II. Commonwealth

Citizenship and nationality.

The Nationality and Citizenship Act 1948[1] came into operation on 26th January 1949; during the period of almost two years which elapsed between that date and the commencement of the Nationality and Citizenship Act 1950 (No. 58) certain minor amendments became necessary and others were thought desirable. Sections 3 and 5 of the 1950 amending Act are intended to remove disabilities from certain categories of women, by amending section 5 (1) as to the definition of a "naturalized person" and section 15 (4). Section 4 grants in certain cases a discretion to the Minister.

Section 3 (a) excludes from the category of "naturalized persons" a woman who was a British subject at birth or who married a British subject before the commencement of the principal Act, and places her in the category of British-born. Two classes of women are contemplated by this provision. The first consists of those women who were natural-born British subjects but who at some time lost their British nationality—e.g., by marriage to aliens—and who later became naturalized in order to regain British nationality. The anomalous position before this amendment was that if such women had refrained from becoming naturalized they would have regained their British nationality automatically under section 27 of the principal Act. Accordingly they would not have been included in the category of naturalized persons who, on taking up residence outside Australia, are required to give annual notice of intention to retain Australian citizenship on pain of losing that status after seven year's absence. It will be seen that those who were zealous to regain their British nationality before 26th January 1949 were penalized; those who were careless of it regained it on that day.

The second class of women contemplated in paragraph (a) of section 3 are those women who at one time were aliens, then became naturalized, and later married British subjects. These women were also to be considered as naturalized persons by virtue of the provisions of the principal Act, yet alien women who married British subjects were not "naturalized persons" under that Act. Thus a women who had sufficient attachment to the status of British subject to induce her to seek that status by naturalization before her marriage to a

1 See 1 University of Western Australia Annual Law Review 329 *et seq.*

British subject was placed in a worse position than a woman who acquired British nationality solely by reason of her marriage. By the 1950 amendment all women who married British subjects before the commencement of the principal Act, whether they were then naturalized or not, are to be placed in the same position; that is, none of them are to be regarded as naturalized but are to be treated in the same way as British-born citizens. Paragraph (b) of the section extends to residence in Nauru the provisions of the principal Act as to residence in New Guinea.

Section 5 amends section 15 (4) of the principal Act, which provided that an alien woman who marries an Australian citizen cannot become a naturalized Australian citizen until she has resided in Australia for one year "with her husband." The effect of the words "with her husband" was that it was necessary for the woman to reside in Australia for a year *after* her marriage even though she might have spent three or four years in Australia prior thereto. The new amendment deletes the words "with her husband" from the relevant section of the principal Act, so that women in this category will be eligible for naturalization after one year's residence in Australia. The same provisions are to apply to the widow, as well as to the wife, of an Australian citizen.

It may be noted in passing that before the enactment of the 1948 Act alien women who married British subjects automatically acquired that status upon marriage; but under the 1950 Act they can only become naturalized Australian citizens (and British subjects) after fulfilling a qualifying period of residence.

Section 4 grants to the Minister a discretion to exempt applicants for naturalization as Australian citizens from the necessity of making a declaration of intention to apply. Ordinarily an applicant for naturalization must have made a declaration of intention to apply at least two years before the grant of naturalization, and under the principal Act the Minister had no power to make the grant unless the applicant had complied with this requirement. However, the Minister now has a discretion to dispense with the declaration and to grant naturalization without it.

Another Act on the same subject-matter is the Nationality and Citizenship (Burmese) Act 1950 (No. 12). The necessity for this Act arose from the consequences of the Burma Independence Act of the United Kingdom (11 & 12 Geo. 6, c. 3) whereby, on and after 4th January 1948, Burma ceased to be part of His Majesty's dominions, and from the fact that, although with the enactment of Citizenship

Acts by the various member nations of the British Commonwealth the 'common code system' has been swept away, the 'common status' of British subject is still said to remain.

As a consequence of the Burma Independence Act, Burmese could no longer claim to be British subjects merely because of their connection with Burma. That Act therefore provided that Burmese domiciled or ordinarily resident in the United Kingdom or its dependencies should have the right to elect to remain British subjects. No similar Act was passed by the Commonwealth Parliament when the independence of Burma was recognised; hence only the common law applied to this branch of the nationality law of Australia. And at common law only those Burmese who were inhabitants of Burma at the time when it became a foreign country lost their British nationality; every native Burmese who left Burma permanently either before its independence was recognised or 'within a reasonable time thereafter' remained a British subject. This led to the anomalous position that all native Burmese not resident in Burma at the time of the proclamation of independence remained British subjects solely for the reason that they were not resident in Burma on that date even though, in taking up residence in a foreign country, they may have had as little connection with the British Commonwealth as those who had never left Burma. Secondly, this lacuna in our legislation was considered a contradiction of the long-accepted principle that persons who are British subjects in one part of His Majesty's dominions should have the same status in all other parts of those dominions. And thirdly, the common law position may lead to uncertainty in certain cases inasmuch as it must inevitably be a matter of opinion whether a particular individual had left Burma "within a reasonable time" after it had ceased to be British.

The effect of section 2 of the new Act, when put in a positive form and with the operation of the relevant provisions of the Burma Independence Act borne in mind, is to deprive of British nationality only those persons whose sole claim to be considered British subjects was their birth in, or some other connection with, Burma. Section 3 gives to Burmese who became Australian citizens upon the commencement of the Nationality and Citizenship Act 1948 (No. 80) an opportunity to retain that citizenship by a simple declaration. It may be noted that this right of election, being confined to persons who are already Australian citizens and who therefore have the right to reside permanently in Australia, does not affect the immigration policy of the Commonwealth in relation to non-Europeans.

Statute law revision.

On 16th March 1949 Senator N. E. McKenna, then Acting Attorney-General for the Commonwealth, made the following statement to the Senate:—

> "I desire to inform honorable senators that it has been decided to prepare a consolidation of Commonwealth Acts as at 31st December, 1950. The consolidation will be published as early as possible in the year 1951. The first consolidation of Commonwealth Acts was prepared as at the end of 1911, and a second at the end of 1935. It was then intended to issue a fresh consolidation at the end of each ten years, but that intention was, of course, frustrated by the war. It has also been decided to issue a consolidation of Commonwealth statutory rules as at the 31st December, 1950. The statutory rules have previously been reprinted twice, namely, in 1914 and 1927. Besides being of great utility, those works will mark the completion of 50 years of federation, and will be issued to commemorate this important milestone in the history of the Commonwealth of Australia."[2]

This decision having been adopted by the present Attorney-General, the Statute Law Revision Act (No. 80 of 1950) was passed for the purpose of clearing away a great deal of obsolete matter from the federal statute book so as to facilitate the publication of a reprint of Commonwealth Acts in force on the named date. An Act of similar purpose had been the Statute Law Revision Act 1934 (No. 45), after which the "1935 Reprint"[3] of the Commonweath Acts was published.

It is common practice of the Parliament of the United Kingdom to pass Acts of this kind in order to keep the statute book in a proper state; the object is "merely to cut away the dead wood." There are, furthermore, various circumstances which justify the removal of Acts. Thus the 1950 Act not only removes useless matter but also corrects some mistakes which have been discovered since the passing of the previous measure in 1934. Many Acts apply only to a set of circumstances temporarily existing at the time of their enactment; e.g., the annual Supply Acts and Appropriation Acts, Acts providing for the payment of bounties for a limited period and Acts appropriating the money for that payment, Acts granting a fixed sum to one of the States, and Acts validating action already taken. All such Acts quickly become obsolete but they must remain in every edition of the statutes until specifically repealed. In addition to Acts

2 201 *Commonwealth Parliamentary Debates* 1474.
3 Commonwealth Acts 1901-1935, in 4 volumes.

that are wholly obsolete there are others which, owing to the effluxion of time or the happening of later events, have no longer any force or effect. For example, section 53A of the Bankruptcy Act, dealing with certain acts of bankruptcy committed before the commencement of the Bankruptcy Act 1924, is no longer of any operative necessity; similarly section 9 of the Excise Tariff Act which provided that certain tariff proposals, proposed in 1918 or earlier, "shall be deemed to have ceased to have effect", is no longer needed.

The First Schedule amends particular provisions in certain specified Acts. Where a necessary amendment could not be made by means of this Schedule it has been carried into effect by a separate section in the Act. For example, section 13 of this Act repeals section 5 of the Australian Imperial Forces Canteen Funds Act (No. 3 of 1920) and substitutes a new section which takes into account changes in the body of trustees which have occurred as a result of death or resignation since the passing of the Act in 1920. Overlapping provisions which occur in more than one Act, verbal mistakes, and obviously unnecessary words are sought to be corrected or removed. Thus in the Arbitration (Public Service) Act references to the Public Service Commissioner are omitted because there is no longer such an officer, and references to the Public Service Board are substituted; similarly references to the now defunct Inter-State Commission are omitted from the Evidence Act.

The Second Schedule simply alters the citation of certain Acts. It is desired to bring the citation up to date by substituting 1950 as the second date mentioned in the title. With regard to six of these Acts it is proposed to go further and actually change their titles. The reason for this is that it has been decided that when the Acts are reprinted, they will be published in the alphabetical order of their short titles. In the earlier reprints of Commonwealth Acts another system was used, namely, the system of arrangement under subject-headings. The difference between the two arrangements can best be explained by an example. Under the old system, the Patents Act was found not under the letter "P" but under the heading "Industrial Property" where it was grouped with other Acts of a similar nature, e.g., the Trade Marks Act. Under the new system, the Patents Act will be printed in alphabetical order, after the Passports Act. The titles of the six Acts which it is proposed to change are titles which do not, at present, fall well into an alphabetical arrangement. For instance, the Arbitration (Public Service) Act would more easily be found under such an arrangement if its title were changed to the Pub-

lic Service Arbitration Act, and it is therefore proposed to make that change. The other Acts and their proposed new titles are:—

Present title	*Proposed new title*
Australian Broadcasting Act	*Broadcasting Act*
Australian Soldiers' Repatriation Act	*Repatriation Act*
Commonwealth Conciliation and Arbitration Act	*Conciliation and Arbitration Act*
Commonwealth Public Service Act	*Public Service Act*
Seat of Government Supreme Court Act	*Australian Capital Territory Supreme Court Act*

In the case of the last Act, the Court in question is the Court for the Territory and not for the Seat of Government alone, and the proposed title is, therefore, more accurate. The Court is in fact and also in name the Supreme Court of the Australian Capital Territory.

The Third Schedule has the effect of repealing a large number of Acts. In Part I 30 Supply Acts are listed; there is no need whatever for the retention of those Acts upon the statute-book. Division 1 of Part II repeals Appropriation Acts of past years because they are no longer a part of the effective law of the Commonwealth. Careful provision is made both in this Act and in the Acts Interpretation Act to preserve any rights that have accrued and any obligations which have come into existence under the repealed Acts, as well as the validity of anything done in pursuance of them.

Division 2 of Part II relates to a series of special Appropriation Acts. For example, a grant was made in 1949 to the United Nations International Children's Emergency Fund. The money having been paid, it is no longer necessary to include that Act in an edition of Commonwealth statutes. Similar considerations apply in the case of the various other Appropriation Acts listed in this division. By Part III it is proposed to repeal a number of validating Acts. From time to time it happens at the end of a Parliament that a tariff is temporarily validated until Parliament has had an opportunity to debate it; whereupon a fresh Act is passed which takes the place of the temporary validating measure. Those validating Acts are now repealed, but at the same time anything done under or in pursuance of them is preserved and saved.

Part IV consists of various Acts which in past years have made grants to the States. The moneys having been paid there is no need to have those Acts permanently on the statute-book. Part V consists

of a number of Loan Acts which have fully performed their functions. Part VI consists of a series of Bounty Acts, the operation of which has expired by reason of the expiration of the period to which they related. Part VII consists of a number of miscellaneous Acts which it is proposed to repeal because they are obsolete. Some of them were passed for a specific purpose; for example, the objects of certain geophysical surveys have now been fulfilled. All these Acts relate to the past.

In the Fourth Schedule a number of tax Acts are repealed, with a necessary saving clause allowing the collection of amounts that have not yet been paid. The Fifth Schedule is long but is devoted simply to removing the Customs Tariff matter which is now obsolete; for example, matter which related to a rate of duty which was in force only until a date which is now past, and which has been replaced by a new rate. Altogether, the Act amends some 85 Acts and repeals just under 500 more.

Conciliation and arbitration.

Section 24 of the Commonwealth Conciliation and Arbitration Act 1904-49 provides that the jurisdiction of the Commonwealth Arbitration Court shall, except as to matters of practice and procedure, be exercised by not less than three judges, no provision being made for the absence of a judge during part of a prolonged hearing. The Chief Judge of the Arbitration Court fell ill in 1950 during the hearing of claims for variations of individual awards as a consequence of the basic wage case. Under Section 24 as it stood those hearings could not be completed, but would have been invalidated. The Conciliation and Arbitration Act (No. 20 of 1950) was intended to enable the completion of proceedings for variations of awards which had been commenced before any three judges, one of whom later became unable to sit, and permitted the two remaining judges to exercise the jurisdiction of the Court in completing the hearing and making an order or award.

The Act is expressed to apply only to an industrial dispute the hearing of which had begun before its commencement (3rd November 1950). The measure was therefore only temporary in its operation and the need for it has already disappeared.

Dollar Loan.

A recent American survey of the world dollar situation, conducted at the request of the President of the United States and presented on 10th November 1950, came to the conclusion that "although the gold

and dollar reserves of the sterling area had reached 2.8 billion dollars in September, 1950, this was not a satisfactory level." Even before this report was published the Commonwealth had become seriously concerned about the shrinkage of the dollar pool and its own inability to finance essential purchases in the United States, and had successfully negotiated for a loan of one hundred million dollars (at 4¼% interest) from the International Bank for Reconstruction and Development. It was a term of the agreement that the money would be used exclusively "for the development and expansion of electric power facilities, water conservation works, railways, agriculture and land settlement, mining, smelting and refining, and iron and steel, engineering and other industries." In effect the bank has the deciding voice as to whether particular purchases come within the scope of the agreement.

The Loan (International Bank for Reconstruction and Development) Act (No. 74 of 1950) gives formal authority to the federal Treasurer to borrow the named sum on behalf of the Commonwealth. The terms of the Agreement, and the Bank's Loan Regulation No. 3, are set out in the First and Second Schedules.

Import of prefabricated houses.

The policy of the State Grants (Imported Houses) Act (No. 66 of 1950) is, by means of grants to the States, to stimulate the import of prefabricated houses; a field in which the Commonwealth has no powers, under the Constitution, to make laws, but which belongs to the States. It illustrates accordingly a way in which the Commonwealth can influence State policy, developments in the community, and activities generally throughout Australia; i.e., the Commonwealth can exercise "social control" by indirect means. The Act authorises the payment of financial assistance to the States in respect of prefabricated houses imported by the State or by a State 'housing authority'. The definition of 'housing authority' is sufficiently wide to include any State instrumentality which is empowered to import houses (e.g., the State Electricity Commission of Victoria, or the New South Wales Commissioner for Railways). Financial assistance is at the rate of an overall average of £300 per house up to 30,000 houses. Section 7 provides that payment to a State shall be made on the following conditions—

(a) in selecting the area for erection of houses, primary consideration shall be given to areas of coal or steel production or where other activities essential for national development are carried on;

(b) in the allocation of houses to individuals (either by sale or lease) preference shall be given to workers engaged in the industries mentioned in paragraph (a);
(c) such other conditions as the Minister determines.

Grants for housing.

The Loan (Housing) Act (No. 21 of 1950) seeks parliamentary authority for further advances to the States of capital funds totalling £26,100,000 in accordance with the provisions of the Commonwealth and State Housing Agreement Act 1945. The following statement reveals the continued increase in advances made to the States by the Commonwealth since the inception of the agreement:—

1945-46	6,795,000
1946-47	11,015,000
1947-48	13,305,000
1948-49	14,492,000
1949-50	17,215,000
Total	£62,822,000

During the same period parliamentary appropriations amounting to £69,000,000 have been approved, leaving a balance of £6,178,000 available at the 30th June, 1950, to enable the building programme to continue without interruption in the early months of the financial year 1950-51. (The works programme approved by the Loan Council in September 1951 included £26,100,000 for rental housing under the Commonwealth and State Housing Agreement).

The increase of the provision in this Act over that provided by the Loan (Housing) Act 1949 is to meet (a) an anticipated increase in the volume of orthodox housing to be built; (b) rising costs of building; and (c) costs of supply and erection of imported houses.

The local building industry gives no indication under present conditions of being able to produce substantially more than 60,000 of the 90,000 new houses a year that Australia must have to meet housing needs arising solely from marriages and migration, so that there is an annual deficiency of approximately 30,000 houses to be made good. To encourage importation and to help to meet this deficiency, the Commonwealth has offered financial assistance to the States up to £300 for each house imported from overseas. Orders so far placed, or in process of negotiation for importing houses under the Commonwealth offer, total approximately 8,000, with options for a further 6,000.

Construction and maintenance of roads.

The Commonwealth Aid Roads Act (No. 47 of 1950) provides the machinery and lays down the policy to be followed for payments by the Commonwealth to the States for road purposes and supersedes the Commmonwealth Aid Roads and Works Act (No. 17 of 1947). The objects which the Act seeks to secure are:

"(a) To make available each year for roads a larger amount of money than under the former legislation and to ensure that the aggregate grant will increase as petrol consumption increases.

(b) To provide from this money a specific grant to the States for roads in rural areas as well as a grant for general roads purposes.

(c) To give the States express permission to use any part of either of these grants to assist local authorities in the construction and upkeep of roads.

(d) To provide for continuity in roads programmes by making the legislation operative for five years.

(e) To set aside annual sums for Commonwealth expenditure on strategic roads and roads of access to Commonwealth property and for the promotion of road safety."[4]

For these purposes a Trust Account is established into which are paid, from time to time, amounts from the Consolidated Revenue Fund representing sixpence per gallon of customs duties paid on imported petrol and threepence-halfpenny per gallon of excise duties paid on locally produced petrol or allied products. By section 6, sixty-five per cent. of the money so paid into the Trust Account (less six hundred thousand pounds) is to be paid out to the States for general road purposes, and by section 7 the remaining thirty-five per cent. is to be paid to the States for rural road purposes. The amounts are to be divided between the five mainland States on a basis of both population and area (fifty-seven per cent. of the money to be paid out is to be apportioned by population and thirty-eight per cent. by area—Tasmania receiving five per cent. of the whole). Sections 10 and 11 provide for special expenditure on strategic roads and road safety practices. Payment to each State is made conditional on the submission to the Minister of a statement, certified by the Auditor-General of the State, that the amounts claimed have been duly spent (section 9).

[4] Statement by the Federal Treasurer, in *Commonwealth Parliamentary Debates*, 21st November 1950.

Section 12 empowers the Governor-General to make Regulations "not inconsistent with this Act."

Milk for school children.

The State Grants (Milk for School Children) Act (No. 72 of 1950) provides the necessary appropriations to permit the Commonwealth to subsidise the provision by the States of milk (not exceeding one half-pint per child on each school day) to children attending public or private primary schools, including kindergartens, creches, nursery schools and aboriginal missions. The actual provision of the milk is intended to be a State responsibility (except in the Australian Capital Territory and the Northern Territory of Australia), the Commonwealth reimbursing the States when a claim is made and proved.

L. F. E. GOLDIE*

* *LL.B. (W.A. & Sydney): of the Bar of New South Wales.*