II. Commonwealth.

I. CONSTITUTIONAL.

Electoral.

The Commonwealth Electoral Act[1] amends the existing law in two substantial particulars; it contains three provisions consequential upon the passing of the Nationality and Citizenship Act,[2] and certain machinery clauses.

The Act, among other provisions, makes history by offering to a limited number of aboriginal natives the right to vote at federal elections. The enfranchised groups are two: (1) aboriginal natives who are or have been members of the defence forces; (2) aboriginal natives entitled under the law of their State of residence to be enrolled as State electors and to vote at elections for the more numerous House of the Parliament of that State (or if the legislature is unicameral, as in Queensland, for that legislature).

In New South Wales, Victoria, South Australia, and Tasmania some aboriginals are entitled under State law to be enrolled as electors and to vote. In Western Australia, aboriginal natives are in the main disqualified from enrolment and from voting, but the Natives (Citizenship Rights) Act[3] of that State permits any adult native to apply to a resident or stipendiary magistrate for a certificate of citizenship; if the magistrate is satisfied that the applicant is a suitable person he issues the certificate. Therefore, for State purposes, the holder of the certificate is deemed to be no longer an aboriginal but is to have all the rights, privileges, and immunities and be subject to the duties and liabilities of any other British subject—including the right to be enrolled and to vote. It follows that any aboriginal native resident in Western Australia who has already secured or in future obtains a certificate of citizenship under the State Act (or who is serving or has served in the Commonwealth defence forces) is now or will be entitled to become a federal elector. At present no legislation has been enacted in or for Queensland, the Northern Territory or the Australian Capital Territory to liberalise the position of the aboriginals so that only those with defence service to their credit receive any benefit from the new Act.

Some new provisions as to postal voting are also made by this new Act. Before 1949, an application for a postal vote could be witnessed by any elector, but the actual recording of the vote on the ballot paper had to be attested by one of the authorised persons specified in sec. 91B (I) (a). Now any enrolled elector may witness the recording of a postal vote; if the vote is recorded outside Australia it may be attested by any naval, military or air force officer or by any person employed in the public service of the Commonwealth

[1] No. 10 of 1949.
[2] No. 83 of 1948; see *Review of Legislation 1948*, 329-333 *supra*.
[3] No. 23 of 1944.

or of any of its territories. To assist electors from any of the States who are temporarily in the Australian Capital Territory or in the Northern Territory, the Act provides that they may apply to and obtain postal vote certificates and ballot papers from the Returning Officers at Canberra or Darwin respectively. There is no variation of the present rule that a returning officer is not to post a postal vote certificate and ballot paper to an applicant unless the application was received by him before 6 p.m. on the eve of polling day (sec. 88 (I)). But the new Act provides in effect that electors who are entitled to vote by post can obtain the certificate and ballot paper by personal application at the office of a returning officer before the close of the poll. This amendment is intended to give an opportunity to electors who are outside their home States at election time to record their votes at any polling-place where they may happen to be —a last minute opportunity of exercising the right to vote and of avoiding a penalty for not doing so.

Sec. 96 of the Principal Act is amended as to the acceptance of postal votes by divisional returning officers. Under the previous law, the returning officer only accepted the postal vote if he was satisfied, among other things, that the envelope containing the postal vote had been *posted* before the close of the poll; he must now accept the vote if he is satisfied that it was *recorded* before the close of the poll. Hence he can now accept a postal vote which bears in the certificate of the witness a date not later than polling day even if it is contained in an envelope bearing the postmark of a later date. Four new provisions are aimed at the activities of agents of the various political parties who in their zeal to get their supporters to vote may overstep the limits. Firstly, applications for postal votes received by a divisional returning officer are not to be open to public inspection until the third day after polling-day: this is to prevent "follow-up" action. Secondly, before this amendment sec. 92 provided that a postal voter should, upon making his vote, fold the ballot paper and hand it to the witness to place in the official envelope; as amended the section requires the voter himself to put the ballot paper in the envelope and to seal it—thus to secure the secrecy of the ballot. Thirdly, a penalty is imposed on "any person who persuades or induces, or associates himself with a person in persuading or inducing, an elector to make application for a postal vote certificate and postal ballot paper." Fourthly, a new section (94A) is inserted which makes it an offence for a person to persuade or induce an elector to hand over to him a postal ballot paper upon which a vote has been recorded.

The rest of the amendments to the Principal Act were made necessary by the passing of the Nationality and Citizenship Act. The words "British Subject" replace the words "Subject of the King" in secs. 39, 69, and 115 of the Principal Act, and the qualifying words "natural-born or naturalized" are omitted. The restrictive condition previously contained in sec. 69 (I) (b), requiring a naturalized subject to have been naturalized for five years under a law of the United Kingdom or of the Commonwealth, is struck out.

Electoral Posters.

A second amendment[4] of the Commonwealth Electoral Act relates to sec. 164B[5] of the latter; in its unamended form the main provision of the section was that "A person shall not post up or exhibit, or permit or cause to be posted up or exhibited, on any building, vehicle, vessel, hoarding or place . . . (a) an electoral poster the area of which is more than sixty square inches; or (b) any electoral poster in combination with any other such poster if the aggregate area of those posters exceeds sixty square inches."

Sec. 3 of the 1949 Act inserts a new sub-section (2A) which makes these restrictions applicable even before the issue of the writ for an election or referendum. A new sub-section (3) exempts signs posted outside the committee room of a political party or a candidate. Two new sections, 164BA and 164BB, are inserted in the Principal Act. The former authorises a police officer or a Commonwealth peace officer, at his own discretion or on the order of the Chief Electoral Officer for the Commonwealth, the Commonwealth Electoral Officer for a State, or a divisional returning officer, to remove or obliterate any electoral poster which appears to violate the prohibitions of sec. 164B. The second of the new sections empowers any federal court, or the Supreme Court of a State or of a Commonwealth Territory, to issue an injunction restraining any apprehended contravention of sec. 164B or directing the removal of any poster exceeding the authorised size.

II. EXTERNAL TERRITORIES.

The government of Papua and New Guinea.

The Papua and New Guinea Act[6] "will institute a new step toward self-government for the two territories and join them in an administrative union."[7] Sec. 6 approves the placing of the Territory of New Guinea (but not the Territory of Papua) under the international trusteeship system on the terms embodied in the Trusteeship Agreement which is set out in the Fourth Schedule of the Act. The basic objectives of the international trusteeship system are—

a, to further international peace and security;

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territory and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely ex-

[4] Commonwealth Electoral Act (No. 2.), No. 47 of 1949.
[5] Inserted by Commonwealth Electoral Act, No. 42 of 1946.
[6] No. 9 of 1949.
[7] Elizabeth Converse, *Administrative Merger for Papua and New Guinea,* in *"Far Eastern Survey"* (American Institute of Pacific Relations), 1 June 1949.

pressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

c. to encourage respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to ensure equal treatment in social, economic, and commercial matters to all members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.[8]

The trusteeship system applies to such territories in the following categories as may be placed thereunder by individual trusteeship agreements:—

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War; and

c. territories voluntarily placed under the system by states responsible for their administration.[9]

With regard to the effect of sec. 6 of the 1949 Act the following precis of the effect of paragraph (2) of Article 77 of the Charter is illuminating. "The terms of trusteeship for each territory to be placed under the Trusteeship System, including any alteration or amendment, are to be agreed upon by the States directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations."[10] The provisions of Article 77, however, emphasize the fact that the trusteeship system shall apply only to the extent determined by subsequent agreement.[11] Thus the placing of New Guinea under the trusteeship system and the ratification of the trusteeship agreement by sec. 6 arose out of a moral and not a treaty obligation.

The Bill was originally introduced in the House of Representatives and read a first time on 18th June 1948. However, copies of it were made available to the Trusteeship Council of the United Nations which examined its provisions at its second and third sessions at Lake Success. The Council requested a review of certain provisions of the Bill in order that the identity and status of the trust territory would not in any way be jeopardised by the administrative union which had been created in the Bill.

[8] *Charter of the United Nations,* Article 76.
[9] *Ibid.,* Article 77 (1).
[10] *Year Book of the United Nations 1946-47,* 573.
[11] Goodrich & Hambro, *Charter of the United Nations,* (2nd edn.) 435.

The text of the Council's recommendations concerning administrative union is as follows:—

"(a) The Council, having devoted a prolonged and significant debate to the question of the proposed administrative union between the trust territory of New Guinea and the Australian territory of Papua, takes the position that the establishment of the union is a highly important problem of serious consequence.

(b) The Council considers that, insofar as the problem—as to whether or not the proposed union is within the terms of the Trusteeship Agreement approved by the General Assembly—is partly juridical in nature, it might to that extent be resolved by recourse to the appropriate juridical body, the International Court of Justice.

(c) It is the Council's conviction that an administrative union must remain strictly administrative in its nature and its scope, and that its operation must not have the effect of creating any conditions which will obstruct the separate development of the Trust Territory, in the fields of political, economic, social and educational advancement, as a distinct entity.

(d) The Council is not, however, entirely convinced that the proposed union between New Guinea and Papua may not go so far as to compromise the preservation of the separate identity of the trust territory.

(e) The Council considers also that the establishment of a union of the kind proposed imposes an embarrassing burden on the judgment of the Council, and that it may constitute a difficulty in the way of the discharge by the Council of its responsibilities under the Charter.

(f) The Council is firmly determined that the proposed union must not lead to a union of a closer permanent nature with still greater implications.

(g) The Council expresses concern lest the powers conferred on the Governor-General by Section 11 of the legislation of defining provinces in the combined territories, may allow provinces to be so defined as to include portions of both territories, which might result eventually in obliterating the territorial boundaries and rendering difficult the supervision by the Council of the trust territory.

(h) The Council considers that a single tariff system for the two territories under Section 73 of the legislation should not affect the obligation of the administering authority to apply to the trust territory the provisions of Article 76 (d) of the Charter respecting equal treatment in social,

economic and commercial matters for all members of the United Nations and their nationals.

(i) The Council accordingly recommends that the administering authority review the matter of administrative union in the light of the foregoing conclusions, and also in the light of the views expressed in the Council, and that they inform the Council of the results of its review."[12]

Accordingly the following alterations relating to the status and identity of New Guinea were made:—

"(1) Clauses 8 and 10 have been recast to emphasize that although the two territories will be governed under administrative union, the identity and status of the Territory of Papua as an Australian possession and the Territory of New Guinea as a trust territory shall continue to be maintained.

(2) As the majority of the members of the Trusteeship Council felt that there might be a danger of the boundaries of the trust territory thus prejudicing the maintenance of its separate identity, the clause has been omitted.

(3) A suggestion that provision be made for a definite assignment of representatives in the Legislative Council to the inhabitants of the trust territory has been accepted and is embodied in Clause 36 (4)[13] of the present bill."[14]

The two territories which will in future be known as the Territory of Papua and New Guinea were, until the Japanese invasion, administered as separate units with separate Legislative Councils and separate Civil Services. Both administrations were suspended on 12th February 1942 as a result of the Japanese invasion; as territory was recovered the Australian Military Forces took entire control. In 1945 civil administration was restored in Papua and part of New Guinea, but not in the whole until 24th June 1946.

Apart from the administrative advantages revealed during the military control of both Territories, the following general reasons for administrative union were advanced by the government:—

"(a) The two territories are geographically united, the division between them being no more than a line drawn on a map;

(b) The racial groups (Micronesians, Polynesians, Papua-Melanesians, Negritos, and Papuans) are scattered throughout the two territories. Where the aboriginal inhabitants have retained their languages they are called 'Papuans.' This term does not of itself imply any definite

[12] *Current Notes on International Affairs* (Commonwealth Department of External Affairs), Vol. 20, 82-83.
[13] And see also sec. 36 (1) (e).
[14] 201 Parliamentary Debates, 251.

racial relationship but merely distinguishes the people who have remained completely aboriginal from those who have been fused to the extent of linguistic modification. The native religious structure of both territories, which may be loosely defined as ancestor and spirit worship, beliefs in magic and animism, is not particular to either territory; and the basic unit in New Guinea and Papuan social organisation is the family;

(c) The problems involved in raising the standard of living of the population of both territories demand the utilization of all the resources of, and the efficient execution of policies for, both territories as an economic unit."[15]

Since 1936, village councils have been operating to a limited extent in New Guinea, mainly round Rabaul. In Papua, however, village councils have been functioning for many years. These have formed the experiments and guides for the present legislative provision for the establishment of village councils and Advisory Councils in native matters. The village councils are intended to be the nursery from which will be drawn the members of the Advisory Councils. These latter Councils are intended to function on a district or perhaps regional basis, spreading the principle of local self government and local responsibility over a wider area than the village; thus the provisions may be regarded as a first step towards the realization of the goal set out in Article 76 (b) not only for New Guinea but also for Papua.[16]

The existing laws of the Territories of Papua and New Guinea are to continue but may be amended or repealed by Ordinance (secs. 32, 34). Government is by an Administrator, an appointed Executive Council, and a Legislative Council consisting of sixteen official members, three non-official native members, three non-official members, three representatives of the Christian missions in the Territory, and three elected members (sec. 36). Elections are to be held at intervals not exceeding three years (sec. 39). Sessions of the Legislative Council are held at the discretion of the Administrator and are summoned by notice in the Government Gazette; the Administrator may in similar manner prorogue the Council (sec. 40).

A Supreme Court is set up for the Territory of Papua and New Guinea (sec. 58). It is a superior court of record consisting of a Chief Judge and such other judges as the Governor-General appoints. Jurisdiction may be exercised by a judge or judges sitting in Court and, to the extent and in the cases provided by or under Ordinance,

[15] See 201 Parliamentary Debates, 253 et seq.
[16] See also Chapter X and Article 75 of the United Nations Charter.

by a judge sitting in chambers. The qualifications of a judge are that—

(a) he has been a judge of the Supreme Court of the Territory of Papua-New Guinea, or

(b) he is a barrister or solicitor of the High Court or the Supreme Court of a State or Territory of not less than five years' standing (sec. 61).

Judges must retire at 65 unless thereafter continued in office (at the pleasure of the Governor-General).

Provision is also made for the creation, by ordinance, of other courts and tribunals including native village courts and other tribunals.

Sec. 65 empowers the Minister, with the concurrence of the Treasurer, to make agreements for any purpose likely to promote the development of the resources of the Territory or the welfare of the inhabitants. Boards, committees or authorities for the purpose of promoting and controlling the production and marketing of primary products in the Territory may also be established.

Part VIII establishes an Australian School of Pacific Administration, outlines its functions, and authorises the appointment of staff.

The remaining provisions forbid the slave trade and the supply of liquor to natives; empower the Administrator to grant pardons, remission or respite of sentence to offenders; lay down rules as to the collection and expenditure of public funds; and authorise the Governor-General to make regulations not inconsistent with the Act.

III. INTERNATIONAL LAW.

Genocide Convention Act.[17]

The word "genocide"—the name of a new offence imported into Australian Law by this Act—first came into general use at the time of the Nuremburg Trials and was used to describe the destruction by the Nazis of groups of human beings on racial or religious grounds. The General Assembly of the United Nations at its first session, in December 1946, unanimously affirmed that genocide was a crime under international law.

This Act ratifies the "Convention on the Prevention and Punishment of the Crime of Genocide" approved by the General Assembly of the United Nations at Paris on 9th December 1948.

The parties to the Convention confirm that genocide, whether committed in peace or war, is a crime under international law which they undertake to punish. "Genocide means any of the following

[17] No. 27 of 1949.

acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:—

(a) Killing members of the group;

(b) Causing serious bodily injury or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children from the group to another group."[18]

The following acts are declared to be punishable: "Genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide."[19] Persons are declared to be punishable for any of the above offences, be they constitutionally responsible rulers, public officers, or private individuals.[20]

International Wheat Agreement Act.[21]

This Act ratifies for Australia the International Wheat Agreement. A similar ratifying enactment had been passed in 1948,[22] but the agreement which it covered was not ratified by the United States Congress and lapsed because of the importance of the U.S.A. as an exporter. At the instance of the United States a further conference was called; the agreement covered by this Act was the result. The agreement is subject to ratification or formal acceptance by the governments concerned by 1st July 1949.

The period of operation of this agreement is four years. The quantity of wheat covered is slightly over 450,000,000 bushels which is to be supplied by five exporters—Australia, Canada, France, the United States of America, and Uruguay. A fixed quantity, or quota, is to be supplied by each of these countries. Thirty-seven importing countries are parties to the agreement, each undertaking to purchase a specified annual quantity of wheat, including flour, for which maximum and minimum prices are provided by the agreement. The maximum is the price at which the importers may call upon the exporters to supply wheat; the minimum is the price at which the exporters may call upon the importers to purchase wheat. In practice, however, it may be expected that many sales of wheat covered

[18] Convention, Article II.
[19] *Ibid.*, Article III.
[20] *Ibid.*, Article IV.
[21] No. 21 of 1949.
[22] No. 21 of 1948.

by the agreement will be made at various prices within the range set by the maximum and minimum limits. The important point is that while wheat is relatively scarce importers cannot be charged more than the maximum price; later on, if prices slump heavily as a result of a change to a buyer's market, exporters will be assured of a market for about 450,000,000 bushels of wheat at not less than the minimum price. Transactions in wheat outside the agreement may be made at any price. There is no restriction on such transactions provided that the countries concerned continue to sell and purchase their quotas under the agreement.

IV. IMMIGRATION AND CITIZENSHIP.

Immigration Act 1949.[23]

The Immigration Act 1901-1946, which this Act amends, made provision for the grant of certificates which exempted the holders from the provisions of the Act, thereby enabling persons who otherwise would be prohibited from landing to enter Australia for a stipulated period. It was under this system that nationals of Asian countries have been admitted as businessmen, students and tourists without infringing the basic principle on which Australia's immigration policy is based. Furthermore, during the war years it enabled the entry of those persons who were technically prohibited immigrants but whose admission could not well be denied on humanitarian grounds. The system was thought to have the advantage of enabling the immigration authorities to exercise full control over the persons admitted under its provisions during the whole period of their stay in Australia. However, the effect of the High Court's judgment in the *O'Keefe Case*[24] was that, as the Act stood before this amendment, a person admitted to Australia, who had not been a prohibited immigrant at the time of entry, or who had not been subjected to and failed in a dictation test, was not a person to whom it was necessary to issue a certificate of exemption in order to allow him to remain in Australia. Furthermore, the effect of this decision was that grantees who had been in Australia for five years or longer had passed beyond the control of the immigration authorities altogether,[25] and that grantees who had been in Australia for less than five years would have to be declared prohibited immigrants or subjected to a dictation test before the lapse of five years from their entry. The amendments to the Principal Act introduced by this Act are intended to close the loopholes which were revealed by the *O'Keefe Case*. This is done by means of—

(a) amending section 4 of the Principal Act to provide that certificates of exemption may be issued to persons who are actually prohibited immigrants and to immigrants who are

[23] No. 31 of 1949.
[24] *O'Keefe v. Calwell*, (1949) 77 C.L.R. 261.
[25] But see Wartime Refugees Removal Act (No. 32 of 1949), *infra*.

subject to the contingent liability of being subjected to a dictation test within five years after arrival; and

(b) validating certificates of exemption issued prior to this Act.

It may be noted that section 4 of this amending Act, whereby such certificates are validated, is not inserted into the Principal Act but is a provision in form independent of that Act although in purpose relating to it. This section therefore constitutes an Immigration Act independent of the Principal Act.

Wartime Refugees Removal Act 1949.[26]

This Act is complementary to the Immigration Act 1949[27] in that its purpose is to obviate the weaknesses in the existing law with regard to the basic immigration policy which were revealed by the judgment of the High Court in the *O'Keefe Case,*[28] and to restore to the immigration authorities control over that limited class of persons who were permitted to enter this country under special circumstances and on compassionate grounds during the war, and who would otherwise never have been so permitted. The Act therefore defines the persons within its scope as persons who entered Australia during the period of hostilities, as refugees or for any other reason attributable to the existence of hostilities and who, in either case, have not since left this country. Exceptions are made of persons domiciled or born in Australia, diplomatic or official persons, or the wives or dependant relatives of such latter persons. Section 5 allows the Minister to make, within twelve months of the commencement of the Act, an order for the deportation of any person to whom the Act applies. Pending deportation, the deportee may be kept in such custody as the Minister or an officer directs; but on the giving of two bonds of £100 each the Minister may direct that a deportee be not kept in custody. The master of a ship on which a deportee is being deported must produce him on request. A person reasonably supposed to be a deportee may be arrested without warrant; concealing deportees or assisting them in evading deportation is made an offence; and the Governor-General may make regulations under the Act and prescribe penalties not exceeding a fine of £50 or imprisonment for three months, or both, for offences against these regulations.

V. EX-SERVICEMEN'S BENEFITS.

War Service Homes Act.[29]

By this Act the amount available for loans to ex-servicemen seeking to buy homes is increased. The previous provision for assistance under mortgage was to a total of £1,500, and under a

[26] No. 32 of 1949.
[27] No. 31 of 1949.
[28] Note 24, *supra.*
[29] No. 24 of 1949.

contract of sale to a total of £1,750. This Act provides for a maximum assistance of £2,000 whether the assistance by the Director of War Service Homes is either by way of a mortgage or by way of a contract of sale. Provision is also made to retain the figure for a deposit at 5 per cent. where the contract is by way of sale on the "Rent Purchase System" and where the assistance does not exceed £1,750. A sliding scale is provided for the deposit increasing above the five per cent. by one per cent. for every £50 increase of assistance or part thereof, above £1,750; the maximum deposit required is 10 per cent. Where the contract is by way of mortgage the applicant is required to have his equity of redemption valued at 10 per cent. irrespective of the amount of advance. The provisions granting discretion to the Director of War Service Homes to accept a deposit smaller than that required by the Act where the circumstances warrant such action have also been amended as to amounts, etc., *pari passu* with the other provisions of the Act.

VI. INDUSTRIAL REGULATION.

Scientific and Industrial Research.[30]

Following on pressure to bring the Council of Scientific and Industrial Research under the closer control of the Executive for various reasons, amongst which the most important were the increase in its scientific and technical staffs and research activities and allegations both here and overseas that the Council was a "bad security risk," this Act re-organises the Council and brings it under Ministerial control. The name of the body is changed to "Commonwealth Scientific and Industrial Research Organization," commonly referred to as C.S.I.R.O.

The Commonwealth Scientific and Industrial Research Organization is to be administered by an Executive consisting of a Chairman and four other members all of whom are to be appointed by the Governor-General in Council on the recommendation of the Minister; at least three of them must be persons with scientific qualifications, while the Chairman and two other members must devote the whole of their time to their duties. This leaves flexibility as regards the remaining two members of the Executive, who may be men with scientific, industrial, business, or administrative experience and interests. The Executive as so reconstructed has full responsibility for administration but makes recommendations to the Minister as to the policy and work of the Organization. In addition to the Executive there is an Advisory Council which consists of the members of the Executive, the Chairman of each State Committee, and such other members as are co-opted, by reason of their scientific knowledge, with the consent of the Minister on the recommendation of the Executive.

[30] No. 13 of 1949.

The appointment of staff is the responsibility of the Executive except that appointments or promotions to positions with maximum salaries over £1,500 require the Minister's authority. The Executive, in selecting persons for appointment, must comply with the requirements of the Commonwealth Public Service Board; the approval of the Public Service Board is also necessary for the conditions of temporary or casual employment and for the levels of establishment of the clerical and administrative staff, but the persons actually appointed are not to be subject to the Public Service Act 1922-48; C.S.I.R.O. officers and employees of the Organization, whether permanent, temporary or casual, are required to take an oath of allegiance and are presumably subject to the same security screening as are members of the Commonwealth Public Service.

All discoveries, inventions and improvements in processes, apparatus and the like made by officers and employees of the Organization are the property of the Organization and are to be made available on such conditions and on payment of such fees or royalties as the Executive with the approval of the Minister determines (sec. 27); however, the Organization may pay a reward to its officers and employees for useful discoveries or inventions made by them (sec. 28). It may also charge fees for carrying out investigations at the request of a private person (sec. 29). Disclosure of any information concerning the work of the Organization or the contents of any document in its possession, except in the course of duty, is made an offence punishable by two years' imprisonment.

Shipping Act 1949.[31]

The objects of this Act are to establish a Commonwealth Shipping Line, to preserve the Australian shipping and shipbuilding industries by requiring that ships trading on the Australian coast shall be built in Australia and shall be replaced when they reach the age of 24 years, and by providing for financial assistance by the Commonwealth Government.

Accordingly an Australian Shipping Board, having the usual attributes of corporate personality, is established. Apart from the provisions relating to the Shipping Board there are other provisions conferring very wide powers on "the Minister" in relation to the shipping and shipbuilding industries generally.

The new Board is authorised to establish and operate shipping services; in it are vested all the right, title and interest of the Commonwealth or the older Australian Shipping Board established under the National Security (Shipping Co-ordination) Regulations in merchant ships, tackle, etc., owned by Commonwealth or Board, all other property owned by that Board, and all property owned by the Commonwealth[32] and used for the purpose of such merchant ships

[31] No. 6 of 1949.

[32] See however Cockatoo and Schnapper Islands Act 1949 (No. 30 of 1949), *infra*.

as may be owned by the Board or the Commonwealth (sec. 5(1)). This is to form the nucleus of the Board's fleet. Furthermore all rights, liabilities, and obligations of the Australian Shipping Board established under the National Security Regulations are vested in, or imposed on, the new Board by this Act. The Australian Shipping Board is given power to operate shipping services between (but not within)[33] the States of the Commonwealth, overseas, and with and within any Territory of the Commonwealth, and to carry out the necessary incidental business of a shipowner in relation to the shipping services established by it. The Board may, subject to the Minister's approval, purchase or charter ships and dispose of any ship owned by it, purchase or lease and dispose of land, buildings and wharves, and purchase or hire and dispose of equipment or stocks necessary for the operation of its assets. It may sub-charter vessels and may appoint agents or act as agents for shipowners, and is empowered to train or arrange for the training of seamen. It also is empowered to advise the Minister as to the designs of ships and as to any action necessary to maintain and develop the shipping and shipbuilding industries.

Where the Board is directed by the Minister to establish and maintain a particular shipping service, it is entitled to be reimbursed for any losses thereby incurred by the Commonwealth in the manner provided in sec. 15 (5).

It has power to borrow money on overdraft from the Commonwealth Bank on the Treasurer's guarantee (sec. 19 (3)), but cannot borrow in any other way except with the Treasurer's consent (see sec. 19).

The profits of the Board are to be applied in the following order:—

(1) in payment of interest on moneys advanced by the Treasurer;

(2) in repayment of moneys advanced by the Treasurer in accordance with the terms under which the money was made available;

(3) in payment, after recommendation by the Minister, for property transferred to the Board under sec. 5 in such amounts as the Treasurer determines; and

(4) in such manner as the Treasurer determines after recommendation by the Minister.

The question may arise, for certain purposes, whether the Shipping Board is an organ or branch of the executive government, or a body which though independent of the Government is performing Governmental functions, or an independent statutory corporation.

[33] See *Australian National Airlines & Ors. v. The Commonwealth of Australia & Ors.*, (1945) 71 C.L.R. 29.

With regard to the tests to be found in *Marks v. Forests Commission,*[34] *Skinner v. Railways Commissioner,*[35] *Grain Elevators Board (Victoria) v. Dunmunkle Corporation,*[36] and *Rural Bank of New South Wales v. Bland Shire*[37] and other cases, attention is drawn to the following points:—

(a) Sec. 15 (2) empowers the Minister to direct that a shipping service for the benefit of a particular area be established—it is interesting to note the restriction on this authority in sub-sec. (3) (see *Australian National Airlines & Ors. v. The Commonwealth of Australia*);[38]

(b) The Service of the Board is separate from the Commonwealth Public Service, but the general terms and conditions of employment are subject to the approval of the Commonwealth Public Service Board (sec. 17 (5)) and its officers and employees (other than masters, mates, radio operators and engineers) are within the Commonwealth Employees' Compensation Act 1930-1948 (sec. 39);

(c) Its finances are dependent on the Treasurer, the form of accounts is to be approved by him, and audit is required to be by the Auditor-General;

(d) It is required to furnish an annual report to the Minister on its functions; and

(e) It is made subject to Commonwealth taxation (other than income tax) but not to any State taxation law to which the Commonwealth is not subject.

Actions against the Board must be brought within six months after the commission of the act complained of; notice of the alleged cause of action must be given to the Board as soon as practicable, and action cannot be commenced until one month has elapsed from the date of notice (sec. 36). But failure to give notice, or any defect or inaccuracy in any notice actually given, is not to bar the complainants' action, if the Board would not thereby be prejudiced in its defence.

In actions for personal injuries the maximum recoverable if death or permanent disablement results is £2,000, and £1,000 for temporary disablement.

A claimant in respect of an injury to which the Commonwealth Employees' Compensation Act or the Seamen's Compensation Act does not apply may be required to submit to examination by a medical practitioner nominated by the Board; if he refuses or fails

[34] [1936] V.L.R. 345; see Lowe, J., at 350-352.
[35] (1937) 37 S.R. N.S.W. 261; see Jordan, C.J., at 269-272.
[36] (1946) 73 C.L.R. 70.
[37] (1947) 74 C.L.R. 408.
[38] (1945) 71 C.L.R. 29.

to submit to such an examination he cannot recover damages unless he can establish (a) that his refusal or failure was reasonable or (b) that the Board was not thereby prejudiced in its defence.

Part III of the Act provides that no ship exceeding 200 tons may be built in Australia except under licence granted by the Minister; nor may any such ship engage in trade between places in the Commonwealth except under licence granted by the Minister, but a licence to trade must be granted if the ship is less than 24 years old and was built in an Australian shipyard *or* was engaged in the coastal trade before the Act. If the ship does comply with these two conditions the granting of the licence is automatic; if not, the Minister may nevertheless issue a licence if he is satisfied that it is in the public interest to do so. The effect of these provisions is that, subject to certain exceptions, vessels engaged in the Australian coastal trade will be built in Australian yards; continuity of work in those yards is sought by the provisions not permitting ships to trade after they reach the age of 24 years. Furthermore, except with the Minister's consent, a ship licensed to trade on the Australian coast under this Act and which is registered or owned, managed or controlled by an Australian resident or body corporate whose principal place of business is in Australia, or a share in any such ship, cannot be transferred or mortgaged to a person not resident in Australia or to a body corporate whose principal place of business is outside Australia. A mortgage or transfer repugnant to this provision is void. An application to transfer the registration of such a ship from a port of registry out of Australia requires ministerial consent (sec. 31).

The purpose of forbidding the building of ships except under licence is to enable a planned programme of building to be commenced and orders to be spread over a period of years and among different yards, and thus to avoid excess orders being placed during the present period of high demand for shipping and a later diminution of orders and consequent slump in the industry. Hence the Minister's powers are to be used to ensure—

(1) the use of the labour of persons engaged in the shipyards to the best advantage;

(2) the adoption of standard designs;

(3) the adoption of appropriate standards and efficient methods in the construction of ships;

(4) the building of ships of the most urgently needed tonnage and design;

(5) economy in the cost of building and equipping ships.

It is not the policy of the Act to give financial assistance to the shipbuilding industry by means of tariff protection or the direct grant of bounties or subsidies. Since the Minister is given power

(by sec. 33) with the Treasurer's concurrence to buy ships and to sell them to the Board or to any other person, it appears to be the intention of the Act that the Commonwealth will order ships on behalf of private shipping companies as well as the Board and will then sell them, when constructed, to those companies at a price lower than the cost of construction—the difference in cost representing financial assistance to the shipping industry by the Commonwealth.

Cockatoo and Schnapper Islands Act.[39]

By this Act the Commonwealth Shipping Act 1923[40] is repealed and all the right, title, and interest of the Australian Commonwealth Shipping Board constituted under that Act in and to Cockatoo Island and Schnapper Island are transferred to and vested in the Commonwealth together with all the structures, dockyards, machinery, tools, etc. thereon and all leases, contracts, agreements, etc. relating thereto. The administration of these islands is therefore departmental and outside the operation of sec. 5 of the Shipping Act 1949;[41] i.e., the islands and the dockyards, etc., do not become the property of the Australian Shipping Board set up by that Act.

Whaling Industry Act.[42]

The *Eastern World* of August 1947 contained an interesting article from which the following is an extract:—

"The whaling grounds lie close to Australia's southern ports. And Australia has a greater stake in the Antarctic than any other country. More than a third of the Antarctic continent—an area of 2,472,000 square miles—is Australian territory . . . .

"The natural base for Australian whaling in the Antarctic is Hobart, Tasmania. This city, with its magnificent harbour, lies in 43 degrees south. It was Hobart that the Norwegian whaling pioneer, Captain Carl Anton Larsen, used as his jumping-off place in November, 1923, when he sailed to open up the great whaling grounds of the Ross Sea . . . .

"Hobart has a long record as a whaling port of the old harpooning days. A century ago it was the greatest whaling port in the British Empire, and took second place, in those days, only to the great whaling ports of the United States. As far back as 1832, a whaling vessel from Hobart, the *Venus,* is reported as going as far south as 72 degrees in the Ross Sea.

"Pending a decision on her claim to a whaling fleet as reparations from Japan, the Commonwealth and States in Australia are

[39] No. 30 of 1949. These two islands lie in Port Jackson (New South Wales), better known as Sydney Harbour.
[40] No. 3 of 1923.
[41] No. 6 of 1949.
[42] No. 33 of 1949.

planning to revive, with modern methods, the shore-based whaling (bay whaling) which long flourished in Australia. Small vessels, working from such bases as Twofold Bay in New South Wales and Albany or Point Cloates in Western Australia, would capture the whales which migrate up and down the eastern and western coasts of Australia. These whales would be brought into the base for treatment.

"The yields and profits from such stations, dealing mainly with black and humpbacked whales, would be small compared with those secured by floating factories and chasers working in the Antarctic Seas."

It is interesting to note that the first whaling operations in Australia were conducted in 1804, that in the early days of settlement Australia was the principal whaling country in the world, and that in our own day, some ninety per cent. of the world's whales are to be found in the Antarctic.

This Act provides for the establishment of an Australian Whaling Commission which is intended to engage in whaling both in Australian waters (including Australian waters beyond territorial limits—see placitum (x) of sec. 51 of the Constitution), and beyond those waters with the vessels not required for the time being for whaling in Australian waters. Without limiting the generality of those objects, the Commission is empowered to own, buy, sell, dispose of and charter ships, buy, own, sell and lease land, machinery, docking facilities, etc. It may appoint its own officers—whose conditions and terms of employment are subject to the approval of the Public Service Board—on a permanent, temporary or casual basis. The rate of salary of an officer, if it exceeds one thousand five hundred pounds a year, is subject to the approval of the Minister. The rights of its permanent officers are as if such officers were in the Commonwealth Public Service and are within the operation of the Officers' Rights Declaration Act 1928-1948. Seamen employed by the Commission are within the Seamen's Compensation Act 1911-1949, and the Commonwealth Employees Compensation Act 1930-1948 applies to officers and employees of the Commission not being masters, mates, radio officers, or engineers of a ship, or seamen.

The Commission is required, as soon as practicable after 30th June of each year, to report to the Minister on its activities and to furnish its accounts to the Treasurer after an audit by the Auditor-General. The report and accounts are to be laid before each House of Parliament within fifteen sitting days of that House after their receipt by the Minister.

By sec. 31, the Governor-General may make regulations not inconsistent with the Act for giving effect to it and in particular for prescribing penalties not exceeding a fine of fifty pounds or imprisonment for any period not exceeding three months, or both, for offences against the regulations.

The Snowy Mountains Hydro-Electric Power Act.[43]

Between 1884 and 1937 there have been many proposals for the use of the waters of the Snowy River. The earlier schemes were for irrigation and did not usually envisage dam construction. Later, however, the emphasis was transferred to the development of hydro-electric power and the furtherance of irrigation.

A committee under the chairmanship of Dr. Loder submitted a report in November, 1948, which now forms the basis of the present scheme involving as it does the use of the Tumut River and the Tooma as well as the Murrumbidgee, the Murray and the Snowy. It envisages the diversion of 235,000 acre feet annually from the Snowy River into the Tumut, which is a tributary of the Murrumbidgee, and the diversion of 334,000 acre feet annually from the Tooma, which is a tributary of the Murray, into the Tumut and thence into the Murrumbidgee. The result of the two diversions would be that the Murrumbidgee River would gain 569,000 acre feet a year, or about two-thirds of the average annual flow of the Snowy. To make up for the loss of the Tooma waters, at least one-third of the Snowy would have to be diverted into the Murray. It is intended that sixteen power stations will be operating and that after the water has passed through the turbines it will flow inland into irrigation schemes. This scheme, by the addition of the waters from other streams previously mentioned, will make available for irrigation some 1,800,000 acre feet of water.

This Act was passed by the Commonwealth Parliament only. No reciprocal legislation has yet been sought from the States affected by it and no formal agreement, supported by validating legislation, has been executed by the States in which are vested the riparian rights in the river systems affected by the scheme envisaged by this legislation.[44] The requisite legislative authority is sought in the defence power (Constitution, sec. 51 (vi)) and in clause 10 of the Agreement in the First Schedule of the Seat of Government Acceptance Act 1909.[45] Accordingly the functions of the Authority set up under this Act are the generation of electricity and its supply to the Commonwealth for defence purposes and for consumption in the Australian Capital Territory. However, sec. 39 provides that the Authority may sell to a State, or to an authority of a State, electricity generated by it which is not immediately required for defence purposes or for consumption in the Australian Capital Territory.

A "Snowy Mountains Hydro-Electric Authority" is constituted, consisting of a Commissioner who is a corporation sole with perpetual succession and an official seal. He is advised and assisted by

[43] No. 25 of 1949.

[44] Furthermore sec. 5 provides "This Act shall bind the Crown in right of a State."

[45] No. 23 of 1909, and (New South Wales) Seat of Government Surrender Act, No. 14 of 1909, First Schedule, clause 10.

two associate commissioners, whose duties are to be such as he directs. The functions of the Authority have been set out above. Its powers are, generally, the collection, etc., of water in the Snowy Mountains Area,[46] the generation of electricity in that area, the transmission of electricity so generated, and all matters incidental. Section 18 provides particular powers relating to interests in land, and section 21 authorises alterations of water levels in the Snowy Mountains Area.

The terms and conditions of employment of the officers and employees of the Authority are subject to the approval of the Public Service Board. They are not subject to the Commonwealth Public Service Act 1922-1948. The provisions of the Commonwealth Employees' Compensation Act 1930-1948 are applicable to all members, officers and employees of the Authority; by sec. 35 (2) of the Snowy Mountains Hydro-Electric Act the Authority is liable to pay compensation under the former Act. The Officers Rights Declaration Act 1928-1948 preserves the rights of officers of the Public Service employed by the Authority (sec. 34).

The relevant provisions of the Lands Acquisition Act 1906-1936 are made applicable to this Act, and in those provisions, reference to the Commonwealth or the Minister shall be read as a reference to the Authority which can acquire land from a State by agreement (sec. 4) and can either purchase or compulsorily acquire land from private persons.

The finances of the Authority are under the control of the Treasurer who may make advances to it out of moneys appropriated by the Parliament. The Authority may also borrow money on overdraft from the Commonwealth Bank, but only on the Treasurer's guarantee. It is liable to Commonwealth taxes (except income tax) but is not subject to any State taxes to which the Commonwealth is not subject. Audit is by the Commonwealth Auditor-General; the form of accounts kept is subject to the Treasurer's approval and the usual annual reports must be furnished to the Minister and tabled in each House of Parliament within fifteen sitting days of receipt by the Minister. Finally, the Governor-General may make regulations under the Act and may prescribe penalties not exceeding a fine of

[46] Section 6 defines the Snowy Mountains Area as follows:—
"6. (1) For the purposes of this Act, the Snowy Mountains Area shall be an area of land in the south-eastern portion of the State of New South Wales and the north-eastern portion of the State of Victoria defined in accordance with this section.
(2) The Governor-General may, by Proclamation, define the boundaries of the Snowy Mountains Area and may, from time to time by Proclamation, vary the boundaries so defined."

fifty pounds or imprisonment not exceeding three months, or both, for offences against such regulations.

State Grants (Encouragement of Meat Producton) Act.[47]

The purpose of this Act is to make available to the Governments of Queensland and Western Australia special grants to meet the capital cost of constructing or improving roads in the Channel country of south-west Queensland and the east Kimberley area of Western Australia, and further, to assist those areas as to half the capital cost (up to specified limits) of improvement of stock routes in those areas. Improved watering facilities along certain stock routes are also envisaged (sec. 5). Surveys will be the obligation of the States; standards of design and construction are to be determined by the Minister and to be observed by the States. Conditions of payment by the Commonwealth to the State concerned are:—

(a) The State may not, without the consent of the Minister, impose any road or bridge toll on the transportation of cattle or goods along a "subsidised" road; and

(b) the State will maintain in reasonable order and condition every road, bridge, etc., to which the Act relates.

Section 11 sets out the necessary appropriation—a sum not exceeding £2,166,000.

Railway Standardisation (South Australia) Agreement Act.[48]

This Act ratifies an agreement between the Commonwealth of Australia and the State of South Australia. An earlier Act, the Railway Standardization Agreement Act 1946,[49] had ratified the Railway Standardization Agreement between the Commonwealth and the States of Victoria, New South Wales, and South Australia; but there was a provision that the Agreement would not become operative until it had been approved by the Parliaments of all the States concerned and of the Commonwealth. That agreement remained inoperative because it has not been ratified by the Parliament of New South Wales. The present Act ratifies a separate agreement between the Commonwealth and the State of South Australia for the standardisation work to be carried out in South Australia which would have been carried out in that State had the Commonwealth-Three States Agreement become operative. This Agreement provides that over a period of years the Commonwealth shall contribute 70 per cent. of the estimated cost of £24,000,000 for the conversion of South Australian 5ft. 3ins. and 3ft. 6ins. railway lines to standard gauge, for standardization of railway equipment, rolling stock, etc., and the State of South Australia the remaining 30 per cent. of that sum.

[47] No. 74 of 1949.
[48] No. 83 of 1949.
[49] No. 50 of 1946.

Commonwealth Conciliation and Arbitration Act.[50]

This Act, by adding a new Division[51] to the Principal Act,[52] makes provision for the prevention of irregularities in the election of office-bearers in organizations registered under the Commonwealth Conciliation and Arbitration Act 1904-1948 and vests in the Commonwealth Court of Conciliation and Arbitration additional powers in relation thereto. This Act applies to all organizations, whether of employers or employees, registered with the Commonwealth Court.

Firstly, this enactment provides machinery for the investigation, by the judges of the Commonwealth Arbitration Court, of elections and of irregularities in connection with those elections. The Court is given power to rectify any vital irregularities, to order the holding of new elections, and to take other appropriate measures. The procedure is that the Court will act only when the Industrial Registrar, after a preliminary examination, is satisfied that there are reasonable grounds for such an enquiry by the Court. Secondly, the Act includes a provision (sec. 96M) permitting an organization, of its own free will, to ask for an election to be conducted under the authority of the Registrar of the Court. An election so conducted would not subsequently be subject to challenge in the Court. For a member of an organization to invoke the machinery of the Court in the former of the two proceedings set out above, it is necessary for him to lodge a written application with the Industrial Registrar setting out the facts upon which he relies and verified by a statutory declaration. If the Registrar is satisfied that there are grounds for an enquiry, he will then refer the matter to the Court. After an application has been lodged a judge may authorise the Registrar to enter the premises of an organization, inspect ballot papers and documents relevant to the election, require delivery and take and retain possession of such papers and documents. This jurisdiction of the Court is to be exercised by a single judge. Amongst the powers that a judge may exercise there is the discretion to require a secret ballot (see sec. 96G (3) (d)). The Court has power to enforce its orders under this new Division by way of injunctions, including mandatory injunctions, as it thinks necessary (see sec. 96H). Sec. 96J provides that the acts of a person who has not only been irregularly elected to office but has also purported to act in that office prior to the finding, if his acts would have been valid if he had been duly elected, shall be valid and effectual unless the Court declares them to be void.

The Court is given a wide power under sec. 96K to make orders as to the costs and expenses of proceedings before the Court. But the same section also provides that under certain circumstances the Attorney-General may authorise payment of costs by the Common-

[50] No. 28 of 1949.
[51] "Division 3—Disputed Elections in Organizations," to Part VI of the Principal Act.
[52] Commonwealth Conciliation and Arbitration Act 1904-1948.

wealth. This may be done for the benefit of the person applying for the enquiry where the Court finds an irregularity has occurred or even where the Court does not so find but certifies that the applicant for the enquiry acted reasonably. There is, moreover, a very comprehensive sub-section that the Attorney-General, if satisfied that it is not just that any other person should bear any expenses in relation to the enquiry, may authorise payment by the Commonwealth of the whole or part of those expenses. Whenever the Court orders a new election to be held, there too the Attorney-General may authorise payment of the expenses of such election by the Commonwealth if he is of opinion that it would be unreasonable to require the organization to bear them.

L. F. E. GOLDIE.