

50.—(1.) The Commission shall, not later than the thirty-first day of August in each year, prepare and furnish to the Minister a report on the operations of the Commission during the year ending on the last preceding thirtieth day of June, together with financial accounts in respect of that year in such form as the Treasurer approves. Annual report.

(2.) The report and financial accounts, accompanied by a certificate of the Auditor-General for the Commonwealth, shall be laid before each House of the Parliament within fifteen sitting days of that House after their receipt by the Minister.

51. 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. Regulations.

STEVEDORING INDUSTRY CHARGE ASSESSMENT.

No. 3 of 1947.

An Act relating to the Imposition, Assessment and Collection of a Charge in respect of the Employment of Waterside Workers.

[Assented to 28th March, 1947.]

BE it enacted by the King'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 *Stevedoring Industry Charge Assessment Act 1947*. Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.
3. This Act is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary.
 - Part II.—Administration.
 - Part III.—Liability to the Charge.
 - Part IV.—Returns.
 - Part V.—Collection and Recovery of the Charge.
 - Part VI.—Penal Provisions.
 - Part VII.—Prosecutions.
 - Part VIII.—Miscellaneous.

Definitions.

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

- “agent” includes every person who in Australia, for or on behalf of any employer out of Australia (in this definition called “his principal”), holds or has the management or control of the business of his principal, and every person declared by the Commissioner to be an agent or the sole agent of any employer for the purposes of this Act ;
- “company” includes all bodies or associations, corporate or unincorporate, but does not include a partnership ;
- “Deputy Commissioner” means a Deputy Commissioner of Taxation ;
- “employer” means a person who employs waterside workers, and includes the Crown in right of a State and an authority constituted under the law of a State ;
- “liquidator” means a person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company ;
- “officer” means an officer of the Public Service of the Commonwealth ;
- “person” includes a company ;
- “stevedoring operations” has the same meaning as in the *Stevedoring Industry Act 1947* ;
- “the charge” means the charge imposed by the *Stevedoring Industry Charge Act 1947* ;
- “the Commissioner” means the Commissioner of Taxation ;
- “the Second Commissioner” means the Second Commissioner of Taxation ;
- “trustee”, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, includes an executor or administrator, guardian, committee, receiver or liquidator ;
- “waterside worker” means a person who is registered as a waterside worker under the *Stevedoring Industry Act 1947*.

(2.) For the purposes of this Act, the number of man-hours of employment by an employer during the period to which any return or assessment under this Act relates shall be the number of complete hours in the sum of the periods of time, within that period, for which each waterside worker employed by that employer was paid or entitled to be paid by the employer.

PART II.—ADMINISTRATION.

5.—(1.) The Commissioner of Taxation shall have the general administration of this Act.

Commissioner
and Second
Commissioner.

(2.) Subject to this section, the Second Commissioner of Taxation shall have and may exercise all the powers and functions of the Commissioner under this Act.

(3.) Where in this Act the exercise of any power or function by the Commissioner, or the operation of any provision of this Act, is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised by the Second Commissioner or that provision may operate (as the case may be) upon the opinion, belief or state of mind of the Second Commissioner in relation to that matter.

(4.) Nothing in this Act shall be deemed to confer upon the Second Commissioner any power or function of the Commissioner under section seven of this Act, or to prevent the exercise of any power or function by the Commissioner under this Act, and the Commissioner shall have, in relation to any act of the Second Commissioner, the same power as if that act were done by himself.

6. The Deputy Commissioners of Taxation shall, subject to the control of the Commissioner, have such powers and functions as are prescribed, or as the Commissioner directs.

Deputy
Commissioners

7.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters, or the State or part of the Commonwealth, specified in the instrument of delegation.

Delegation
by the
Commissioner.

(2.) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power or function by the Commissioner.

(3.) Any delegation under this section may be made subject to a power of review and alteration, within the period specified in the instrument of delegation, by the Commissioner of any act done in pursuance of the delegation, and the decision given upon such review or alteration shall be deemed to be that of the Commissioner.

**References to
Commissioner.**

8. Any reference in this Act to the Commissioner shall be deemed to include—

- (a) in respect of matters as to which the Second Commissioner has exercised any power or function conferred upon him by this Act—a reference to the Second Commissioner; and
- (b) in respect of matters as to which a Deputy Commissioner has exercised any power or function conferred upon him by delegation under this Act—a reference to that Deputy Commissioner.

**Report by the
Commissioner.**

9.—(1.) The Commissioner shall furnish to the Treasurer annually, for presentation to the Parliament, a report on the working of this Act.

(2.) In the report the Commissioner shall draw attention to any breaches or evasions of this Act which have come under his notice.

**Officers to
observe
secrecy.**

10.—(1.) For the purposes of this section, “officer” means a person who is or has been appointed or employed by the Commonwealth, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person, disclosed or obtained under the provisions of this Act.

(2.) Subject to this section, an officer shall not either directly or indirectly, except in the performance of any duty as an officer, and either while he is, or after he ceases to be, an officer, make a record of, or divulge or communicate to any person, any such information so acquired by him.

(3.) An officer shall not be required to produce in Court any return, assessment or notice of assessment made or given for the purposes of this Act, or to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duties as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(4.) Nothing in this section shall be deemed to prohibit the Commissioner, Second Commissioner, or a Deputy Commissioner, or any person thereto authorized by him from communicating any information to—

- (a) the Stevedoring Industry Commission or any member or officer of that Commission;
- (b) any person performing, in pursuance of any appointment or employment by the Commonwealth or by a State, any duty arising under any Act administered by the Commissioner of Taxation or the Commissioner of Land Tax, for the purpose of enabling that person to carry out any such duty;

- (c) any board exercising any function under any Act administered by the Commissioner of Taxation or the Commissioner of Land Tax or under any State Act administered by the Commissioner of Income Tax of any State, or any member of any such board ;
- (d) the Commissioner of Income Tax for any State, or the authority administering any Act of a State relating to Stamp Duties or Succession Duties if that authority is authorized by law to afford information to the Commissioner, the Second Commissioner or a Deputy Commissioner ; or
- (e) the Commonwealth Prices Commissioner.

(5.) Any person to whom information is communicated under the last preceding sub-section, and any person or employee under his control shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities, under sub-sections (2.) and (3.) of this section, as if he were an officer.

(6.) For the purposes of sub-sections (2.) and (5.) of this section, an officer or person shall be deemed to have communicated such information to another person in contravention of those sub-sections if he communicates that information to any Minister.

(7.) Any officer shall, if and when required by the Commissioner, Second Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

Penalty : Two hundred and fifty pounds or imprisonment for twelve months.

PART III.—LIABILITY TO THE CHARGE.

11. Subject to and in accordance with the provisions of this Act, the charge imposed by the *Stevedoring Industry Charge Act 1947* shall be levied and paid in respect of the employment of waterside workers after the commencement of this Act. Imposition of charge.

12.—(1.) The charge in respect of the employment of any waterside worker shall be paid by the employer of that waterside worker. Person liable.

(2.) An employer who employs waterside workers for the purpose of performing a contract for the provision of stevedoring services for another person shall state upon the account rendered by him to that person in respect of those services the correct amount of the charge which the employer is liable to pay in respect of that employment.

Penalty : One hundred pounds.

(3.) An employer shall have the same right to recover from the person to whom an account referred to in the last preceding sub-section is rendered the amount of the charge properly stated upon the account (but not including any additional charge payable in pursuance of this Act) as he has to recover the amount agreed to be paid for the services rendered.

PART IV.—RETURNS.

Returns by
employers.

13. Every employer shall, within fourteen days after the end of each month, furnish to the Commissioner a return, in accordance with the prescribed form, of the man-hours of employment by him, after the commencement of this Act, of waterside workers during each pay period ending in that month, together with such particulars as are specified in the form.

Further
returns.

14. In addition to any return which is required under this Part, the Commissioner may, by notice in writing, call upon any person to furnish to him, within a time specified in the notice, such return, or such further or fuller return, as the Commissioner requires for the purposes of this Act.

Commissioner
to obtain
information
and evidence.

15.—(1.) For the purpose of inquiring into or ascertaining the liability of any person under any of the provisions of this Act, the Commissioner may, by notice in writing, require any person—

- (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,

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 person 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.

Returns
deemed to
be made.

16. Any return purporting to be made and signed by or on behalf of any person shall, until the contrary is proved, be deemed to have been made and signed by him or with his authority.

PART V.—COLLECTION AND RECOVERY OF THE CHARGE.

Time for
payment of
charge.

17. Every employer who is liable to pay the charge in respect of any employment shall pay the charge within the time within which he is required by this Act to furnish a return in respect of that employment.

Time to pay—
extensions and
instalments.

18. The Commissioner may, in such cases as he thinks fit—

- (a) extend the time for payment of the charge as he considers the circumstances warrant; or
- (b) permit the payment of the charge to be made by instalments within such time as he considers the circumstances warrant.

Penal charge.

19. If the charge is not paid within the time specified in section seventeen of this Act, or such further time as the Commissioner allows under the last preceding section, an additional charge shall be payable at the rate of ten per centum per annum upon the amount of the charge unpaid, to be computed from the expiration of that time, or further time, as the case may be:

Provided that the Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional charge imposed or any part thereof.

20.—(1.) Where in any case the Commissioner is of the opinion that any charge or further charge is payable by any person, the Commissioner may assess the amount of the charge which, in his opinion, should be or should have been paid. Assessment of charge or further charge

(2.) Where—

- (a) any person makes default in furnishing any return ;
- (b) the Commissioner is not satisfied with the return furnished by any person ; or
- (c) the Commissioner has reason to believe or suspect that any person has avoided payment of any charge,

the Commissioner may cause an assessment to be made of the amount of the charge which, in his judgment, ought to be levied, and that person shall be liable to the charge accordingly, excepting so far as he establishes that the assessment is excessive.

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

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

(4.) As soon as conveniently may be after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and the charge or further charge payable in accordance with the assessment to be given to the person liable to pay the charge or further charge.

(5.) The amount of the charge or further charge specified in the notice shall be due and payable on the date specified in the notice, together with any other amount which is payable in accordance with any other provision of this Act.

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

21.—(1.) Any charge or additional charge shall be deemed, when it becomes due and payable, to be a debt due to the King on behalf of the Commonwealth and payable to the Commissioner in the manner and at the place prescribed. Commissioner may sue for charge.

(2.) Any charge unpaid, including additional charge, may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

Refunds of charge.

22. Where the Commissioner finds in any case that any charge has been overpaid, he shall refund the amount of the charge found to be overpaid :

Provided that a refund shall not be made of any amount of charge unless the Commissioner is satisfied that the person claiming the refund has not passed on the charge to some other person or, if he has passed on the charge to some other person, that he has since repaid the amount to that person.

Persons leaving Australia to obtain certificate.

23.—(1.) When the Commissioner has reason to believe that a person liable to any charge or further charge may leave Australia before the charge or further charge becomes due and payable by him, the charge or further charge shall be due and payable on such date as the Commissioner fixes and notifies to that person.

(2.) Upon the application of any person about to leave Australia, the Commissioner, the Second Commissioner or a Deputy Commissioner may, if he is satisfied—

- (a) that that person is not liable to pay any charge ;
- (b) that arrangements have been made to the satisfaction of the Commissioner for the payment of any charge which is or may become payable by that person ; or
- (c) that the charge payable by that person is irrecoverable,

issue a certificate that, for the purposes of this Act, there is no objection to the departure of that person from Australia.

Authority to travel not to issue if without certificate.

24.—(1.) Unless and until such a certificate is presented to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship or aircraft by which that person intends to leave Australia at the port or place at which his passage is booked, an authority for that person to travel by that ship or aircraft shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

(2.) Any person who, in contravention of this section, issues an authority to any person to travel by a ship or aircraft shall be personally liable to pay the amount of the charge, if any, which is or may become due and payable by that second mentioned person, and shall be guilty of an offence.

Penalty : Not less than Fifty pounds or more than Two hundred pounds.

Certificates and list of passengers to be lodged.

25.—(1.) The owner or charterer, or the representative of the owner or charterer, of every ship or aircraft which takes passengers on board at any port or place shall, on the first working day after the departure of the ship or aircraft from that port or place, lodge all certificates so presented at the office of the Deputy Commissioner

of Taxation for the State or Territory in which that port or place is situated, together with a list showing the name and last-known address in Australia of every person (other than members of the crew and staff of the ship or aircraft) who travelled on the ship or aircraft.

(2.) Every owner or charterer, or representative of an owner or charterer, who fails to comply with this section shall be guilty of an offence.

Penalty: Not less than Ten pounds or more than One hundred pounds.

26. If, in any proceedings against a person for the recovery of any charge or additional charge, the defendant—

Substituted
service.

- (a) is absent from Australia and has not to the knowledge of the Commissioner after reasonable inquiry in that behalf any attorney or agent in Australia on whom service of process can be effected; or
- (b) cannot after reasonable inquiry be found, service of any process in the proceedings may, without leave of the Court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in Australia.

27.—(1.) Every person (in this section called “the trustee”)—

Liquidators,
&c.

- (a) who is liquidator of any company which is being wound up and is, or has been, required to furnish returns under this Act;
 - (b) who is receiver for any debenture holder, and has taken possession of any assets of any such company; or
 - (c) who is agent for an employer who is not resident in Australia and has been required by his principal to wind up the business or realize the assets of his principal,
- shall, within fourteen days after he has become liquidator, or after he has so taken possession of assets, or after he has been so required by his principal, give notice thereof to the Commissioner.

(2.) The Commissioner shall, as soon as practicable thereafter, notify to the trustee the amount which appears to the Commissioner to be sufficient to provide for any charge which then is or will thereafter become payable by the company or principal, as the case may be.

(3.) The trustee—

- (a) shall not without the leave of the Commissioner part with any of the assets of the company or principal until he has been so notified;
 - (b) shall set aside out of the assets available for the payment of the charge assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
 - (c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the charge.
- (4.) If the trustee fails to comply with any provision of this section (or fails as trustee duly to pay the charge for which he is liable under

the last preceding sub-section), he shall, to the extent of the value of the assets of which he has taken possession and which were available at any time for the payment of the charge, be personally liable to pay the charge, and shall be guilty of an offence.

Penalty : Not less than One pound or more than Fifty pounds.

(5.) Where more than one person is the trustee, the obligations and liabilities attaching to the trustee under this section shall attach to those persons jointly.

(6.) Upon the winding up of any company, the Commissioner may, if all other creditors of that company whose debts rank in priority to the costs, charges and expenses incurred by the liquidator agree to do likewise, permit all such costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator, including the remuneration of the liquidator, to be paid out of the assets of the company in priority to any charge under this Act payable by the company.

(7.) Nothing in this section shall limit the liability of any person under section fifty-eight of this Act.

When charge
not paid during
lifetime.

28. Where, whether intentionally or not, a person escapes full payment of the charge in his lifetime by reason of not having duly made full, complete and accurate returns—

- (a) the Commissioner shall have the same powers and remedies against the trustees of the estate of that person in respect of the liability to which that person was subject as he would have against that person if he were still living ;
- (b) the trustees shall make such returns as the Commissioner requires for the purpose of an accurate assessment ;
- (c) the trustees shall be subject to an additional charge to the same extent as the deceased person would be subject to an additional charge if he were still living, but the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional charge or any part thereof ; and
- (d) the amount of any charge payable by the trustees shall be a first charge on all the deceased person's estate in their hands.

Provision for
payment of
charge by
executors or
administrators.

29.—(1.) Where, at the time of a person's death, he had not paid the whole of the charge payable before the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of the charge from the trustees of that person's estate as he would have had against that person if that person were alive.

(2.) The trustees shall furnish such of the returns under this Act in respect of employment by the deceased person as have not been made by the deceased person.

(3.) Where the trustees are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the amount of the charge which, in his judgment, ought to be paid.

(4.) Where, in respect of the estate of any deceased person, probate has not been granted or letters of administration have not been taken out within six months after his death, the Commissioner may cause an assessment to be made of the amount of the charge due by the deceased.

(5.) The Commissioner shall cause notice of an assessment under the last preceding sub-section to be published twice in a daily newspaper circulating in the State or Territory of the Commonwealth in which the deceased person resided.

(6.) Subject to any amendment of the assessment by the Commissioner, an assessment under this section shall be *prima facie* evidence of the indebtedness of the deceased to the Commissioner.

(7.) The Commissioner may issue an order in the prescribed form authorizing any member of the police force of the Commonwealth or of a State or Territory of the Commonwealth or any other person named therein to levy the amount of the charge due by the deceased, as assessed under sub-section (4.) of this section, with costs by distress and sale of any property of the deceased.

(8.) Upon the issue of any such order the member or person so authorized shall have power to levy that amount accordingly in the prescribed manner.

30. Every person who, under the provisions of this Act, pays any charge for or on behalf of any other person shall be entitled to recover the amount so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any moneys in his hands belonging or payable to that other person.

Recovery of charge paid on behalf of another person.

31.—(1.) Where two or more persons are jointly liable to any charge they shall each be liable for the whole charge, but any of them who has paid the charge may recover contribution as provided in the next two succeeding sub-sections.

Contributions from persons jointly liable.

(2.) A person who has paid the charge may recover from any other person jointly liable to that charge a sum which bears the same proportion to the charge as the interest which that other person had in the profits of the business from which the liability to charge arose bears to the total interests therein of the persons jointly liable to the charge.

(3.) Every person entitled to contribution under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request, or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute.

Commissioner may collect charge from person owing money to person liable to charge.

32.—(1.) The Commissioner may, by notice in writing (a copy of which shall be forwarded to the person liable to the charge at the last place of address known to the Commissioner), require—

- (a) any person by whom any money is due or accruing or may become due to a person liable to the charge ;
- (b) any person who holds or may subsequently hold money for or on account of a person liable to the charge ;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a person liable to the charge ; or
- (d) any person having authority from some other person to pay money to a person liable to the charge,

to pay to him, forthwith upon the money becoming due or being held or within such further time as the Commissioner allows, the money or so much thereof as is sufficient to pay the charge due by the person liable to the charge.

(2.) A person shall comply with a notice given to him under this section.

Penalty : Fifty pounds.

(3.) Where the amount payable by the person to the person liable to the charge is less than the amount of the charge due, the person shall pay to the Commissioner in reduction of the amount of the charge due the amount payable by that person to the person liable to the charge.

(4.) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the person liable to the charge and of all other persons concerned and is hereby indemnified in respect of the payment.

(5.) If the charge is paid before any payment is made under a notice given in pursuance of this section, the Commissioner shall forthwith give notice to the person of the payment.

(6.) In this section—

“charge” includes any additional charge payable under this Act, any judgment debt or costs in respect of any charge, and any fine or costs imposed by a court in respect of an offence against this Act or the regulations ;

“person” includes company, partnership, the Commonwealth, a State, and any public authority (corporate or unincorporate) of the Commonwealth or a State.

(7.) Any notice to be given under this section to the Commonwealth or a State may be served upon such person as is prescribed, and any notice so served shall be deemed to have been served upon the Commonwealth or the State, as the case may be.

Evidence.

33.—(1.) The production of any document or a copy of a document under the hand of the Commissioner, the Second Commissioner or a Deputy Commissioner purporting to be a notice or a copy of a notice

specifying any liability of a person under this Act shall be conclusive evidence of the due exercise of any act required by this Act to be done or performed by the Commissioner, the Second Commissioner, or a Deputy Commissioner or other person or authority for the purpose of ascertaining the liability so specified and shall be *prima facie* evidence of the correctness of any calculations upon which that liability is ascertained.

(2.) The production of any document under the hand of the Commissioner, the Second Commissioner or a Deputy Commissioner purporting to be a copy of or extract from any document or return furnished to or of any document issued by the Commissioner shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

PART VI.—PENAL PROVISIONS.

34.—(1.) A person shall not—

Offences.

- (a) fail or neglect duly to furnish any return or information, or to comply with any requirement of the Commissioner, as and when required by this Act or the regulations or by the Commissioner;
- (b) without just cause shown by him refuse or neglect duly to attend and give evidence when required by the Commissioner or any person duly authorized by him, or truly and fully to answer any questions put to him, or to produce any book, document or paper required of him, by the Commissioner or any person so authorized; or
- (c) make or deliver a return which is false in any particular or make any false answer, whether orally or in writing, to any question duly put to him by the Commissioner or any person duly authorized by him.

Penalty: Not less than Two pounds or more than One hundred and fifty pounds.

(2.) Upon the conviction of any person for an offence against this section, the Court may order him, within a time specified in the order, to do the act which he had failed or refused or neglected to do, and any person who does not duly comply with any such order shall be guilty of an offence.

Penalty: Not less than Ten pounds or more than Two hundred pounds.

(3.) An order under this section may be made orally by the Court or may be in writing, in which case it shall be served in the manner prescribed.

(4.) In any prosecution for an offence arising under paragraph (c) of sub-section (1.) of this section of a person who has not previously been convicted of an offence against this Act, it shall be a defence if the defendant proves that the false particulars were given or the false answer was made through ignorance or inadvertence.

Additional
charge in
certain cases

35.—(1.) Notwithstanding anything contained in this Act, any person who—

(a) fails or neglects duly to furnish any return or information as and when required by this Act or the regulations or by the Commissioner; or

(b) fails to include any required particulars in any return,

shall, if a person to whom paragraph (a) of this sub-section applies, be liable to pay an additional charge at the rate of ten per centum per annum upon the amount of the charge which he is liable to pay (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which an assessment of the charge is made, whichever first happens), or the sum of One pound, whichever is the greater, or, if a person to whom paragraph (b) of this sub-section applies, be liable to pay by way of an additional charge the amount of One pound or double the amount of the difference between the charge properly payable and the amount of the charge payable on the basis of the particulars set out in the return furnished by him, whichever is the greater, in addition to any additional charge which may become payable by him in accordance with any other provision of this Act:

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

(2.) If the Commissioner considers that the circumstances of any case warrant action being taken to recover the penalty provided by the last preceding section, that action may be taken by the Commissioner, and, in that case, the additional charge payable under this section shall not be charged.

False
declarations.

36. If any person, in any declaration made under, or authorized or prescribed by, this Act or the regulations, knowingly or wilfully declares to any matter or thing which is false or untrue, he shall be deemed to be guilty of wilful and corrupt perjury and shall upon conviction be liable to imprisonment for a period not exceeding four years.

Avoiding
charge.

37. A person shall not, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoid or attempt to avoid the charge under this Act.

Penalty: Not less than Fifty pounds and the amount of the charge avoided or attempted to be avoided, or more than Five hundred pounds and treble the amount of the charge avoided or attempted to be avoided.

Obstructing
officers.

38. A person shall not obstruct or hinder any person acting in the discharge of his duty under this Act or the regulations.

Penalty: Not less than One pound or more than Fifty pounds.

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

(2.) A prosecution in respect of any offence against paragraph (a) or (c) of sub-section (1.) of section thirty-four of this Act may be commenced at any time.

40. Payment of penalties under this Act shall not relieve any person from liability to assessment or payment of any charge or additional charge. Penalties not to relieve from charge.

PART VII.—PROSECUTIONS.

41. Proceedings by the Crown for the recovery of penalties under this Act or the regulations are in this Part referred to as “prosecutions”. Prosecutions.

42. Prosecutions may be instituted in the name of the Commissioner by action, information or other appropriate proceeding— How instituted.
 (a) in the High Court; or
 (b) in the Supreme Court of a State,
 and when the prosecution is for a pecuniary penalty not exceeding Five hundred pounds or the excess is abandoned, the prosecution may be instituted in the name of the Commissioner or a Deputy Commissioner in a County Court, District Court, Local Court or court of summary jurisdiction.

43. Any of the following offences, namely :— Place where offence committed.
 (a) failure duly to furnish any return or information ;
 (b) making or delivering a return which is false in any particular, or making a false answer ; or
 (c) failure to comply with any requirement,
 shall be deemed to have been committed either—
 (d) at the place where the return or information was furnished or should, in accordance with this Act, the regulations or a requirement of the Commissioner, have been furnished, or where the answer was made, or where the requirement should have been complied with : or
 (e) at the usual or last known place of business or abode of the defendant,
 and may be charged as having been committed at either of those places.

44.—(1.) Where any prosecution has been instituted by an officer in the name of the Commissioner or a Deputy Commissioner the prosecution shall, until the contrary is proved, be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be. Evidence of authority to institute proceeding.

(2.) The production of a telegram purporting to have been sent by the Commissioner or a Deputy Commissioner and purporting to authorize an officer to institute any prosecution or proceedings shall

be sufficient evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Commissioner or Deputy Commissioner, as the case may be.

Defendant to have right of trial in High Court or State Court. *zm*

45. In any prosecution instituted in a court other than the High Court or a Supreme Court where the penalty exceeds One hundred pounds and the excess is not abandoned, the defendant, within seven days after service of process, shall have the right to elect in the prescribed manner to have the case tried in the High Court or in the Supreme Court of the State in which the prosecution has been instituted and thereupon the proceedings shall stand removed at the option of the Commissioner to the High Court or that Supreme Court and may be conducted as if originally instituted in the Court to which they are so removed.

Prosecution in accordance with Practice Rules.

46. Every prosecution in the High Court or the Supreme Court of any State may be commenced, prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

State Court practice.

47. Subject to this Act, the provisions of the law relating to summary proceedings before Justices in force in the State where the proceedings are instituted shall apply to all prosecutions before a court of summary jurisdiction in that State and an appeal shall lie from any conviction or order of dismissal to the Court, and in the manner, provided by the law of the State for appeals from convictions or orders of dismissal.

Information, &c., to be valid if in words of Act or regulations.

48. All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act or the regulations.

No objection for informality.

49.—(1.) An objection shall not be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

(2.) If any such defect or variance appears to the Court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the Court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

Conviction not to be quashed.

50. A conviction, warrant of commitment or other proceeding, matter or thing done or transacted in relation to the execution or carrying out of this Act shall not be held void, quashed or set aside by reason of any defect therein or want of form, and no party shall be entitled to be discharged out of custody on account of any such defect.

51. A witness on behalf of the Commissioner or a Deputy Commissioner in any prosecution shall not be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Protection to witnesses.

52.—(1.) In any prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters 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 by witnesses ; 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 by witnesses 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.) The foregoing provisions of this section shall not apply to—

- (a) an 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.

53. No minimum penalty provided by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the Court.

Minimum penalties.

54. Where any pecuniary penalty is adjudged to be paid by any convicted person, the Court—

Treatment of convicted offenders.

- (a) may commit the offender to gaol until the penalty is paid ;
- (b) may release the offender upon his giving security for the payment of the penalty ; or
- (c) may exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the Court for the enforcement and recovery of penalties in any other case.

55.—(1.) The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge that person—

Release of offenders.

- (a) on payment to him of the penalty adjudged ;
- (b) on a certificate by the Commissioner or a Deputy Commissioner that the penalty has been paid or released ; or

(c) if the penalty adjudged to be paid is not paid or released, according to the following table :—

Amount of Penalty.	Period after commencement of imprisonment on the expiration of which defendant is to be discharged.
£2 and under	7 days
Over £2 and not more than £5	14 days
Over £5 and not more than £20	1 month
Over £20 and not more than £50	2 months
Over £50 and not more than £100	3 months
Over £100 and not more than £200	6 months
Over £200	1 year

(2.) Where any person is committed to gaol for non-payment of more than one penalty, the imprisonment of that person, for the period specified in the last preceding sub-section in respect of the amount of any one of those penalties, shall not relieve him from liability to imprisonment for the period so specified in respect of the amount of any other such penalty, and the last-mentioned period of imprisonment shall commence at the expiration of the first-mentioned period of imprisonment.

Parties may recover costs.

56. In all prosecutions the Court may award costs against any party and all provisions of this Act relating to the recovery of penalties except commitment to gaol shall extend to the recovery of any costs adjudged to be paid.

PART VIII.—MISCELLANEOUS.

Public officer of company.

57.—(1.) Every company which is an employer shall at all times be represented for the purposes of this Act by a public officer, being a person residing in Australia and duly appointed by the company or by its duly authorized agent or attorney.

(2.) The company shall appoint a public officer within three months after the commencement of this Act or after the company becomes an employer, whichever is the later, and the company shall keep the office of the public officer constantly filled.

Penalty: Two pounds for every day during which the failure to make the appointment continues.

(3.) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and an address for service upon him, has been given to the Commissioner.

(4.) Service of any document at the address for service, or on the public officer of the company, shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if

at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient.

(5.) The public officer shall be answerable for the doing of all things which are required to be done by the company under this Act or the regulations, and in case of default shall be liable to the same penalties.

(6.) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company.

(7.) The absence or non-appointment of a public officer shall not excuse the company from the necessity of complying with any of the provisions of this Act or the regulations, or from any penalty for failure to comply therewith, but the company shall be liable to comply with the provisions of this Act as if there were no requirement to appoint a public officer.

(8.) Any notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company.

(9.) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him.

(10.) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company, or any attorney or agent of the company, and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.

58.—(1.) Every agent and every trustee shall be answerable as the person liable to pay the charge for the doing of all such things as are required to be done by virtue of this Act in respect of any employment by him in his representative capacity or by virtue of his agency.

**Agents or
Trustees**

(2.) He shall, in respect of any such employment, make the returns and be liable to the charge, but in his representative capacity only, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other.

(3.) If he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.

(4.) Where as agent or trustee he pays the charge, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person.

(5.) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the charge which is or will become due in respect of any such employment.

(6.) He is hereby made personally liable for the charge payable in respect of any such employment if, after the Commissioner has required him to make a return, or while the charge remains unpaid, he disposes of or parts with any fund or money which comes to him from or out of which the charge could legally be paid, but he shall not be otherwise personally liable for the charge :

Provided that the Commissioner may, upon application by the agent, permit disposal of any such fund or money or part thereof as he considers necessary.

(7.) He is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirements of the Commissioner.

(8.) For the purpose of insuring the payment of the charge the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other person liable to the charge in respect of the charge, and in as full and ample a manner.

Person in receipt or control of money for stevedore.

59.—(1.) Every person who has the receipt, control or disposal of money belonging to an employer resident out of Australia shall, when required by the Commissioner, pay the charge due and payable by the employer.

(2.) Where any person pays the charge in accordance with the last preceding sub-section he is hereby authorized to recover the amount so paid from the employer or to deduct it from any money in his hands belonging to the employer.

(3.) Every person specified in sub-section (1.) of this section—

(a) is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the employer so much as is sufficient to pay the charge which is or will become due by the employer ;

(b) is hereby made personally liable for the charge payable by him on behalf of the employer to the extent of any amount which he has retained, or should have retained, under the last preceding paragraph, but shall not be otherwise personally liable for the charge ; and

(c) is hereby indemnified for all payments which he makes in pursuance of this Act or in accordance with the requirements of the Commissioner.

60.—(1.) Every employer shall, for the purposes of this Act, keep proper books or accounts recording full particulars of all employment by him of waterside workers, and shall preserve those books or accounts for a period of not less than five years after the completion of the employment to which they relate.

Books,
accounts, &c.,
to be preserved

Penalty: One hundred pounds.

(2.) This section shall not apply so as to require the preservation of any books, accounts or documents—

- (a) in respect of which the Commissioner has notified a person that preservation is not required; and
- (b) of a company which has been dissolved.

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

Access to
books, &c.

62.—(1.) 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 an officer.

Appearance by
Commissioner.

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

63. 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 giving effect to this Act, and, in particular, for prescribing penalties not less than One pound or more than Twenty pounds for any breach of the regulations.

Regulations.

STEVEDORING INDUSTRY CHARGE.

No. 4 of 1947.

An Act to impose a Charge in respect of the
Employment of Waterside Workers.

[Assented to 28th March, 1947.]

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 *Stevedoring Industry Charge Act 1947.*

Short title.