

CHRISTMAS ISLAND AGREEMENT.

No. 87 of 1949.

An Act to authorize the Execution on behalf of the Government of Australia of an Agreement with the Government of New Zealand relating to certain Rights vested in those Governments jointly in connexion with Phosphate Deposits on Christmas Island, and for other purposes.

[Assented to 29th October, 1949.]

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

- Short title.** 1. This Act may be cited as the *Christmas Island Agreement Act* 1949.
- Commencement.** 2. This Act shall come into operation on the day on which it receives the Royal Assent.
- Definition.** 3. In this Act, "the Commission" means the Christmas Island Phosphate Commission constituted under the agreement the execution of which is authorized by this Act.

4. The execution on behalf of the Government of Australia of an agreement with the Government of New Zealand in accordance with the form set out in the Schedule to this Act is authorized. Execution of agreement authorized.

5. The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of— Incorporation of Commission.

- (a) suing and being sued in all courts ;
- (b) acquiring, holding and disposing of real and personal property ;
and
- (c) entering into contracts for, or incidental to, the carrying out of its functions.

6. The income of the Commission shall not be subject to taxation under any law of the Commonwealth or of a State or Territory of the Commonwealth. Taxation.

THE SCHEDULE.

Section 4.

AN AGREEMENT made the _____ day of _____, One thousand nine hundred and _____, BETWEEN THE GOVERNMENT OF AUSTRALIA of the one part and THE GOVERNMENT OF NEW ZEALAND of the other part.

WHEREAS by virtue of an Indenture of Assignment dated the fourth day of February, 1897, Christmas Island Phosphate Company Limited acquired a lease for a period of 99 years from the first day of January, 1891, of all that Island commonly known as Christmas Island situate in the Indian Ocean (hereinafter called "the Island") with full licence and authority, subject to the payment of the prescribed royalties, to cut timber and get all phosphate and other minerals on, from and out of the Island :

AND WHEREAS by an Agreement dated the thirty-first day of December, 1948, and made between the said Christmas Island Phosphate Company Limited of the one part and the Government of Australia and the Government of New Zealand of the other (which Governments are hereinafter collectively referred to as "the said Governments") the said Governments have jointly acquired as at midnight (Christmas Island time) on the thirty-first day of December, 1948, all the estate, right, title and interest of the said Christmas Island Phosphate Company Limited in and to the said lease and the other assets as set out in the said agreement (which lease and other assets as set out in the said agreement together with all other property acquired by or on behalf of the said Governments since the thirty-first day of December, 1948, either in substitution for any part of or in addition to, but for use in conjunction with, those assets are hereinafter referred to as "the said property") :

AND WHEREAS it is necessary to make provision for the mining and development of the phosphate deposits on the Island, the distribution and sale of the phosphate therefrom, the cutting and sale of timber and the obtaining and sale of any other minerals, and all other matters incidental thereto (all of which are collectively included in the expression "working" whenever hereinafter contained) :

NOW IT IS HEREBY AGREED by and between the said Governments as follows :

Article 1.

The cost of acquiring the said property shall be borne by the said Governments in equal shares, and the said Governments shall contribute in equal shares any additional moneys required in the joint opinion of such Governments from time to time for the expenses of working the said property.

Article 2.

(a) For the purposes of this agreement there shall be a Commission, to be known as the Christmas Island Phosphate Commission (hereinafter called "the Commission"), which shall manage and control for and on behalf of the said Governments the working of the said property.

THE SCHEDULE—*continued.*

(b) The Government of Australia shall promote legislation by virtue of which the Commission will be a body corporate with perpetual succession and a common seal, and capable of—

- (i) suing and being sued in all courts ;
- (ii) acquiring, holding and disposing of real and personal property ; and
- (iii) entering into contracts for, or incidental to, the carrying out of its functions.

(c) The New Zealand Government will introduce legislation providing for the Commission to be recognized as a public authority.

(d) The Head Office of the Commission shall be at Melbourne in the State of Victoria, Australia, or at such other place as is agreed upon by the said Governments jointly.

Article 3.

(a) The Commission shall consist of three Commissioners, of whom one shall be appointed by the Government of Australia, one shall be appointed by the Government of New Zealand and one shall be appointed by the said Governments jointly.

(b) A Commissioner shall hold office during the pleasure of the Government, or the Governments jointly, by which he is appointed.

(c) Where a Commissioner is, by reason of illness or otherwise, unable to perform his duties, the Government, or the Governments jointly, by which he was appointed may appoint a person to act as a Commissioner during the inability, or until his appointment is sooner terminated, and the person so appointed shall, while so acting, have all the powers of a Commissioner.

(d) The said Governments shall jointly determine the remuneration of all Commissioners.

(e) A majority of the Commissioners may, except as otherwise provided in this agreement, exercise the powers of the Commission.

Article 4.

Immediately upon the appointment of the three Commissioners as provided in Article 3, the ships and all the said property, except the leasehold interest in the said Christmas Island, and all property which may hereafter be acquired in connexion with the working of the said property, together with the management and control of the working of the said property, shall be vested in the Commission :

Provided that the leasehold interest in the said Christmas Island shall remain vested in the said Governments.

Article 5.

The phosphate shall be worked and sold under the direction and control of the Commission which shall employ the British Phosphate Commissioners as Managing Agents on such terms as may be agreed upon between the Commission and the said British Phosphate Commissioners and approved by the said Governments.

Article 6.

The Commission shall—

- (a) ensure that, so far as is practicable, phosphate so worked shall be disposed of in Australia or New Zealand in conjunction with phosphate supplied by the British Phosphate Commissioners from Nauru and Ocean Island and other sources in such a manner as to give the lowest possible average c.i.f. cost for phosphate supplied to Australia and New Zealand ;
- (b) fix the f.o.b. price of phosphate supplied to Australia and New Zealand from the Island on a basis which will cover rent and royalties payable under the hereinbefore referred to lease, working expenses, depreciation, administration expenses (including remuneration of Commissioners), interest on all moneys provided by the said Governments pursuant to Article 1, and other charges including a contribution to a sinking fund for the redemption of all such moneys ;
- (c) refrain from selling or supplying any phosphate to or for shipment to any country or place other than Australia and New Zealand except with the unanimous approval of the three Commissioners or as provided in paragraph (d) of this Article ;

THE SCHEDULE—*continued.*

- (d) supply to Malaya from the Island as much as possible of Malaya's requirements of ground phosphate up to thirty thousand (30,000) tons per annum or such other quantity as the said Governments may notify the Commission from time to time after agreement between the said Governments and the Government of Malaya ;
- (e) pay for and on behalf of the said Governments in every year when due out of the proceeds of the working of the said property the rent and royalties payable under and by virtue of the hereinbefore referred to lease ;
- (f) carry out and perform all acts, promises and obligations in connexion with the mining, distribution and sale of the phosphate on the said property which the said Governments have undertaken to carry out or perform under and by virtue of the hereinbefore referred to agreement dated 31st December, 1948 ;
- (g) keep proper books and accounts and other records in relation to the working of the said property, and the records so kept shall include full particulars of all timber, phosphate and other minerals which shall be cut or gotten on or from or out of the said Island ;
- (h) as soon as possible after the close of each financial year ending on the thirtieth day of June, prepare and furnish to each of the said Governments in respect of such financial year a report of its activities and a financial statement duly audited by auditors approved by the said Governments ; and
- (i) do such other things as are incidental to the things which it is expressly authorized to do, or which are necessary or convenient for carrying out its functions.

Article 7.

If, by reason of the disposal of phosphate to Australia, New Zealand, Malaya and other countries or places or by other means or circumstances, any surplus funds are accumulated, such funds shall be held by the Commission on behalf of the said Governments which shall share the same in equal proportions and such funds shall either be paid to them or, with prior approval, be utilized for the purposes of the business.

Article 8.

The Commission may borrow from time to time for the purpose of carrying out its functions such sums as may be approved by the said Governments.

Article 9.

(a) Subject to the terms of this agreement and to joint general direction on policy by the said Governments, the business of the management and control of the working of the said property shall be left in the hands of the Commission.

(b) The said Governments agree to join in the giving of all directions, and to take any other necessary action, for the purpose of ensuring performance by the Commission of its duties as defined in this agreement.

Article 10.

This agreement shall be known as the Christmas Island Agreement, 1949, and shall be subject to review whenever requested by either of the said Governments.

Article 11.

This agreement shall come into operation when signed on behalf of each of the said Governments.