

TRADING WITH THE ENEMY.

No. 14 of 1939.

An Act relating to Trading with the Enemy.

[Assented to 9th September, 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 *Trading with the Enemy Act* Short title.
1939.
2. This Act shall come into operation on the day on which it Commencement.
receives the Royal Assent.
- 3.—(1) In this Act, unless the contrary intention appears— Definitions.
 - “Australia” includes the Territories of the Commonwealth;
 - “constable” includes any member of the police force of the Commonwealth, of a State, or of a Territory, and any Peace Officer appointed in pursuance of the *Peace Officers Act* 1925;
 - “corporation” means a body corporate;
 - “enemy country” means any country with which His Majesty is for the time being at war;
 - “enemy subject” means—
 - (a) any person or firm trading with whom would be deemed to be trading with the enemy within the meaning of sub-section (2.) of this section; or
 - (b) any corporation, whether incorporated in any enemy country or not, which the Attorney-General, by notice published in the *Gazette*, declares to be in his opinion managed or controlled, directly or indirectly, by or under the influence of, or carried on wholly or mainly for the benefit or on behalf of, persons of enemy nationality, or resident or carrying on business in an enemy country;
 - “the Comptroller-General” means the Comptroller-General of Customs;
 - “the present state of war” means the period from the third day of September, One thousand nine hundred and thirty-nine at the hour of nine-thirty o'clock *post meridiem* reckoned according to standard time in the Australian Capital Territory, until the issue of a Proclamation by the Governor-General that war no longer exists.

(2.) For the purposes of this Act, a person shall be deemed to trade with the enemy, if he performs or takes part in—

- (a) any act or transaction which is prohibited by or under any Proclamation made by the King and published in the *Gazette*, whether before or after the commencement of this Act;
- (b) any act or transaction which, by notice published in the *Gazette*, whether before or after the commencement of this Act, persons are warned not to do or into which by such notice they are warned not to enter;
- (c) any act or transaction which is prohibited by or under any Proclamation made by the Governor-General and published in the *Gazette*; or
- (d) any act or transaction which at common law or by statute constitutes trading with the enemy.

Extension to Territories.

4. This Act shall extend to the Territories of the Commonwealth as if each of those Territories were part of the Commonwealth.

Trading with the enemy.

5.—(1.) Any person who, during the continuance of the present state of war, trades, or directly or indirectly offers or proposes or agrees to trade, or has before the commencement of this Act traded, or directly or indirectly offered or proposed or agreed to trade, with the enemy shall be guilty of an offence.

(2.) Any person who, without lawful authority, deals, or offers or proposes or agrees, whether directly or indirectly, to deal, with any money or security for money or other property which is in his hands or over which he has any claim or control for the purpose of enabling an enemy subject to obtain money or credit thereon or thereby, shall be guilty of an offence.

(3.) An offence against this section may be prosecuted either summarily or upon indictment, but an offender shall not be liable to be punished more than once in respect of the same offence.

(4.) The punishment for an offence against this section shall—

- (a) if the offence is prosecuted summarily—be a fine not exceeding Five hundred pounds, or imprisonment for any term not exceeding twelve months, or both; or
- (b) if the offence is prosecuted upon indictment—be a fine of any amount, or imprisonment for not more than seven years, or both.

(5.) Any goods or money in relation to which an offence against this section has been committed or which has been used in connexion with such an offence shall be forfeited to the King, and may be seized without warrant by any constable, or by any person thereto authorized in writing by the Comptroller-General, and shall be taken before a court of summary jurisdiction and dealt with in the same manner as articles seized under section nine of the *Crimes Act* 1914–1937.

(6.) A corporation guilty of an offence against this section shall be liable to the pecuniary penalties thereby provided, and any director, officer, servant or agent of a corporation who is knowingly concerned in the commission of an offence against this section by the corporation shall be deemed to be guilty of the offence and punishable accordingly by fine or imprisonment, or both.

6.—(1.) A prosecution under section five of this Act shall be instituted only by or with the consent of the Attorney-General or of a person acting under his direction: Institution of prosecution.

Provided that a person charged with any offence against that section may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General or of a person acting under his direction has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

(2.) Nothing in this section shall prevent the discharge of the person charged if proceedings are not continued within a reasonable time.

7.—(1.) Where it appears to a Justice of the Peace that an offence has been, or is likely to be, committed by any person against section five of this Act, or that it is desirable for the purposes of this Act to inspect the books or documents of any person, he may, upon information on oath made by the Comptroller-General or a person thereto authorized by him, by warrant authorize any person named in the warrant— Power to inspect books, &c.

- (a) to inspect, and if thought fit impound, any books or documents belonging to or in the possession or control of the first-mentioned person;
- (b) to require any person whom the Comptroller-General believes to be able to give information or to produce books or documents respecting the business or trade of the first-mentioned person to give that information or produce those books or documents; and
- (c) if accompanied by a constable or prescribed officer, to enter into, break open and search any house, premises or place used or believed by the Comptroller-General to be used in connexion with that business or trade or in which the Comptroller-General believes there are any books or documents belonging to the first-mentioned person.

(2.) Where the Comptroller-General certifies in writing that, in relation to any person, it is desirable on account of urgency that any or all of the powers contained in paragraphs (a), (b) and (c) of sub-section (1.) of this section should be exercised without prior application to a Justice of the Peace for the issue of a warrant, the Comptroller-General may, by writing under his hand, authorize any person named in the writing to exercise all or any of the powers contained in those paragraphs.

(3.) Any person who obstructs or interferes with any person authorized under sub-section (1.) or sub-section (2.) of this section in the exercise of any power conferred upon him in pursuance of this section, or who refuses or fails to produce any book or document or to give any information when required to do so in pursuance of this section, shall be guilty of an offence.

Penalty : Five hundred pounds or imprisonment for one year, or both.

(4.) Offences against this section may be prosecuted either summarily or on indictment.

Destruction
&c. of books.

8. Where a person has been authorized under this Act to inspect the books and documents of any person, and any book or document is found by him to have been destroyed, mutilated or falsified, any person having, or having had, control of that book or document shall be guilty of an offence and liable to the same punishment as if he had been guilty of trading with the enemy, unless he proves that the destruction, mutilation or falsification was not intended for the purpose of concealing any transaction which would constitute an offence against section five of this Act.

Use of
information
obtained.

9. Where a person has given any information to a person authorized in pursuance of this Act to require him to give the information, the information so given may be used in evidence against him in any proceeding for an offence against this Act.

Incriminating
answer or
production of
document.

10. A person shall not, in any proceeding for an offence against this Act, be excused from answering any question or producing any book or document on the ground that the answer or production may criminate or tend to criminate him, but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury or a proceeding under this Act.

Aiding and
abetting.

11. Any person who aids, abets, counsels or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to—

- (a) the commission of any offence against this Act ; or
- (b) the doing of any act outside Australia which would, if done within Australia, be an offence against this Act,

shall be deemed to have committed the offence and shall be punishable accordingly.

Evidence of
Proclamation.

12. For the purposes of this Act, evidence of any Proclamation made by the King or by the Governor-General may be given in all Courts by the production of the *Gazette* purporting to contain it.

13.—(1.) Where it appears to the Minister that, with reference to any person, firm or corporation—

Appointment of controller of firm or corporation.

- (a) an offence against section five of this Act has been or is likely to be committed in connexion with the trade or business thereof ;
- (b) (in the case of a firm or corporation) the control or management thereof has been or is likely to be so affected by the state of war as to prejudice the effective continuance of its trade or business, and that it is in the public interest that the trade or business should continue to be carried on ;
- (c) the business thereof is controlled or managed directly or indirectly by or under the influence of enemy subjects, or is carried on wholly or mainly for the benefit or on behalf of enemy subjects ; or
- (d) it is expedient in the public interest, or necessary for the safety of the Commonwealth, that a controller of the business should be appointed,

the Minister may apply to the High Court for the appointment of a controller of the person, firm or corporation, and the High Court shall have power to appoint such a controller for such time and with such powers and subject to such conditions as the Court thinks fit, and the powers so conferred may include any powers of controlling, conducting, continuing, discontinuing, extending, restricting or varying the business and operations of the person, firm or corporation, including, if the Court considers it necessary or expedient for the purpose of enabling the controller to borrow money, the power, upon special application made to the Court for that purpose, to create charges on the property of the person, firm or corporation in priority to existing charges.

(2.) The Court shall have power to direct how and by whom the costs of any proceedings under this section, and the remuneration, charges and expenses of the controller, shall be borne, and shall have power, if it thinks fit, to charge those costs, charges and expenses on the property of the person, firm or corporation in such order of priority in relation to any existing charges thereon as it thinks fit.

(3.) Where the Minister is satisfied that, with reference to any person, firm or corporation, the business thereof is managed, controlled or carried on as mentioned in paragraph (c) of sub-section (1.) of this section, or that it is expedient in the public interest or necessary for the safety of the Commonwealth that a controller of the business should be appointed, he may, before applying to the High Court under that sub-section, appoint an interim controller of the person, firm or corporation with such powers and subject to such conditions as he thinks fit, but in that case he shall as soon as practicable thereafter apply to the High Court under that sub-section.

Debts due to
enemy subject.

14.—(1.) Where any person has reasonable ground for believing that any person to whom he owes money is an enemy subject, he may tender the money to the Comptroller-General, or to any officer authorized in that behalf by the Comptroller-General, together with a statutory declaration stating the transaction or matter in respect of which he owes the money, and his grounds for believing that the creditor is an enemy subject.

(2.) The Comptroller-General or officer shall, if he is satisfied that the grounds of belief stated in the declaration are reasonable, receive the money, and give a receipt therefor stating the name of the creditor on whose account the money is paid.

(3.) The receipt shall be a good and valid discharge to the debtor as against the creditor and all persons claiming through or on behalf of the creditor.

(4.) The Comptroller-General or officer shall pay the money into a Trust Account to be established for that purpose by the Treasurer under the *Audit Act* 1901–1934.

(5.) The Treasurer may pay the money to the creditor, his executors or administrators, on demand made after the termination of the present state of war, or before that time, if he is satisfied that the creditor is not an enemy subject.

Power to
grant
licences.

15.—(1.) Notwithstanding anything contained in this Act, the Governor-General may, by licence under his hand, exempt any particular transaction or class of transactions from the provisions of this Act.

(2.) Every licence granted in pursuance of this section shall be published in the *Gazette*.

(3.) Any person who, for the purpose of obtaining a licence under this section—

(a) makes or presents to an officer any declaration, statement or representation which is false in any material particular; or

(b) produces to an officer any instrument or document which—

(i) is false in any material particular; or

(ii) has not been executed by the person by whom it purports to be executed; or

(iii) has been in any way altered or tampered with,

shall be guilty of an offence.

Penalty: Five hundred pounds, or three times the value of any goods or money in respect of which the offence has been committed, whichever is the greater, or imprisonment for six months, or both.

Regulations.

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.