

THE SCHEDULE.

Sec. 2.

AMENDMENT OF THE SCHEDULE TO THE PRINCIPAL ACT.
EXCISE DUTIES.

Articles.	Rate of Duty.
11. By adding a new paragraph (3) to sub-item (A) (third time occurring) as follows :— “(3) Produced by National Oil Proprietary Limited from shale mined on the land described in the First Part of the Fourth Schedule to the Agreement (a copy of which is set forth in the Schedule to the <i>National Oil Proprietary Limited Agreement Act 1937</i>) as read and construed in the manner provided by the Agreement made on the 25th October, 1939, between the parties to the first-mentioned Agreement— (a) For each gallon not exceeding 10,000,000 gallons in each year commencing on the first day of January — — — (b) For each gallon exceeding 10,000,000 gallons in each year commencing on the first day of January — — —	Id. 6½d.”

PATENTS, TRADE MARKS, DESIGNS AND
COPYRIGHT (WAR POWERS).

No. 66 of 1939.

An Act to make special Provisions with respect to Patents, Trade Marks, Designs and Copyright in Consequence of the War, and for other purposes.

[Assented to 15th December, 1939.]

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

1. This Act may be cited as the *Patents, Trade Marks, Designs and Copyright (War Powers) Act 1939*. 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, unless the contrary intention appears— Definitions.
 - “Australia” includes the Territory of Papua, the Territory of New Guinea and the Territory of Norfolk Island ;
 - “enemy country” means any country with which His Majesty is for the time being at war ;
 - “enemy subject” has the same meaning as in the *Trading with the Enemy Act 1939* ;

“ laws relating to trading with the enemy ” means—

(a) the *Trading with the Enemy Act* 1939; and

(b) any other Act, or any regulation or rule of law, relating to intercourse or dealings with, or for the benefit of, enemies or enemy subjects, or relating to the property, rights or capacity of enemies or enemy subjects;

“ licence ” includes any instrument having the effect of a licence, by whatever name called;

“ the present state of war ” has the same meaning as in the *Trading with the Enemy Act* 1939.

(2.) In this Act, the expressions “ the Commissioner of Patents ”, “ the Registrar of Trade Marks ” and “ the Registrar of Designs ” include a Deputy Commissioner of Patents, the Deputy Registrar of Trade Marks and a Deputy Registrar of Designs, respectively, when exercising any power or function delegated to him in pursuance of this Act.

(3.) For the purposes of this Act—

(a) where a patent has been granted—

(i) to any person in respect of an invention communicated to him by the actual inventor, or by his legal representative or assignee; or

(ii) to any person who is the agent, attorney or nominee of the actual inventor,

the actual inventor shall, unless the contrary is proved, be deemed to have an interest in the patent; and

(b) any reference to an application of, or by, an enemy subject, shall be deemed to include—

(i) a reference to an application of, or by, an enemy subject jointly with some other person, whether an enemy subject or not; and

(ii) in the case of an application for a patent, an application made in respect of an invention communicated to the applicant by an enemy subject.

(4.) Any power conferred by this Act may be exercised notwithstanding that the exercise thereof will, whether directly or indirectly, benefit an enemy subject.

4. This Act shall extend to the Territory of Papua, the Territory of New Guinea and the Territory of Norfolk Island, as if each of those Territories were part of the Commonwealth.

Extension to
Territories.

Existing
licences by
enemy subjects.

5.—(1.) Notwithstanding anything in the laws relating to trading with the enemy, a licence in favour of a person resident or carrying on business in Australia shall not be invalid by reason of the fact that the proprietor of the patent or registered design, or the owner of the copyright, or any person otherwise interested therein, is an

enemy subject, nor shall any contract, in so far as it relates to any such licence, be invalid by reason of the fact that any party to the contract is an enemy subject.

(2.) Where, during the present state of war, an enemy subject is, or has been, whether alone or jointly with any other person—

- (a) the proprietor of a patent or registered design or the owner of a copyright ; or
- (b) entitled to some other interest in a patent, registered design or copyright (not being merely the interest of a licensee),

in respect of which a licence in favour of a person resident or carrying on business in Australia is in force, the Attorney-General may, on the application of the licensee or of any other person interested in the patent, registered design or copyright, by order—

- (c) revoke the licence ;
- (d) revoke or vary any condition subject to which the licence has effect ; or
- (e) revoke or vary any of the provisions of a contract in so far as they relate to the licence,

and may, by order, revoke or vary any such order.

(3.) Nothing in this section shall—

- (a) render valid the grant or assignment of a licence, or any contract relating to a licence, if the grant, assignment or contract is, or was, made during the present state of war and is unlawful by reason of the laws relating to trading with the enemy ; or
- (b) authorize the performance of any contract relating to a licence in a manner inconsistent with the laws relating to trading with the enemy.

(4.) In this section, “ licence ” means a licence under a patent, for the application of a registered design, or granting an interest in a copyright.

6.—(1.) Where—

- (a) an enemy subject is, or has been, during the present state of war, whether alone or jointly with any other person, the proprietor of a patent or registered design, or the owner of a copyright, or entitled to any other interest in a patent, a registered design or a copyright (not being merely the interest of a licensee) ; and
- (b) the Attorney-General is satisfied that it is in the public interest to do so,

the Attorney-General may, on the application of a person who is not an enemy subject, by order, grant to that person a licence under the patent or for the application of the design, or granting an interest in the copyright, as the case may be, for such period as the Attorney-General thinks fit.

Grant of
licences under
enemy patents.

(2.) The power to grant a licence under this section shall include power to grant, on such terms (if any) as the Attorney-General thinks fit—

- (a) an exclusive licence ; or
- (b) a licence notwithstanding that a licence, whether exclusive or otherwise (not being an exclusive licence granted under this section), is in force in relation to the patent, registered design or copyright.

(3.) Where the Attorney-General grants a licence under this section in respect of a patent, a registered design or a copyright in respect of which some other licence (not being a licence under this section) is in force, the Attorney-General may, in relation to that other licence, make any order which the Attorney-General is empowered to make under sub-section (2.) of the last preceding section and which appears to him to be expedient having regard to the granting of a licence under this section.

(4.) An order granting a licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence executed by the patentee, the proprietor of the registered design, or the owner of the copyright, as the case may be, and all other necessary parties, and the order shall accordingly operate to take away from any such party any right in relation thereto the exercise of which would be inconsistent with the exercise of the licence in accordance with, and subject to, the terms on which it is granted.

(5.) A licensee under a licence granted under this section may institute proceedings for infringement in his own name as though he were the patentee, the proprietor of the registered design, or the owner of the copyright, as the case may be, but where any person (not being an enemy subject) is the patentee, the proprietor of the registered design, or the owner of the copyright, as the case may be, or has an interest therein, that person shall, unless the Court in which the proceedings are taken otherwise directs, be made a party to the proceedings—

- (a) if he consents in writing thereto, as a plaintiff ; or
- (b) if he does not so consent, as a defendant.

(6.) Where any person is made defendant to any proceedings under the last preceding sub-section, he shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(7.) An order granting a licence under this section shall give directions as to the person to whom, or the manner in which, the licensee is to pay or deal with any royalties or other payments to be paid in respect of the licence.

(8.) Any directions given in pursuance of the last preceding sub-section shall have effect to the exclusion of any provisions of the *Trading with the Enemy Act 1939*, or of any regulations under the *National Security Act 1939*, with which they are inconsistent.

(9.) The Attorney-General may, by order, vary an order under this section, or a licence granted by any such order—

- (a) on the application of the licensee ; or
- (b) where the Attorney-General is satisfied that it is in the public interest that the order or licence should be varied.

(10.) The Attorney-General may, by order, revoke an order under this section, or a licence granted by such an order—

- (a) on the application of the licensee ;
- (b) where the Attorney-General is satisfied that the order or licence was obtained by any misrepresentation, whether intentional or not, or was made or granted without the Attorney-General having full knowledge of the material facts ;
- (c) where the licensee has failed to comply with any term on which the licence was granted or with a direction given under sub-section (7.) of this section ;
- (d) where the licensee has failed to exercise the licence in such a manner as to satisfy the reasonable requirements of the public in relation to the invention, registered design, or work in which copyright subsists, as the case may be, or has charged unreasonable or excessive prices in respect of anything made or done in the exercise of the licence ; or
- (e) where the Attorney-General is satisfied that it is in the public interest that the order or licence should be revoked.

7.—(1.) Where the Attorney-General is satisfied that it is difficult or impracticable to describe or refer to any article or substance without the use of a trade mark registered in respect of that article or substance, and that that mark has been, or is, during the present state of war, in the proprietorship of, or registered in the name of, an enemy subject, whether alone or jointly with another person, the Attorney-General may, on the application of a person who proposes to deal in the course of trade in Australia with an article or substance which is, or is intended to be, the same as, or equivalent to, or a substitute for, the article or substance in respect of which the trade mark is registered, by order, suspend the rights given by the registration of the trade mark so far as regards use of the trade mark by the applicant to such extent and for such period as the Attorney-General thinks necessary for enabling the applicant to render well-known and established some description of, or means of reference to, the article or substance with which he proposes to deal in the course of trade, being a description or means of reference which does not involve the use of the trade mark.

Suspension of
enemy trade
marks.

(2.) Where an order has been made under the last preceding sub-section, an action for passing off shall not lie on the part of any person interested in the trade mark in respect of any use thereof which, by virtue of the order, is not an infringement of the rights given by the registration of the trade mark.

(3.) The Attorney-General may, by order, revoke or vary any order made under this section.

Effect of war on grant of patents and registration of trade marks, designs and copyright.

8.—(1.) Notwithstanding the laws relating to trading with the enemy, but subject to this Act—

- (a) a patent may be granted under the *Patents Act* 1903–1935 ;
- (b) a trade mark may be registered, or the registration may be renewed, under the *Trade Marks Act* 1905–1936 ;
- (c) a design may be registered, or the period of registration may be extended, under the *Designs Act* 1906–1934 ; and
- (d) copyright may be registered under the *Copyright Act* 1912–1935,

on the application of an enemy subject.

(2.) Where a patent is so granted, or a trade mark, design or copyright is so registered—

- (a) the patentee shall not be entitled to require the delivery of the patent, or the person registered as proprietor of the trade mark or design shall not be entitled to the issue of a certificate of registration ; and
- (b) the patent, or the rights conferred by the registration of the trade mark, design or copyright, shall be subject to the provisions of any law relating to the property of enemy subjects.

(3.) No act necessary for such a grant to be obtained or maintained, or registration to be effected or renewed, shall, in so far as it is done for that purpose and for that purpose only, be deemed to be a contravention of any provision of the laws relating to trading with the enemy.

(4.) Subject to any direction of the Attorney-General, the Commissioner of Patents, the Registrar of Trade Marks, the Registrar of Designs or the Registrar of Copyrights may, in any case in which he is satisfied that it is desirable in the public interest to do so, refuse to take, or suspend the taking of, any proceedings on, or in relation to, an application by an enemy subject for a patent or for the registration of a trade mark, design or copyright.

(5.) Subject to this Act, the fact that a state of war exists between His Majesty the King and any other country shall not affect the operation of—

- (a) section one hundred and twenty-one of the *Patents Act* 1903–1935 ;
- (b) section one hundred and fifteen of the *Trade Marks Act* 1905–1936 ;
- (c) section forty-eight of the *Designs Act* 1906–1934 ; or
- (d) any order made by the Governor-General under sub-section (2) of section thirty of the Imperial Act known as the Copyright Act, 1911.

(6.) Notwithstanding any provisions of the laws relating to trading with the enemy, any copyright which would have subsisted by virtue of an order referred to in paragraph (d) of sub-section (5.) of this

section if the owner of the copyright had not been an enemy subject shall subsist where an enemy subject (whether alone or jointly with some other person) is the owner thereof, but the provisions of the laws relating to trading with the enemy shall have effect with respect to that enemy subject in relation to the copyright so subsisting.

9.—(1.) Subject to any directions of the Attorney-General, the Commissioner of Patents, the Registrar of Trade Marks, the Registrar of Designs or the Registrar of Copyrights, may, notwithstanding anything contained in any Act, if it appears to him to be necessary or expedient so to do, by reason of circumstances arising from the existence of a state of war, extend for such period as he thinks fit the time fixed by or under the *Patents Act* 1903–1935, the *Trade Marks Act* 1905–1936, the *Designs Act* 1906–1934 or the *Copyright Act* 1912–1935, for doing any act.

Emergency powers.

(2.) The power conferred by sub-section (1.) of this section may be exercised notwithstanding the expiry, whether before or after the commencement of this Act, of the time referred to therein.

(3.) If any application, patent, registration or proceeding has lapsed, ceased or expired, or become void or invalid, or has been treated as abandoned, it shall revive upon the granting of an extension of time for doing the act by reason of the non-performance of which it lapsed, ceased or expired or became void or invalid, or was treated as abandoned, as the case may be.

10.—(1.) It shall be lawful for any person, on his own behalf or on behalf of any person residing, carrying on business or being in Australia, to pay any fee, or do any other act, necessary for obtaining or maintaining the grant of a patent, or for obtaining the registration or renewal of the registration of a trade mark or design, in any enemy country, and to pay to his agent in the enemy country the agent's charges and expenses in connexion therewith.

Payments in respect of patents, &c.

(2.) Subject to the next succeeding sub-section, it shall be lawful for any person, on behalf of an enemy subject, to pay any fee, or do any other act, necessary for obtaining or maintaining the grant of a patent, or for obtaining the registration or renewal of the registration of a trade mark or design, in Australia, and to pay an agent in Australia (including himself) the agent's charges and expenses in connexion therewith.

(3.) A payment under the last preceding sub-section shall, unless it is made by a person having an interest in or under the patent, trade mark or design, be made only out of moneys—

(a) remitted by or on behalf of the enemy subject; or

(b) held for, or on account of, the enemy subject,

and not by way of gift, advancement or loan to or on account of the enemy subject.

(4.) Nothing in this section shall render lawful anything which would otherwise be unlawful by virtue of section one hundred and seven of the *Patents Act* 1903–1935.

Evidence relating to enemy subjects, &c.

11.—(1.) For the purposes of this Act, the fact that the address of any person set out in the Register of Patents, the Register of Trade Marks, the Register of Designs or a Register of Copyrights is an address in an enemy country within the meaning of the *Trading with the Enemy Act* 1939 shall be *prima facie* evidence that that person resides, or carries on business, in that enemy country.

(2.) An order made by the Attorney-General, the Commissioner of Patents, the Registrar of Trade Marks, the Registrar of Designs or the Registrar of Copyrights shall not be deemed to be invalid by reason only that any decision made for the purposes of the order that a particular person is an enemy subject is wrong.

Persons to be heard before making orders.

12. Before making any order under this Act, the person making the order shall (unless, having regard to the circumstances, he considers it inexpedient or impossible to do so) give any person who appears to him to be interested such opportunity of being heard as appears to him to be just.

Service of orders.

13.—(1.) An order made under this Act shall be in writing and shall be served upon any person affected thereby.

(2.) An order made under this Act may be published in the *Gazette* and shall thereupon be deemed to have been served upon any person affected thereby.

Delegation.

14.—(1.) The Commissioner of Patents, the Registrar of Trade Marks or the Registrar of Designs may, in relation to any particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Act (except this power of delegation) to a Deputy Commissioner of Patents, the Deputy Registrar of Trade Marks or a Deputy Registrar of Designs, respectively, so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Commissioner of Patents, the Registrar of Trade Marks or the Registrar of Designs.

International arrangements.

15. The provisions of section one hundred and twenty-one of the *Patents Act* 1903–1935, section one hundred and fifteen of the *Trade Marks Act* 1905–1936, and section forty-eight of the *Designs Act* 1906–1934 shall be deemed to have applied from and including the first day of August, One thousand nine hundred and thirty-eight, and shall continue to apply after the commencement of this Act, in respect of an application for a patent, or for the registration of a trade mark or design, as the case may be, made in a country which was, or is, at the date of the application, a Convention country for the purposes of those provisions of the Imperial Acts cited as the Patents and Designs Acts, 1907 to 1938 (or of those Acts as subsequently amended) which relate to patents, trade marks and designs, respectively.

16. 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—

Regulations.

- (a) for regulating the practice and procedure in respect of any application or other matter under this Act ;
- (b) for prescribing the time within which any act authorized or required by this Act or the regulations shall, or may, be done ; and
- (c) for prescribing fees in respect of applications and other matters under this Act.

17. This Act shall continue in operation during the present state of war and for a period of six months thereafter, and no longer.

Duration of Act.

APPROPRIATION (WORKS AND BUILDINGS) 1939-40.

No. 67 of 1939.

An Act to grant and apply a sum out of the Consolidated Revenue Fund for the service of the year ending the thirtieth day of June One thousand nine hundred and forty for the purposes of Additions, New Works, Buildings, &c., and to appropriate such sum.

[Assented to 15th December, 1939.]

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 :—

Preamble.

1. This Act may be cited as the *Appropriation (Works and Buildings) Act 1939-40*.

Short title.

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

Commencement.

3. The Treasurer may issue out of the Consolidated Revenue Fund and apply towards making good the supply hereby granted to His Majesty for the service of the year ending the thirtieth day of June One thousand nine hundred and forty the sum of Three million five hundred and thirty-four thousand pounds.

Issue and application of £3,534,000.