

NATIONAL SECURITY.

No. 15 of 1939.

An Act to make provision for the Safety and Defence of the Commonwealth and its Territories during the present state of War.

[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 *National Security Act 1939*. Short title.

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

- 3.** In this Act, unless the contrary intention appears— Definitions.
 - “Australia” includes the Territories of the Commonwealth ;
 - “Commonwealth officer” means any person holding office under the Commonwealth, and includes any person permanently or temporarily employed in the Public Service of the Commonwealth or in or in connexion with the Defence Force, or in the service of any authority or body constituted by or under any Act ;
 - “constable” includes any member of the Police Force of the Commonwealth or of a State or Territory of the Commonwealth, and any Peace Officer appointed in pursuance of the *Peace Officers Act 1925* ;
 - “the present state of war” means the state of war existing between His Majesty the King and Germany during the period commencing on 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 and terminating on the date of the issue of a proclamation that the war between His Majesty the King and Germany has ceased ;
 - “the present war” means the war between His Majesty the King and Germany existing during the present state of war.

4. This Act shall extend, with such exceptions, adaptations and modifications, if any, as are prescribed, to every Territory of the Commonwealth. Application of Act to Territories.

Emergency
regulations.

5.—(1.) Subject to this section, the Governor-General may make regulations for securing the public safety and the defence of the Commonwealth and the Territories of the Commonwealth, and in particular—

- (a) for providing for the apprehension, prosecution, trial or punishment, either in Australia or in any Territory of the Commonwealth, of persons committing offences against this Act ;
- (b) for authorizing—
 - (i) the taking of possession or control, on behalf of the Commonwealth, of any property or undertaking ; or
 - (ii) the acquisition, on behalf of the Commonwealth, of any property other than land in Australia ;
- (c) for prescribing any action to be taken by or with respect to alien enemies, or persons having enemy associations or connexions, with reference to the possession or ownership of their property, the conduct or non-conduct of their trade or business, and their civil rights or obligations ;
- (d) for prescribing the conditions (including the times, places and prices) of the disposal or use of any property, goods, articles or things of any kind ;
- (e) for requiring or authorizing any action to be taken by or with respect to aliens, and for prohibiting aliens from doing any act or thing ;
- (f) for applying to naturalized persons, with or without modifications, all or any of the provisions of any regulations relating to aliens ;
- (g) for requiring any person to disclose any information in his possession as to any prescribed matter ;
- (h) for preventing money or goods being sent out of the Commonwealth except under conditions approved by any Minister of State ;
- (i) for authorizing the entry upon or search of any premises ; and
- (j) for providing for the charging, in respect of the grant or issue of any licence, permit, certificate or other document or the giving of any consent for the purposes of the regulations, of a fee not exceeding Five pounds,

and for prescribing all matters which, by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for the more effectual prosecution of the present war, or for carrying out or giving effect to this Act.

(2.) Any provision of any regulation made under this section with respect to aliens may relate either to aliens in general or to any class or description of aliens.

(3.) The regulations may provide for empowering such persons or classes of persons as are prescribed and thereto authorized in pursuance of the regulations, to make orders, rules or by-laws for any of the purposes for which regulations are authorized by this Act to be made, and orders, rules and by-laws so made shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act 1903-1934*.

(4.) Section forty-eight (except paragraphs (a) and (b) of sub-section (1.) and sub-section (2.)) and section forty-nine of the *Acts Interpretation Act 1901-1937* shall apply to orders, rules and by-laws, which are of a legislative and not an executive character, in like manner as they apply to regulations.

(5.) The *Acts Interpretation Act 1901-1937* shall apply to the interpretation of any orders, rules or by-laws made in pursuance of the regulations in like manner as it applies to the interpretation of regulations, and, for the purposes of section forty-six of that Act, those orders, rules and by-laws shall be deemed to be Acts.

(6.) Where a regulation made in pursuance of this Act confers a power to make orders, rules or by-laws, the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to rescind, revoke, amend or vary any such orders, rules or by-laws.

(7.) Nothing in this section shall authorize—

- (a) the imposition of any form of compulsory naval, military or air-force service, or any form of industrial conscription, or the extension of any existing obligation to render compulsory naval, military or air-force service ; or
- (b) the making of provision for trial by courts-martial of persons not subject to naval, military or air-force law under the *Naval Defence Act 1910-1934*, the *Defence Act 1903-1939* or the *Air Force Act 1923*.

6. Unless the contrary intention appears, any provisions contained in, or having effect under, any regulation made under this Act shall—

Extra-territorial operation of regulations.

- (a) in so far as they specifically impose prohibitions, restrictions or obligations in relation to ships, vessels or aircraft, or specifically authorize the doing of anything in relation to ships, vessels or aircraft, apply in relation to all ships, vessels or aircraft in or over Australia, and in relation to all ships, vessels or aircraft registered in Australia, wherever they may be ; and
- (b) in so far as they impose prohibitions, restrictions or obligations on persons, apply to and in relation to all persons in Australia, and to and in relation to all persons on board any ship, vessel or aircraft registered in Australia, wherever it may be.

Indemnity in respect of things done before passing of Act, and validation of regulations, &c.

7.—(1.) A person shall not, by reason of anything done by him on behalf of the Commonwealth during the period commencing on the twenty-fifth day of August, One thousand nine hundred and thirty-nine, and ending on the date of the commencement of this Act, be liable to any proceedings if the doing of that thing could validly have been authorized had this Act been in force throughout that period.

(2.) Where during the period specified in sub-section (1.) of this section the Governor-General or any Minister or officer has purported to make any regulation or order, or to do any act or thing which could have been validly made or done if this Act had been in force throughout that period, that regulation, order, act or thing shall be deemed to be as valid and effectual, and shall, at all times, as on and from the date of the making or doing of the regulation, order, act or thing, be deemed to have been as valid and effectual, as if this Act had been in force on that date, and the regulation, order, act or thing had been made or done under or in pursuance of this Act.

Hearing of proceedings in camera.

8.—(1.) If, with respect to any proceedings (whether instituted before or after the commencement of this Act), the court (not being a court of summary jurisdiction) before which the proceedings are taken is satisfied that it is necessary in the interests of the public safety or the defence of the Commonwealth or any Territory of the Commonwealth so to do, the court—

(a) may give directions that throughout or during any part of the proceedings such persons or classes of persons as the court determines shall be excluded; and

(b) may give directions prohibiting or restricting the disclosure of information with respect to the proceedings.

(2.) The powers conferred by sub-section (1.) of this section shall be in addition to and not in derogation of any other powers of the court.

(3.) If any person contravenes any directions given by a court under sub-section (1.) of this section, then, without prejudice to the law relating to contempt of court, he shall be guilty of an offence against this Act.

Proof of instruments.

9.—(1.) Every document purporting to be an instrument made or issued by the Minister or any other authority or person in pursuance of any provision contained in, or having effect under, the regulations, and to be signed by or on behalf of the Minister, authority or person, shall be received in evidence, and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Minister, authority or person.

(2.) Prima facie evidence of any such instrument may, in any legal proceedings (including arbitrations), be given by the production of a document purporting to be certified to be a true copy of the instrument by, or on behalf of, the Minister or other authority or person having power to make or issue the instrument.

10.—(1.) Any person who contravenes, or fails to comply with, any provision of any regulation made in pursuance of this Act, or with any order, rule or by-law made in pursuance of any such regulation, shall be guilty of an offence against this Act. Trial of offences.

(2.) An offence against this Act 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.

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

(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 of any amount or imprisonment for any term, or both.

(4.) An offence against this Act shall not be prosecuted summarily without the written consent of the Attorney-General, or the Minister of State for Defence, or a person thereto authorized in writing by the Attorney-General or the Minister of State for Defence, and an offence against this Act shall not be prosecuted upon indictment except in the name of the Attorney-General.

(5.) For the purpose of the trial of a person summarily or upon indictment for an offence against this Act, the offence shall be deemed to have been committed either at the place in which it was actually committed or (subject to the Constitution) at any place in which the person may be.

(6.) In addition to any other punishment, a court may, if it thinks fit, order the forfeiture of any money or goods in respect of which an offence against this Act has been committed.

11. Any person who does any act preparatory to the doing of any act the doing of which would be an offence against this Act, shall be guilty of an offence against this Act and shall be punishable as if he had committed the first-mentioned offence. Acts preparatory to commission of offence.

12. Where a person convicted of an offence against this Act is a body corporate, every person who, at the time of the commission of the offence, was a director or officer of the body corporate shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence. Offences by corporations

13.—(1.) Any person who is found committing an offence against this Act, or who is suspected of having committed, or of being about to commit, such an offence, may be arrested without warrant by any constable or Commonwealth officer acting in the course of his duty as such, or by any person thereto authorized by the Minister, in the same manner as a person who is found committing a breach of the peace may, at common law, be arrested by any constable or person. Arrest of offenders.

(2.) If a person suspected of having committed, or of being about to commit, an offence against this Act, is arrested under the provisions of this section, a report of the fact and circumstances shall forthwith be made to the Attorney-General or to a person appointed in that behalf by the Attorney-General, and—

(a) if no charge is laid against the suspected person within ten days from the date of his arrest, he shall be released from detention ; or

(b) if a charge is laid against the suspected person, he shall be dealt with according to law.

(3.) No action shall lie against the Commonwealth, any Commonwealth officer, any constable or any other person acting in pursuance of this section in respect of any arrest or detention in pursuance of this section, but if the Governor-General is satisfied that any arrest was made without any reasonable cause, he may award such compensation in respect thereof as he considers reasonable.

Power to order recognizances.

14.—(1.) When any person is convicted of an offence against this Act, the court before which he is convicted may, either in addition to or in lieu of any punishment provided for the offence, require him to enter into recognizances with or without sureties to comply with the provisions of the regulations, orders, rules or by-laws in relation to which the offence was committed.

(2.) If any person fails to comply with an order of the court requiring him to enter into recognizances, the court may order him to be imprisoned for any term not exceeding six months.

Onus of proof.

15. If any question arises in any proceedings under any regulation made in pursuance of this Act or to which sub-section (2.) of section seven of this Act applies, or under any order, rule or by-law made in pursuance of any such regulation, or with reference to anything done or proposed to be done under any such regulation, order, rule or by-law, whether any person is an alien or not, or is an alien of a particular class or not, the onus of proving that that person is not an alien or, as the case may be, is not an alien of that class, shall lie upon that person.

Act not to derogate from other powers.

16. All powers given by or in pursuance of this Act or the regulations, or by or in pursuance of any instrument made or issued in pursuance of this Act or the regulations, shall be in addition to and not in derogation of any other powers exercisable apart from this Act.

Delegation of powers under regulations.

17.—(1.) Any Minister of State may, in relation to any matters or class of matters, or in relation to any particular State or part of Australia, by writing under his hand, delegate all or any of his powers and functions under the regulations (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate with respect to the matters or class of matters, or the State or part of Australia, specified in the instrument of delegation.

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(2.) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Minister of State.

18. A regulation made under this Act shall, subject to the *Acts Interpretation Act* 1901-1937, have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. Effect of regulations, &c.

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