note and the proportion of any such repayment as aforesaid as is attributable ratably to the surrendered Note.

ARTICLE IV

Representations and Warranties

The Borrower represents and warrants as follows:

- (a) *Authority.* The Borrower has full power, authority, and legal right to incur the indebtedness and other obligations provided for in this Agreement and the Notes, to execute and deliver this Agreement and the Notes, and this Agreement does, and the Notes when issued hereunder will, constitute valid and binding obligations of the Borrower in accordance with the respective terms hereof and thereof.
- (b) *Legal Action.* The Borrower has taken all action required under the laws and regulations of the Borrower, or of any political subdivision, department or agency thereof, to authorize the execution and delivery of this Agreement and the Notes.
- (c) *Full Faith and Credit.* All covenants of the Borrower contained in this Agreement constitute, and the Notes when issued hereunder will constitute, unconditional direct obligations of the Borrower, for the payment and performance of which the full faith and credit of the Borrower is pledged.

ARTICLE V

Events of Default

In case one or more of the following events (hereinafter called "Event of Default") shall have occurred and be continuing that is to say:

- (a) A default shall have occurred in the payment of any amounts required under this Agreement, the Notes, or any other agreement between Eximbank and the Borrower; or
- (b) A default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under this Agreement, the Notes, or any other agreement between Eximbank and the Borrower, and such default remains unremedied for a period of thirty (30) days, after written notice thereof shall have been given to the Borrower by Eximbank; or
- (c) Any representation or warranty made by the Borrower under this Agreement, the Notes, or any other agreement between Eximbank and the Borrower proves to be incorrect in any material respect and has not been corrected within thirty (30) days after written notice thereof shall have been given to the Borrower by Eximbank;

THE SCHEDULE—*continued*

then and in each and every such case, Eximbank may, upon written notice to the Borrower, make immediately due and payable the entire principal amount of the Credit at the time outstanding, or any Note or Notes evidencing such amount, together in each case with accrued interest thereon to the date of payment.

ARTICLE VI

Availability, Cancellation and Suspension

A. *Availability.* Except to the extent that a duly authorized officer of Eximbank may otherwise consent in writing, Eximbank shall not be obligated to make disbursements under the Credit subsequent to the close of business on June 30, 1971, and any part of the Credit which shall not have been disbursed on or before said date may be cancelled by Eximbank without the requirement of notice to the Borrower.

B. *Cancellation.* The Borrower may by written notice to Eximbank cancel all or any part of the Credit which shall not have been disbursed.

C. *Suspension.* If an Event of Default shall occur and be continuing, then and in each and every such case, Eximbank may, upon written notice to the Borrower, suspend all further disbursements under the Credit; thereafter, Eximbank shall not be obligated to make further disbursements until it (i) shall have received evidence that the cause or causes of the suspension have been eliminated or corrected in a manner satisfactory to Eximbank, and (ii) shall have notified the Borrower in writing that the suspension has been removed.

D. *Continuation of Rights and Obligations.* Notwithstanding any cancellation or suspension pursuant to this Article, all the provisions of this Agreement and the Notes, and the rights and obligations of either party with respect to disbursements made prior to such cancellation or suspension, shall continue in full force and effect.

ARTICLE VII

Legal Opinions and Other Documents

Prior to and as a condition precedent to the first utilization of the Credit by the Borrower, Eximbank shall be furnished with the following in form and substance satisfactory to it:

- (a) *Legal Opinion.* An opinion or opinions of the Secretary or Acting Secretary to the Attorney-General's Department of the Commonwealth of Australia verifying the representations, warranties and covenants of the Borrower set forth in subparagraphs (a) through (c) of Article IV hereof; provided that, such opinion or opinions shall refer to all pertinent laws, ordinances, regulations, decrees, resolutions and other relevant documents.
- (b) *Evidence of Authority.* Evidence of the authority of the person or persons (i) who have signed this Agreement on behalf of the Borrower; (ii) who will execute the Notes on behalf of the Borrower; and (iii) who will sign the requests for disbursement and other documents required or permitted by this Agreement and who will otherwise act as the representative or representatives of the Borrower in connection with the operation of the Credit.
- (c) *Specimen Signatures.* The authenticated specimen signatures of each person named pursuant to subparagraph (b) above.

Thereafter, prior to and as a condition precedent to disbursements by Eximbank with respect to any given Purchase Arrangement, the Borrower shall submit or cause to be submitted to Eximbank a certified or conformed copy of the Purchase Arrangement in question, or such other written evidence of said Purchase Arrangement as may be satisfactory in form and substance to Eximbank.

In addition, Eximbank shall be furnished with such additional legal opinions, evidence of authority, authenticated specimen signatures, documents, and other information as Eximbank may from time to time reasonably request.

THE SCHEDULE—continued

ARTICLE VIII

Miscellaneous Provisions

A. *Taxes.* The Borrower covenants and agrees that the execution, issuance and delivery of this Agreement and the Notes, and, except to the extent that the right to receive payment of the principal amount of or interest on any outstanding disbursements under the Credit or any Notes is or comes to be beneficially owned by any person residing in or ordinarily a resident of Australia or the Territory of Papua or the Territory of New Guinea, the payment of principal and interest under this Agreement and the Notes, shall be exempt from all present and future taxes, duties, fees, restrictions, and other charges of whatsoever nature now or hereafter levied or imposed (i) under the laws of the Borrower or laws in effect in its territories or (ii) by the Borrower or by any political subdivision, taxing authority, department or agency thereof.

B. *Expenses.* All statements, reports, certificates, opinions and other documents or information furnished to Eximbank under this Agreement shall be supplied by the Borrower without cost to Eximbank. Further, the Borrower hereby agrees to reimburse Eximbank on demand for all out-of-pocket costs and expenses incurred by Eximbank in connection with the enforcement, protection or preservation of any right or claim of Eximbank in connection with this Agreement or the Notes.

C. *Marine Transportation.* Any item or items, the purchase of which is to be financed in whole or in part under this Agreement and which shall be exported by ocean vessel to Australia shall be transported from the United States in vessels of United States registry, as required by Public Resolution No. 17 of the 73rd Congress of the United States, except to the extent that a waiver of such requirement is obtained from the United States Maritime Administration.

D. *Sale of Notes.* Eximbank agrees not to negotiate or transfer the Credit or the Notes nor to dispose of any participations therein without the prior written consent of the Borrower; provided, however, that the foregoing shall not apply to the sale of participations in the Credit or the Notes (i) if such participations constitute interests in a pool of Eximbank loans, which pool includes the Credit or the Notes, and (ii) such participations are guaranteed by Eximbank.

E. *Exchange of Notes.* Upon the request of Eximbank made at any time or from time to time more than thirty (30) days after the final date for making disbursements as provided in paragraph A of Article VI hereof, the Borrower shall issue and deliver to Eximbank, in exchange for any Notes theretofore issued to Eximbank hereunder, its new Notes in such denominations as Eximbank may specify, dated the date to which interest shall have been paid on the Notes surrendered, and in an aggregate principal amount equal to the aggregate of disbursements against, less the aggregate of any repayments of principal made upon, the Notes surrendered. The new Notes issued pursuant hereto shall conform to the requirements of subparagraph (b) of Article II hereof and shall be substantially in the form of Annex "A" to this Agreement, except for such modifications as may be necessary or appropriate to give effect to any of the provisions of this paragraph E. The new Notes shall be dated so that no gain or loss of interest or acceleration or delay of interest payments will result.

F. *Waiver.* No failure or delay on the part of Eximbank to exercise any right, power, or privilege under this Agreement or the Notes shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement or the Notes preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

G. *Notices.* All notices, demands and deliveries to be given or made to the Borrower or Eximbank shall be given or made, as the case may be, at the Australian Embassy, Washington, District of Columbia, United States of America, or at the principal office of Eximbank, Washington, District of Columbia, United States of America, or at such other place as may be designated in writing by the respective parties hereto.

H. *Effectiveness of Agreement.* This Agreement shall not become effective until there shall have come into operation legislation of the Parliament of the Borrower approving the borrowing for defense purposes of an amount of or equivalent to Seventy-Five Million Dollars (U.S. \$75,000,000), United States currency, and authorizing its expenditure by or on behalf of the Borrower. However, the first utilization of the Credit is subject to compliance by the Borrower with the requirements of Article VII hereof.

THE SCHEDULE—continued

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in duplicate in Washington, District of Columbia, United States of America, on the date first mentioned above.

COMMONWEALTH OF AUSTRALIA

WILLIAM McMAHON

By

Treasurer, Commonwealth of Australia

Title.....

EXPORT-IMPORT BANK OF THE UNITED STATES

WALTER C. SAUER

By

First Vice President

Title.....

ATTEST for the Export-Import Bank of the United States

JOSEPH H. REGAN,

.....

Secretary

ANNEX " A "

PROMISSORY NOTE

No.....

U.S. \$....., 19.....

FOR VALUE RECEIVED, THE COMMONWEALTH OF AUSTRALIA (hereinafter called " Borrower "), by this Promissory Note (hereinafter called " Note "), hereby unconditionally promises to pay to the Export-Import Bank of the United States, or order, the principal sum of Dollars (U.S. \$.....), United States currency, in installments as hereinafter provided, and to pay interest in like currency on the 30th day of June and the 31st day of December of each year at the rate of..... (.....%) per annum on the unpaid principal balance of this Note from time to time outstanding.

The principal of this Note shall be payable in (.....) installments, the first of which shall be in the sum ofDollars (U.S. \$.....), United States currency, and shall be due and payable on....., 19....., and the remaining..... (.....) installments shall each be in the sum of.....Dollars (U.S. \$.....), United States currency, and shall be due and payable successively semiannually thereafter.

Payment of the principal of and interest on this Note shall be made at the principal office of The Chase Manhattan Bank, in the City of New York, State of New York, United States of America.

The principal of this Note, and the interest thereon, shall be paid without deduction for or on account of, and shall be exempt from, all present and future taxes, duties, fees, restrictions or other charges of whatsoever nature now or any time hereafter levied or imposed (i) under the laws of the Borrower or laws in effect in its territories or (ii) by the Borrower or by any political subdivision, taxing authority, department or agency thereof, except to the extent that this Note is or comes to be beneficially owned by any person residing in or ordinarily a resident of Australia or the Territory of Papua or the Territory of New Guinea.

Upon the default in the prompt and full payment of any installment of principal or interest on this Note, the entire principal of this Note and interest thereon to the date of payment shall immediately become due and payable at the option and upon demand of the holder hereof.

THE SCHEDULE—*continued*

The Borrower shall have the right, upon payment of all accrued charges for interest, to repay at any time in advance of maturity, without premium or penalty, all or part of the principal amount of this Note; any such prepayment to be applied to the installments of principal in the inverse order of their maturity.

This Note and the covenants herein contained constitute unconditional direct obligations of the Borrower, for the payment and performance of which the full faith and credit of the Borrower is pledged.

The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

COMMONWEALTH OF AUSTRALIA

By

Title.....
