

CHRISTMAS ISLAND AGREEMENT.

No. 69 of 1958.

An Act to approve an Agreement relating to Christmas Island entered into between the Government of Australia and the Government of New Zealand, and for other purposes.

[Assented to 10th October, 1958.]

BE it enacted by the Queen'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* 1958.

Commence-
ment.

2. This Act shall be deemed to have come into operation on the first day of October, One thousand nine hundred and fifty-eight.

Repeal.

3. The *Christmas Island Agreement Act* 1949 is repealed.

4. In this Act—

Definitions.

“the Commission” means the Christmas Island Phosphate Commission constituted under the former agreement and incorporated by the *Christmas Island Agreement Act 1949*;

“the former agreement” means the agreement the execution of which was authorized by the *Christmas Island Agreement Act 1949*.

5. This Act extends to all the Territories of the Commonwealth.

Extension of Act to Territories.

6. The agreement a copy of which is set out in the Schedule to this Act is approved.

Approval of agreement.

7.—(1.) The Commission continues in existence in accordance with, and for the purposes of, the agreement approved by this Act.

Continuance of Christmas Island Phosphate Commission.

(2.) The Commission continues to be a body corporate with perpetual succession and a common seal and to be capable of—

- (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.

8. Subject to the next succeeding section, the Commission is not entitled to any of the rights, privileges, immunities or exemptions of the Crown in right of the Commonwealth or of New Zealand.

Commission not to enjoy immunity of the Crown.

9. The income of the Commission is not subject to taxation, and the Commission is not liable to pay land tax, under any law of the Commonwealth or of a State or Territory of the Commonwealth.

Exemption from taxation.

THE SCHEDULE.

Section 6.

AUSTRALIA—NEW ZEALAND AGREEMENT RELATING TO CHRISTMAS ISLAND.

The Government of Australia and the Government of New Zealand (hereinafter referred to as “the said Governments”)—

participating in equal shares in the production and distribution of phosphate from Christmas Island in the Indian Ocean,
desiring to revise their mutual rights and obligations in the light of the proposed placing of Christmas Island under the authority of the Commonwealth of Australia,

have agreed as follows:

Article 1.

1. The said Governments shall during the period of this Agreement have an equal and exclusive right to extract all phosphates and other minerals and to cut timber in on and from Christmas Island.

2. The said Governments shall not exercise this right in any manner inconsistent with the provisions of this Agreement.

THE SCHEDULE—*continued.*

Article 2.

1. The Christmas Island Phosphate Commission constituted under the Agreement made on the twenty-sixth day of November, 1949, between the Government of Australia and the Government of New Zealand and known as the Christmas Island Agreement 1949 (in this Agreement called "the Christmas Island Agreement 1949"), and incorporated by the *Christmas Island Agreement Act 1949* of the Commonwealth of Australia shall, subject to this Article, continue to function for the purposes of this agreement, and references to "the Commission" in this Agreement shall be read as references to that Commission.

2. The Commission shall, in respect of Christmas Island, manage and control on behalf of the said Governments the mining of phosphate, the distribution and sale of the phosphate, the cutting and sale of timber, the obtaining and sale of any other minerals and all other matters incidental thereto (all of which are hereinafter collectively referred to as "the working of the said property").

3. The following provisions of Article 3 of the Christmas Island Agreement 1949 shall continue to apply to and in respect of the Commission, that is to say:—

(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.

4. The office of the Chairman of the Commission for each financial year of the Commission shall alternate between the Commissioner appointed by the Government of Australia and the Commissioner appointed by the Government of New Zealand.

5. The powers of the Commission shall not be exercised at any meeting of the Commission unless the Commissioner appointed by the Government of Australia and the Commissioner appointed by the Government of New Zealand are both present.

6. Subject to the provisions of Article 10 of this Agreement, the Commission shall not be entitled, in any of the territories of the said Governments, to any of the rights, privileges, immunities and exemptions of Her Majesty in right of the Commonwealth of Australia or of Her Majesty in right of New Zealand.

7. 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.

1. The Government of Australia will, for the purposes of the working of the said property, grant to the Commission full licence and authority to cut timber and to get all phosphates and other minerals in on and from Christmas Island and all powers necessary or proper for the enjoyment of that licence.

2. The title to all phosphates and other minerals produced and to timber cut on Christmas Island on or after the date on which this Agreement comes into force and, in addition to the ships and other property vested in the Commission immediately prior to that date, to all assets acquired by or on behalf of the said Governments on or after that date in connection with the working of the said property shall be vested in the Commission.

Article 4.

In the exercise of its responsibility under Article 2 of this Agreement to manage and control on behalf of the said Governments the working of the said property, the Commission shall employ the British Phosphate Commissioners as Managing Agents on such terms as may be agreed upon between the Commission and the British Phosphate Commissioners and approved by the said Governments.

THE SCHEDULE—*continued.*

Article 5.

The Commission shall—

- (a) subject to the provisions of sub-paragraph (b) of this Article, ensure that, so far as is practicable, phosphate obtained from Christmas Island shall be disposed of in Australia and 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 on a basis which will cover working expenses, depreciation, the administration expenses of the Commission (including the remuneration of the Commissioners), interest on moneys provided by the said Governments under the Christmas Island Agreement 1949 or under this Agreement, or borrowed under the Christmas Island Agreement 1949 or under Article 7 of this Agreement, contributions to any sinking fund for the redemption of such moneys, and the payment of the amounts referred to in Article 6 of this Agreement, the amounts payable by the Commission under Article 9 of this Agreement, and such other charges as the said Governments may agree upon;
- (c) subject to the provisions of sub-paragraph (d) of this Article, refrain from supplying any phosphate to or for shipment to any country or place other than Australia or New Zealand except with the unanimous approval of the Commissioners;
- (d) continue to supply to Malaya as much as possible of Malaya's requirements of ground phosphate (phosphate dust) up to thirty thousand (30,000) tons per annum or such greater quantity as the Commissioners may unanimously approve;
- (e) carry out and perform all the acts, promises and obligations in connexion with the working of the said property which the said Governments have undertaken to carry out or perform under and by virtue of the Agreement dated the thirty-first day of December, 1948, between the Christmas Island Phosphate Company Limited of the one part and Her Majesty's Government of the Commonwealth of Australia and Her Majesty's Government in New Zealand of the other part;
- (f) keep proper books and accounts and other records in relation to the working of the said property, the records so kept to include full particulars of all the phosphate and other minerals extracted or obtained and all the timber cut in on and from Christmas Island;
- (g) as soon as possible after the end of the Commission's financial year, which shall run from the first day of July to the thirtieth day of June in each year, prepare and furnish to each of the said Governments, in respect of that financial year, a report of its activities and a financial statement duly audited by auditors approved by the said Governments; and
- (h) do such other things as are incidental to the things which it is expressly authorized to do and which are necessary or expedient for carrying out its functions.

Article 6.

1. For the purpose of recouping the expenses incurred by the said Governments or by either of them in connection with the placing of Christmas Island under the authority of the Commonwealth of Australia, together with interest thereon at such rate as the said Governments may from time to time jointly determine, the said Governments may from time to time jointly determine an amount to be paid to them by the Commission in respect of each ton of phosphate exported from Christmas Island, and shall direct the time at which and the manner in which those payments are to be made by the Commission.

2. Unless and until otherwise agreed by the said Governments, the amount to be paid in accordance with the last preceding paragraph in respect of each ton of phosphate exported from Christmas Island shall be eight shillings (8/-) sterling.

3. After the expenses referred to in paragraph 1 of this Article together with interest thereon as provided in that paragraph have been recouped, the Commission shall create a special fund (in this Article called "the fund") for the purpose of accumulating moneys to meet the cost of discharging the obligations towards inhabitants of the Island which

THE SCHEDULE—*continued.*

fall upon the Government of Australia as a consequence of the cessation of the phosphate industry and such other residual liabilities as the two Governments agree in accordance with paragraph 7 of this Article fall upon the Government of Australia as a consequence of that cessation.

4. The Commission shall transfer to the fund annually an amount calculated at such rate per ton of phosphate exported from Christmas Island as the said Governments from time to time jointly determine.

5. Unless and until otherwise agreed by the said Governments, the amount to be paid by the Commission to the fund shall be calculated at the same rate per ton as was applicable under paragraphs 1 and 2 of this Article immediately before the final payment was made by way of recoupment of the expenses referred to in paragraph 1 of this Article, together with interest thereon as provided in that paragraph.

6. Moneys standing to the credit of the fund shall be invested in securities approved by the said Governments and interest earned from the investment of the moneys shall form part of the fund.

7. Immediately prior to the Commission ceasing to function, the two Governments shall consult for the purpose of assessing what part of the fund should be applied to meeting the cost of discharging the obligations towards inhabitants of the Island which fall upon the Government of Australia as a consequence of the cessation of the phosphate industry and such other residual liabilities as the two Governments agree fall upon the Government of Australia as a consequence of that cessation.

8. Such part of the fund as has been so assessed shall be paid or transferred to the Government of Australia for that purpose and the balance of the fund shall thereupon be divided equally between the two Governments.

9. If at any time thereafter it is agreed by the two Governments that the portion of the fund so paid or transferred to the Government of Australia under the provisions of the last preceding paragraph is greater than is required to meet the costs for which it was so paid or transferred that excess shall similarly be divided between the two Governments.

10. In addition to the payments provided for by the preceding provisions of this Article, the said Governments may, for any other purposes agreed upon by them, from time to time jointly determine that an amount shall be paid to them by the Commission in respect of each ton of phosphate exported from Christmas Island and may direct the time at which and the manner in which those payments are to be made by the Commission.

Article 7.

1. Subject to the next succeeding paragraph, the said Governments shall, from time to time and upon such terms as are jointly agreed upon, make available to the Commission, in equal shares, such moneys as the said Governments consider necessary for additional capital funds, working expenses or other purposes approved by them.

2. The said Governments may authorize the Commission to borrow moneys in such manner and up to such limits as the said Governments may from time to time agree.

Article 8.

Any surplus funds which the Commission has accumulated, or may from time to time accumulate, through the sale of phosphate or by other means or circumstances (other than the special fund provided for in Article 6 of this Agreement) shall, if and as the said Governments jointly so direct from time to time, be paid to the said Governments in equal shares but, subject to any such direction, the surplus funds may be used by the Commission for the working of the said property.

Article 9.

1. So long as the Commission continues to function, the Commission shall meet the net expenditure incurred by the Government of Australia in administering Christmas Island.

THE SCHEDULE—*continued.*

2. For this purpose, the Government of Australia may require the Commission to make advance payments on the understanding that an adjustment will be made as soon as convenient after the thirtieth day of June in each year on the basis of a statement supplied by that Government which shows in reasonable detail the net cost to that Government of administering Christmas Island and which is duly certified by the Auditor-General for the Commonwealth of Australia. The Government of Australia will, at the same time, supply a copy of that statement to the Government of New Zealand.

3. The cost of the establishment or maintenance on Christmas Island of any aerodrome or works shall not, to the extent that that aerodrome or those works go beyond the reasonable requirements of the administration of Christmas Island, be payable by the Commission.

Article 10.

1. The Commission shall continue to enjoy the same exemptions from income tax and land tax as it enjoyed under the legislation of the Commonwealth of Australia and New Zealand immediately before this Agreement came into force, and shall not be liable to pay income tax or land tax under any law of Christmas Island.

2. No duties of customs shall be imposed under any law of the Commonwealth of Australia or of Christmas Island on, or in respect of, the importation of goods into Christmas Island by the Commission, other than goods imported for the purposes of resale by the Commission.

3. No royalty, tax, duty, levy or charge shall be imposed under any law of the Commonwealth of Australia or of Christmas Island on, or in respect of,—

- (a) the production of phosphate in Christmas Island; or
- (b) the export of phosphate from Christmas Island to Australia or New Zealand.

4. Nothing in this Article shall affect the provisions of Articles 5, 6 or 9 of this Agreement.

Article 11.

The Government of Australia will not, unless the said Governments otherwise agree, establish, or promote the establishment of, an industry on Christmas Island which is likely to affect the phosphate industry on Christmas Island prejudicially.

Article 12.

The Government of Australia will consult with the Government of New Zealand in the exercise of its administrative authority over Christmas Island in any matters, including the erection of any aerodrome or defence or other works, which materially affect the working of the said property by the Commission.

Article 13.

1. Subject to the provisions of this Agreement and to general directions on policy given to the Commission by the said Governments jointly, the management and control of the working of the said property shall be left in the hands of the Commission.

2. The said Governments agree to join in the giving of all directions and to take any other action necessary for the purpose of ensuring the performance by the Commission of its responsibilities and duties as set out in this Agreement.

Article 14.

1. This Agreement shall come into force on the date on which Christmas Island is placed under the authority of the Commonwealth of Australia, and shall, unless otherwise agreed between the said Governments, and except for paragraphs 8 and 9 of Article 6, terminate when, in the opinion of the said Governments, the phosphate on Christmas Island is commercially exhausted, or when the Commission ceases to function, whichever is the later.

2. This Agreement shall be subject to review at the instance of either of the said Governments upon notice being given to the other Government.

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THE SCHEDULE—*continued.*

Article 15.

1. Except as otherwise provided in this Agreement, and without affecting in any way the past operation of the Christmas Island Agreement 1949, this Agreement shall replace the Christmas Island Agreement 1949.

2. This Agreement shall be known as the Christmas Island Agreement 1958.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed the present Agreement, and have affixed thereto their seals.

DONE at Canberra this thirtieth day of September 1958.

For the Government of the Commonwealth
of Australia:

PAUL HASLUCK

(L.S.)

For the Government of New Zealand:

F. JONES

(L.S.)
