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# FINANCIAL AGREEMENTS ENFORCEMENT.

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**No. 3 of 1932.**

An Act to provide for the carrying out of the Financial Agreements between the Commonwealth and the States by the parties thereto, and for other purposes.

[Assented to 12th March, 1932.]

**W**HEREAS it is, by section one hundred and five A of the Constitution, provided *inter alia* that the Parliament may make laws for the carrying out by the parties thereto of any agreement made between the Commonwealth and the States with respect to any of the matters mentioned in that section : Preamble.

**AND WHEREAS** the Agreements set forth in the Schedules to the *Financial Agreement Validation Act 1929*, the *Debt Conversion Agreement Act 1931*, and the *Debt Conversion Agreement Act (No. 2) 1931*, are agreements made between the Commonwealth and the States with respect to matters mentioned in that section :

**AND WHEREAS** it is desirable to make provision for the carrying out by the parties thereto of the obligations imposed upon them by those Agreements :

**BE** it therefore 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 *Financial Agreements Enforcement Act 1932*. Short title.

**Duration of Act.**

2. This Act shall continue in operation for a period of two years, and no longer.

**Parts.**

3. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Enforcement against State Revenue.

Part III.—Enforcement against other Funds of State.

Part IV.—Adjustment with State.

Part V.—Removal of Causes.

Part VI.—Miscellaneous.

**Definitions.**

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

“Authorized person” means a person appointed in writing by the Treasurer for the purposes of this Act, or a person included in a class so appointed;

“Liability” means an obligation to pay a sum certain;

“Loan Council” means the Australian Loan Council established in pursuance of the Agreement, between the Commonwealth and the States, which is contained in the Schedule to the *Financial Agreement Validation Act 1929*;

“Person” includes a body corporate or unincorporate, and a partnership;

“Prescribed moneys” means moneys due and payable by any person to a State during the currency of any Proclamation, which, if received by or on behalf of the State, would have formed part of the specified revenue of the State;

“Specified revenue” means such revenue or class of revenue of a State specified or described in a resolution passed by each House of the Parliament in pursuance of this Act as is from time to time included in a Proclamation;

“The currency of the Proclamation” or “the currency of any Proclamation” means the period extending from the date fixed by the Proclamation referred to in section seven of this Act to the issue of a Proclamation revoking that Proclamation;

“The Financial Agreements” means one or more or all of the Agreements contained in the Schedules to the *Financial Agreement Validation Act 1929*, the *Debt Conversion Agreement Act 1931* and the *Debt Conversion Agreement Act (No. 2) 1931*.

(2.) In sections five and six (with respect to the specified revenue of the State), seven to twelve (inclusive), fifteen, nineteen and twenty-six of this Act, unless the contrary intention appears—

“The State” includes any public authority, incorporated or unincorporated, constituted under the laws of a State, which has power to levy rates, taxes or charges, or collect revenue, for a public purpose, and is declared by the Governor-General by Proclamation to be a public authority for the purposes of this Act, but does not include a municipal council, shire council, or local governing authority.

## PART II.—ENFORCEMENT AGAINST STATE REVENUE.

5.—(1.) The Auditor-General shall, as soon as possible after the close of each financial year, and at any other time when requested by the Treasurer so to do, give to the Treasurer a certificate in writing, signed by the Auditor-General, setting forth an amount of money then due and payable and unpaid by a State to the Commonwealth under or by virtue of the Financial Agreements, and the items in respect of which the sums comprised in that amount are so due and payable and unpaid.

Application of  
Part to State  
after declaration  
of High Court.

(2.) The Treasurer shall publish in the *Gazette* a copy of each certificate received from the Auditor-General.

(3.) At any time, and from time to time, after the publication in the *Gazette* of a copy of a certificate of the Auditor-General, the Attorney-General may apply to the High Court for a declaration that the whole or part of the amount set forth in the certificate or of one or more of the sums comprised in that amount is due and payable and unpaid by the State to the Commonwealth.

(4.) Any such application shall be made by motion of which not less than three days' notice shall be given to the Attorney-General of the State concerned.

(5.) The application shall be heard by a Full Court consisting of not less than three Justices.

(6.) Upon the making, on any such motion, of a declaration by the High Court that any amount is due by the State to the Commonwealth, such declaration shall be a judgment of the High Court in favour of the Commonwealth against the State, and shall be enforceable as a judgment, and shall, in addition to any other remedies for enforcing such judgment by law provided, operate as a charge upon all the revenues of the State.

(7.) At any time and from time to time after the making, on any such motion, of a declaration by the High Court that any amount of money is due by the State to the Commonwealth, each House of the Parliament may resolve, upon motion moved in each House by or on behalf of a Minister, that the provisions of sections seven to thirteen (inclusive) of this Part should apply in relation to the State specified in the motion (being a State to which the declaration relates) and have effect, to the extent of the amount so declared by the High Court, with respect to the specified revenue of the State.

(8.) Upon such a resolution being passed by both Houses of the Parliament, the provisions of sections seven to thirteen (inclusive) of this Part shall, to the extent of the amount so declared by the High Court, apply in relation to the State specified in the resolution, whether there is pending or not any action, suit, proceeding or matter in which there is in issue a question as to whether an amount or amounts of money is or are due and payable and unpaid by the State to the Commonwealth under or by virtue of the Financial Agreements.

Application of  
Part to State  
in case of  
urgency.

6.—(1.) Notwithstanding the provisions of the last preceding section, if, at any time after the Auditor-General has given to the Treasurer such a certificate as is specified in sub-section (1.) of that section, each House of the Parliament resolves, upon motion moved in each House by or on behalf of a Minister, that the certificate be approved and adopted, and that by reason of urgency it is desirable that the provisions of sections seven to thirteen (inclusive) of this Part should apply immediately in relation to the State specified in the motion (being a State to which the certificate relates) and, in order to protect the interests of the Commonwealth until the question of the liability of the State has been determined by the High Court pursuant to an application under this section, should have effect with respect to the specified revenue of the State to the extent—

(a) of the amount set forth in the certificate or of any smaller amount stated in the resolution, and

(b) in case any smaller amount is so stated, of the item or items comprised in that amount,

the provisions of those sections shall apply and have effect accordingly.

(2.) Upon such a resolution being passed by both Houses of the Parliament the provisions of sections seven to thirteen (inclusive) of this Part shall, to the extent of the amount set forth in the certificate, or of any smaller amount stated in the resolution, apply in relation to the State specified in the resolution, whether or not there is pending any action, suit, proceeding or matter in which there is in issue a question as to the amount or amounts of money due and payable and unpaid by the State to the Commonwealth under or by virtue of the Financial Agreements.

(3.) As soon as practicable after such a resolution has been passed by both Houses of the Parliament, and in any event within two months thereafter, the Attorney-General shall apply to the High Court for a declaration that the amount stated in the resolution, or any part thereof, is due and payable and unpaid by the State to the Commonwealth.

(4.) At any time after such a resolution has been passed by both Houses of the Parliament, the Attorney-General of the State may apply to the High Court for a declaration that no part of the amount stated in the resolution or a smaller amount than that stated in the resolution is due and payable and unpaid by the State to the Commonwealth.

(5.) Any application under either of the last two preceding sub-sections shall be made by motion, of which not less than three days' notice shall be given to the Attorney-General of the State concerned, or to the Attorney-General, as the case may be.

(6.) The application shall be heard by a Full Court consisting of not less than three Justices.

(7.) The application in relation to a State of the provisions of sections seven to thirteen (inclusive) of this Part shall not cease or be suspended upon an application to the High Court, or during the pendency of any proceedings thereon in the said Court.

(8.) On the making of a declaration by the High Court that any amount, or part thereof, stated in the resolution is due and payable and unpaid by the State to the Commonwealth—

(a) the declaration—

- (i) shall be a judgment of the High Court in favour of the Commonwealth against the State;
- (ii) shall be enforceable as a judgment; and
- (iii) shall, in addition to any other remedies for enforcing such judgment by law provided, operate as a charge upon all the revenues of the State; and

(b) the provisions of sections seven to thirteen (inclusive) shall continue to apply in relation to that State—

- (i) notwithstanding that a resolution of each House of the Parliament has not been passed in pursuance of sub-section (7.) of the last preceding section; and
- (ii) notwithstanding that there may be pending any action, suit, proceeding or matter in which there is in issue a question as to the amount or amounts due and payable and unpaid by the State to the Commonwealth under or by virtue of the Financial Agreements.

(9.) In the event of the High Court making a declaration that no part of the amount stated in the resolution is due and payable and unpaid by the State to the Commonwealth, the provisions of sections seven to thirteen (inclusive) of this Part shall cease to apply in relation to the State.

7.—(1.) Upon a resolution being passed by both Houses of the Parliament in pursuance of section five or six of this Part, the specified revenue of the State shall, subject to this Act, as from a date to be fixed by Proclamation and during the currency of the Proclamation, become payable to the Treasurer, or, if the Treasurer, by notice in the *Gazette*, so directs, to authorized persons, and in accordance with such directions as are contained in the notice.

Payment of specified State revenue to Commonwealth.

(2.) Where a resolution passed in pursuance of this Act specifies or describes more than one class of revenue, it shall not be necessary that all the classes so specified or described shall be included in one Proclamation, but different classes may be included in successive Proclamations, and their inclusion shall have effect as from the dates respectively fixed by those Proclamations.

8. Upon the payment by any person to the Treasurer, or to an authorized person in accordance with any such directions, during the currency of any Proclamation, of any prescribed moneys, the liability of the person to the State, in respect of the matter in respect of which the prescribed moneys would, but for the last preceding

Effect of payment in accordance with direction of Treasurer.

section, have been payable to the State, shall, to the amount of the payment, be discharged, and no action, suit or other proceeding shall be maintainable by the State against that person in respect of that matter to the amount of that payment.

Commonwealth  
may sue for  
moneys due and  
payable to a  
State.

9.—(1.) The Commonwealth, or any person thereto authorized in writing by the Attorney-General, may sue for and recover any moneys due and payable by any person to the State during the currency of any Proclamation, which, if received by or on behalf of the State, would have formed part of the specified revenue of that State.

(2.) In any proceedings by the Commonwealth or any such person for the recovery of any moneys, the burden of proving any allegation that payment of those moneys had been made to the State before the currency of the Proclamation shall lie upon the person from whom recovery is sought.

Payments not  
to be made to  
State during  
currency of  
Proclamation.

10. A person shall not, from and after the date fixed by Proclamation, and during the currency of the Proclamation, pay to any person, other than the Treasurer or an authorized person, any moneys owing by the person to the State, which, if received by or on behalf of the State, would have formed part of the specified revenue of that State.

Unlawful  
payments not to  
operate as  
discharge of  
liability.

11. A payment made in contravention of the last preceding section shall not operate in discharge or reduction of any liability to the State of the person by whom or on whose behalf the payment is made, but, notwithstanding any agreement to the contrary or any payment to the State, or any assignment (whenever made) by the State of its rights in any liability, the liability shall, subject to this Act, continue to exist until it is discharged by payment to the Commonwealth in accordance with this Act.

Payments in  
contravention  
of Act.

12.—(1.) Any Minister of, or officer or person employed by, a State, and any person, who—

(a) receives, directs or permits the receipt of any moneys by or on behalf of a State the payment of which would be a contravention of the provisions of this Act; or

(b) gives, or offers to give to any person any indemnity in respect of the payment to or on behalf of the State of any moneys the payment of which to the State would be a contravention of those provisions,

shall be guilty of an offence.

(2.) Any indemnity the giving of which is an offence against this section shall be absolutely void and of no effect.

Application of  
Act to further  
certificates of  
Auditor-General.

13.—(1.) If at any time during the currency of any Proclamation, the Auditor-General gives to the Treasurer a certificate setting forth a further amount as being due and payable and unpaid by the State specified in the prior certificate, and the High Court makes a declaration in pursuance of an application under sub-section (3.) of section five of this Act that the amount set forth in the further certificate

or any part thereof is due and payable and unpaid, this Act shall have effect as if the amount specified in the further declaration of the High Court had been set forth in the prior declaration of the Court in addition to the amount stated in that prior declaration, and a resolution had been passed by each House of the Parliament in pursuance of section five of this Act, and the amount so specified in the further declaration shall be deemed to be set forth in the prior certificate of the Auditor-General, in addition to the amount stated in that prior certificate.

(2.) If at any time during the currency of any Proclamation, issued after a resolution has been passed by each House of the Parliament in pursuance of section six of this Act, the Auditor-General gives to the Treasurer a certificate setting forth a further amount as being due and payable and unpaid by the State specified in the prior certificate, this Act shall have effect as if—

- (a) the amount set forth in the further certificate had been set forth in the resolution passed by both Houses of the Parliament after the receipt by the Treasurer of the prior certificate, in addition to the amount stated in that resolution, and
- (b) a resolution had been passed by each House of the Parliament in pursuance of section six of this Act :

Provided that, if at any time after any such further certificate is given, the High Court makes a further declaration in pursuance of sub-section (3.) of section six of this Act, this Act shall have effect as if the amount specified in the further declaration of the High Court had been set forth in the prior declaration of the Court in addition to the amount stated in that prior declaration.

### PART III.—ENFORCEMENT AGAINST OTHER FUNDS OF STATE.

14. Without prejudice to the foregoing provisions of this Act, if at any time during the currency of any Proclamation relating to any State, the Commonwealth has, whether in pursuance or by virtue of the Financial Agreements, or of any decision of the Loan Council, or otherwise, possession or control of any moneys—

Power of Commonwealth to retain certain moneys received on behalf of State.

- (a) for and on behalf of that State ;
- (b) for the purpose of payment to that State ; or
- (c) to which that State has any claim whether under those Agreements or otherwise,

those moneys shall be charged with the due performance by that State of its obligations under those Agreements, and may be applied in discharge of any liabilities of that State which have accrued under those Agreements :

Provided that if the Auditor-General certifies that the obligations of the State under those Agreements have been satisfied, or, if in any action, suit or other proceeding to which the Commonwealth is a party or in which it has intervened, the High Court determines that no

amount was due and payable and unpaid by the State to the Commonwealth under or in pursuance of those Agreements, the moneys which have so come into the possession or control of the Commonwealth shall be dealt with in the same manner as is specified in section eighteen of this Act.

**Moneys held by  
Banks on behalf  
of State.**

15.—(1.) At any time during the currency of any Proclamation, the Treasurer may serve, or cause to be served, upon the chief executive officer in Australia of any corporation carrying on the business of banking, a notice in writing requiring that officer—

- (a) to render forthwith to the Treasurer or to an authorized person a return of the amount of the balance standing to the credit of the State to which the Proclamation relates, in the books of the corporation, whether upon fixed deposit, current account or otherwise, specifying the amount of the balance standing to the credit of the State under each of those heads ; and
- (b) to pay to the Treasurer or authorized person forthwith, or within such period (if any) as is specified in the notice, the whole of that amount or such part of it as is specified by the Treasurer in the notice, and thereafter to pay to the Treasurer or authorized person, within a period or to an amount specified in the notice, any further moneys subsequently received by the corporation on account of the State.

(2.) The receipt of the Treasurer or authorized person shall be a good discharge to the corporation of its obligation to pay the said moneys to the State, and, upon payment thereof to the Treasurer or authorized person, the corporation shall be exempt from any liability to the State in respect thereof, in any proceedings whatsoever.

(3.) Any moneys received by the Treasurer or an authorized person in pursuance of this section shall be dealt with as if they were moneys received by him under or by virtue of the provisions of section seven of this Act :

Provided that if in any proceedings whatsoever it is proved to the satisfaction of the High Court that no amount of money was due and payable and unpaid by the State to the Commonwealth under or by virtue of the Financial Agreements, or that an amount of money less than the amount or amounts set forth in a certificate given by the Auditor-General in pursuance of section five or six of this Act, or certificates given by him in pursuance of either of those sections and section thirteen was in fact due and payable and unpaid by the State to the Commonwealth under the Financial Agreements, the moneys received by the Commonwealth in pursuance of this section shall be dealt with in the manner prescribed by section eighteen of this Act.

(4.) Any chief executive officer who refuses or fails to comply with the requirements of any notice served upon him in pursuance of this section, or who renders a return which is false in any particular, or who otherwise contravenes, or is concerned in any contravention of, this section shall be guilty of an offence.



(5.) Notwithstanding the foregoing provisions of this section, if the Treasurer is satisfied—

- (a) that any moneys paid to him or to an authorized person in pursuance of this section include moneys deposited by any person as security for the supply of goods, the performance of services or the carrying out of any work; and
- (b) that the conditions on which the moneys were deposited have been fulfilled,

the Treasurer may refund those moneys, and any refund so made shall, as between the person making the deposit and the State, be deemed to have been made by the State.

(6.) In this section, the expression "chief executive officer" includes any person for the time being acting as, for, or on behalf of, the chief executive officer of the corporation.

#### PART IV.—ADJUSTMENT WITH STATE.

16.—(1.) The Treasurer shall keep an account of all moneys received by the Commonwealth in pursuance of this Act, and of all expenses incurred by the Commonwealth by reason of the application of any of the provisions of Part II. of this Act in relation to a State, including the expenses of collecting, accounting for, paying and transmitting moneys, and shall be entitled from time to time to deduct from those moneys the amount of any such expenses, and shall, as soon as practicable, from time to time apply the balance in discharge of any liabilities of the State which have accrued under the Financial Agreements and refund to the State any amount received by the Treasurer under this Act in excess of the liability of the State to the Commonwealth.

Account to be kept of moneys received under this Act.

(2.) A copy of every such account shall be supplied from time to time to the Treasurer of the State.

17.—(1.) Upon the discharge of all such liabilities of the State the Auditor-General shall give to the Treasurer a certificate to that effect, and upon the receipt by the Treasurer of any such certificate a Proclamation to that effect shall be issued by the Governor-General.

Certificate of discharge of State liabilities.

(2.) At any time during the currency of any Proclamation referred to in section seven of Part II. of this Act, the Governor-General may issue a Proclamation revoking that Proclamation.

(3.) Upon the issue of a Proclamation under either of the last two preceding sub-sections, the provisions of sections seven to thirteen (inclusive) of Part II. of this Act shall cease to apply in relation to the State concerned until or unless a further resolution is carried by both Houses of the Parliament in pursuance of this Act.

18.—(1.) Notwithstanding the preceding provisions of this Act, if, in any proceedings in the High Court to which the Commonwealth is a party, or in which it has been granted leave to intervene, it is declared in the final judgment of the High Court that no amount is due and payable and unpaid by the State to the Commonwealth under or in pursuance of the Financial Agreements, or that a smaller

Procedure in event of judgment in favour of State.

amount than the amount set forth in that certificate is due and payable and unpaid, the moneys received by the Commonwealth, in respect of that State, under or by virtue of this Act, or moneys to an amount in excess of the amount declared to be so due and payable and unpaid, as the case may be, shall be paid by the Commonwealth to the State or to the persons from whom such moneys were received, as may be directed by the Court, to the intent that a State shall not, in respect of any money received by the Commonwealth, recover an amount both from the Commonwealth and from the person who paid the money to the Commonwealth under the provisions contained in this Act.

(2.) Any payment by the Commonwealth under this section shall be subject to all such allowances as, in the opinion of the High Court, may be just in respect of—

- (a) such amount (if any) as has been applied by the Commonwealth in discharge of any liabilities of the State which have accrued under the Financial Agreements, for the amount of which liabilities the Commonwealth is or was directly or indirectly liable under those Agreements ;
- (b) such amount (if any) as has already been paid by the Commonwealth to the State in pursuance of this Act ; and
- (c) expenses incurred by the Commonwealth by reason of the application of this Act in relation to the State, including the expenses of collecting, accounting for, paying and transmitting moneys.

#### PART V.—REMOVAL OF CAUSES.

Removal of  
certain causes to  
High Court.

19.—(1.) When in any cause pending in any Court of a State there arises any question as to whether, by virtue of the provisions of the Financial Agreements, the Commonwealth is under any liability to make any payment to a State or to any person, or a State is under any liability to make any payment to the Commonwealth or to any person, or whether, by virtue of the provisions of this Act, any person is under any liability to make any payment to the Treasurer or any authorized person or to any State, it shall be the duty of the Court to proceed no further in the cause, and the cause shall be, by virtue of this Act, and without any order of the High Court, removed to the High Court.

(2.) Thereupon the proceedings in the cause, and such documents (if any) relating thereto as are filed of record in the Court of the State, shall be transmitted by the Registrar, Prothonotary or other proper officer of the Court, to the Registrar of the High Court in the State ; or, if there are more Registries than one in the State, to such Registry as is prescribed by Rules of Court.

(3.) Where a cause is removed to the High Court under this section, the High Court shall proceed therein as if the cause had been originally commenced in that Court, and as if the same proceedings had been taken in the cause in the High Court as had been taken therein in the Court of the State prior to its removal, but so that all subsequent proceedings shall be according to the course and practice of the High Court.

## PART VI.—MISCELLANEOUS.

20. Nothing contained in this Act shall impair or diminish the control of the High Court over the execution or enforcement of any judgment of the Court.

Control over enforcement of judgments.

21.—(1.) Any person who contravenes, or refuses or fails to comply with, any provision of this Act or of any requirement or direction made or given in pursuance of this Act, shall be guilty of an offence.

Prosecution of offences.

(2.) Any offence against this Act may be prosecuted either summarily or upon indictment.

(3.) The punishment for an offence against this Act shall be as follows:—

(a) If the offence is prosecuted summarily—a fine not exceeding One hundred pounds or imprisonment for a term not exceeding six months, or both; or

(b) If the offence is prosecuted upon indictment—a fine not exceeding Five hundred pounds or imprisonment for a term not exceeding two years, or both.

(4.) An offence against section ten of this Act shall not be prosecuted without the written consent of the Treasurer.

22. In any proceedings whatsoever, a certificate of the Auditor-General, given in pursuance of sub-section (1.) of section five of this Act, shall be *prima facie* evidence that the amount certified to be due and payable and unpaid by a State to the Commonwealth under or by virtue of the Financial Agreements is so due and payable and unpaid, and that the sums comprised in that amount are due and payable and unpaid in respect of the items set forth in the certificate.

Certificate of Auditor-General *prima facie* evidence.

23. The mere production of the *Gazette* containing what purports to be a copy of a certificate given by the Auditor-General in pursuance of this Act shall in all Courts be evidence that a certificate in the terms appearing in the *Gazette* was given by the Auditor-General in pursuance of this Act.

Proof of certificate of Auditor-General.

24. The expiry of this Act, or the cessation (whether by virtue of the issue of a Proclamation or otherwise) of the application of the provisions of sections seven to thirteen (inclusive) of Part II. of this Act in relation to any State, shall not affect—

Preservation of rights, liabilities, &c., in certain cases.

(a) any right, privilege, obligation or liability acquired, accrued or incurred thereunder;

(b) any penalty, forfeiture or punishment incurred in consequence of any offence committed against this Act; or

(c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had continued in operation, or the provisions of sections seven to thirteen (inclusive) of Part II. had not ceased to apply, as the case may be.

Appropriation  
of Consolidated  
Revenue Fund.

25. The Consolidated Revenue Fund is to the necessary extent hereby appropriated for the purpose of any payment for which the Commonwealth is liable under or in pursuance of this Act.

Regulations.

26. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters 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—

- (a) for conferring on the Treasurer, officers of the Commonwealth, or authorized persons, powers of requiring returns and production of documents, and any other powers which in the opinion of the Governor-General are necessary or desirable to be conferred for the purposes of carrying out this Act ;
- (b) for imposing for the purposes of this Act duties on Ministers of and officers and persons employed by the State ;
- (c) for requiring persons or classes of persons to furnish returns of moneys due or likely to become due to the State ; and
- (d) for prescribing penalties, not exceeding in any case One hundred pounds or imprisonment for six months, for any contravention of the regulations.