

Commonwealth Places (Application of Laws)

No. 121 of 1970

An Act relating to the Application and Administration of Laws in Places acquired by the Commonwealth for Public Purposes.

[Assented to 11 November 1970]

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

1. This Act may be cited as the *Commonwealth Places (Application of Laws) Act 1970*. Short title.

2.—(1.) Subject to the next succeeding sub-section, this Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

(2.) This Act does not have effect with respect to Commonwealth places in a State until a date fixed by Proclamation from and including which it is so to have effect in that State.

3. In this Act, unless the contrary intention appears— Definitions.

“ authority ”, in relation to a State, means—

- (a) the Governor, a Minister or a member of the Executive Council of the State;
- (b) a court of the State;
- (c) a person who holds office as a member of a court of a State;
- (d) a body created by or under the law of the State; and
- (e) an officer or employee of the State or of a body referred to in the last preceding paragraph;

“ Commonwealth place ” means a place (not being the seat of government) with respect to which the Parliament, by virtue of section 52 of the Constitution, has, subject to the Constitution, exclusive power to make laws for the peace, order, and good government of the Commonwealth;

“ the applied provisions ” means the provisions that, in accordance with the next succeeding section, apply or are to be deemed to have applied;

“ the laws of a State ”, in relation to a State, means the laws in force in that State, whether written or unwritten, and instruments made or having effect under those laws, but does not include a law of the Commonwealth, whether written or unwritten, or an instrument made or having effect under such a law, and “ law of a State ” has a corresponding meaning.

Application of
laws in
Commonwealth
places.

4.—(1.) The provisions of the laws of a State as in force at a time (whether before or after the commencement of this Act) apply, or shall be deemed to have applied, in accordance with their tenor, at that time in and in relation to each place in that State that is or was a Commonwealth place at that time.

(2.) This section does not—

- (a) extend to the provisions of a law of a State to the extent that, if that law applied, or had applied, in or in relation to a Commonwealth place, it would be, or have been, invalid or inoperative in its application in or in relation to that Commonwealth place otherwise than by reason of the operation of section 52 of the Constitution in relation to Commonwealth places; or
- (b) operate so as to make applicable the provisions of a law of a State in or in relation to a Commonwealth place if that law would not apply, or would not have applied, in or in relation to that place if it were not, or had not been, a Commonwealth place.

(3.) To the extent that the laws of a State would, but for sub-section (1.) of this section, have, or have had, the same effect, at a particular time, with respect to an act, matter or thing having a connexion with a place in that State that is, or was, at that time, a Commonwealth place as they would have, or would have had, at that time, if the act, matter or thing did not have such a connexion, that sub-section does not have effect with respect to the provisions of those laws.

(4.) In so far as a law of a State has effect in another State, sub-section (1.) of this section operates to make the provisions of that law applicable in or in relation to a Commonwealth place in that other State.

(5.) Sub-section (1.) of this section does not—

- (a) have effect so as to impose any tax;
- (b) have effect so as to confer any judicial power; or
- (c) extend to the provisions of any law of a State in so far as it is not within the authority of the Parliament to make those provisions applicable in or in relation to a Commonwealth place.

(6.) The regulations may provide that such of the provisions referred to in sub-section (1.) of this section as are specified in the regulations do not apply, or shall be deemed not to have applied, by reason of this section or so apply, or shall be deemed to have so applied, with such modifications as are specified in the regulations.

(7.) Regulations shall not be made for the purpose of the last preceding sub-section modifying the applied provisions in their application in or in relation to a Commonwealth place except in so far as the modifications are necessary or convenient to enable the applied provisions to operate in or in relation to that place.

(8.) For the purposes of the last two preceding sub-sections, “ modification ” includes the omission or addition of a provision or the substitution of a provision for another provision.

(9.) Any reference in a law of the Commonwealth (including the applied provisions) to a law of a State shall, if any part of the applied provisions corresponds to that law, be read as including a reference to that part.

(10.) Any reference in the applied provisions to a law of a State shall, if there is not any part of the applied provisions that corresponds to that law, be read as a reference to that law.

(11.) Any reference in a part of the applied provisions to a conviction, punishment, penalty or forfeiture under the applied provisions shall be deemed to include a reference to a conviction, punishment, penalty or forfeiture under the law of a State that corresponds to that part.

(12.) Where—

(a) there is not in force an arrangement with the Governor of a State under sub-section (2.) of section 6 of this Act;

(b) a law of that State provides that an act may or shall be done by an authority of the State; and

(c) a part of the applied provisions corresponds to that law,

that authority is empowered to do that act under that part of the applied provisions.

(13.) Without limiting the effect of any of the preceding provisions of this section, it is declared that the powers of a person under the applied provisions may be exercised in a Commonwealth place in a State in respect of an act done in that State notwithstanding that the act was not done in or in relation to that place and the applied provisions as having effect in or in relation to that place have effect in relation to anything done by a person in the exercise of a power referred to in this sub-section.

(14.) Without limiting the effect of any other law of the Commonwealth, it is declared that the powers of a person under the law of a State may be exercised in that State in respect of an act done in that State notwithstanding that the act was done in or in relation to a Commonwealth place and the provisions of the laws of the State have effect in relation to anything done by a person in the exercise of a power referred to in this sub-section.

5.—(1.) The *Acts Interpretation Act* 1901–1966 (other than section 30) does not apply to or in relation to the applied provisions.

(2.) Sections 5, 6, 7, 7A and 86 of the *Crimes Act* 1914–1966 do not apply to or in relation to matters arising under the applied provisions.

(3.) Where there is in force an arrangement with the Governor of a State under sub-section (2.) of the next succeeding section, the provisions

Acts Interpretation Act, &c., inapplicable to applied provisions.

of the Acts set out in the Schedule to this Act do not apply to or in relation to matters arising under the applied provisions having effect in or in relation to a Commonwealth place in that State.

**Arrangements
with States.**

6.—(1.) Except as provided by the regulations made for the purpose of sub-section (6.) of section 4 of this Act, nothing in this Act has the effect of creating an office, body, court or other tribunal.

(2.) The Governor-General may make an arrangement with the Governor of a State for or in relation to the exercise or performance of a power, duty or function (not being a power, duty or function involving the exercise of judicial power) by an authority of the State under the applied provisions having effect in or in relation to a Commonwealth place in that State and, where such an arrangement is in force, the power, duty or function may or shall, as the case may be, be exercised or performed accordingly.

(3.) The Governor-General may make an arrangement with the Governor of a State with respect to any matter necessary or convenient for the purpose of carrying out or giving effect to this Act in or in relation to the State.

(4.) An arrangement under this section may contain such incidental or supplementary provisions as the Governor-General and the Governor of the State think necessary.

(5.) The Governor-General may arrange with the Governor of a State with whom an arrangement is in force under this section for the variation or revocation of the arrangement.

(6.) A copy of each instrument by which an arrangement under this section has been made, varied or revoked shall be published in the *Gazette*.

**Jurisdiction
of State
courts.**

7.—(1.) The several courts of a State are, within the limits of their several jurisdictions, whether those limits are as to subject matter or otherwise, but disregarding any limitation that exists by reason of a place being a Commonwealth place, invested with federal jurisdiction in all matters arising under the applied provisions as having, or as having had, effect in or in relation to a Commonwealth place.

(2.) The regulations that may be made for the purpose of sub-section (6.) of section 4 of this Act include regulations having the effect that provisions as modified by the regulations make provision for and in relation to investing a court of a State with federal jurisdiction, whether within the limits of its jurisdiction or otherwise.

**Conditions
subject to
which State
courts are
invested
with federal
jurisdiction.**

8.—(1.) The jurisdiction with which courts are invested by the last preceding section or by regulations made for the purpose of sub-section (6.) of section 4 of this Act is invested subject to the following conditions and restrictions and no others:—

- (a) a decision of such a court, whether in original or appellate jurisdiction, is not subject to appeal to Her Majesty in Council, whether by special leave or otherwise; and

- (b) where the law of a State prohibits any appeal from such a court, an appeal does not lie to the High Court from a decision of that court unless the High Court grants special leave to appeal.

(2.) Sections 39 and 68 of the *Judiciary Act* 1903–1969, and any other law of the Commonwealth that was passed or made before the commencement of this Act, do not, and, unless the contrary intention appears, any law of the Commonwealth that is passed or made after the commencement of this Act does not, operate so as to invest a court of a State with federal jurisdiction in a matter arising under the applied provisions.

(3.) Nothing in this Act affects the operation of section 38 of the *Judiciary Act* 1903–1969.

(4.) Sections 38A and 40A of the *Judiciary Act* 1903–1969 do not apply in relation to a matter arising under the applied provisions or under a law of a State by reason only that it involves the application or interpretation of section 52 of the Constitution in relation to Commonwealth places.

(5.) Paragraph (d) of sub-section (2.) of section 39 of the *Judiciary Act* 1903–1969 does not apply in relation to a matter arising under a law of a State in respect of which a court of a State is invested with federal jurisdiction by that sub-section where that jurisdiction is so invested by reason only that the matter involves the application or interpretation of section 52 of the Constitution in relation to Commonwealth places.

(6.) Sections 72 to 76 (inclusive) of the *Judiciary Act* 1903–1969 do not apply to or in relation to a trial in a court of a State for an offence against any part of the applied provisions.

9. Where an act or omission gives, or gave, to a person a cause of action under a part of the applied provisions and also gives, or gave, to that person a cause of action under the law of a State to which that part corresponds and the cause of action under the law of the State has been extinguished, the cause of action under the applied provisions is also extinguished.

10. Where an authority of a State or a person has purported to do an act under a law of a State in or in relation to a Commonwealth place and—

- (a) that law was inapplicable by reason of the operation of section 52 of the Constitution in relation to that Commonwealth place; and
 (b) a part of the applied provisions corresponded to that law,
 that act shall be deemed to have been done under that part of the applied provisions.

11. In so far as an instrument or other writing that relates to an act, matter or thing that has a connexion with a Commonwealth place in a State refers to a law of that State and—

- (a) that law is inapplicable by reason of the operation of section 52 of the Constitution in relation to Commonwealth places; and
 (b) a part of the applied provisions corresponds to that law,

that reference has effect as if it were a reference to that part of the applied provisions.

Procedure in proceedings under the applied provisions.

12.—(1.) Subject to this Act, proceedings (whether civil or criminal and whether original or appellate) under any part of the applied provisions shall be instituted and conducted in the same manner as though they were proceedings under the law of the State to which that part corresponds and all other proceedings in relation to any such proceedings (including declining to proceed further in a prosecution) shall also be taken as though the first-mentioned proceedings were proceedings under that law.

(2.) Where there is not in force an arrangement with the Governor of a State under sub-section (2.) of section 6 of this Act, the last preceding sub-section does not prevent the institution or conduct, in accordance with a law of the Commonwealth other than this Act, of proceedings under any part of the applied provisions having effect in or in relation to Commonwealth places in that State.

(3.) The trial on indictment of an offence against any part of the applied provisions shall be by jury.

Objection not allowable where two offences charged.

13. Objection shall not be allowed in any proceedings in which an offence is alleged against a part of the applied provisions by reason only that an offence is also alleged against a law of a State to which that part corresponds.

Continuance of proceedings where place found to be a Commonwealth place.

14. Where a person is charged with an offence against a law of a State and the court before which he is charged is satisfied that—

(a) that law is inapplicable by reason of the operation of section 52 of the Constitution in relation to Commonwealth places; and

(b) a part of the applied provisions corresponds to that law,

the proceedings shall be continued as though that person had been charged with the corresponding offence under that part of the applied provisions.

Proceedings on certain appeals.

15. Where, on an appeal from a judgment, decree, order or sentence of a court of a State or Territory of the Commonwealth in proceedings under a law of a State, not being an appeal to the High Court, the court is satisfied that—

(a) that law was inapplicable by reason of the operation of section 52 of the Constitution in relation to Commonwealth places; and

(b) a part of the applied provisions corresponds to that law,

the court shall deal with the appeal as though the proceedings in relation to which the appeal was brought had been brought under that part of the applied provisions and the judgment, decree, order or sentence had been given or made in proceedings so brought.

16. Unless the High Court gives special leave to appeal, an appeal does not lie to the High Court from a judgment, decree, order or sentence of—

Exceptions to appellate jurisdiction of High Court.

- (a) a Justice of the High Court;
- (b) a federal court other than the High Court; or
- (c) a court of a State or Territory of the Commonwealth,

if any ground relied upon in support of the appeal involves a question as to the operation or interpretation of section 52 of the Constitution in relation to a place (not being the seat of government).

17.—(1.) A certificate in writing given by an authorized person—

Certificates as to ownership of land.

- (a) as to the ownership of land, or of an estate or interest in land, specified in the certificate, on a date or during a period so specified; or
- (b) as to the existence and ownership, on a date or during a period specified in the certificate, of a right so specified in respect of land so specified,

is, in proceedings under, or purporting to be under, any part of the applied provisions, evidence of the matters stated in the certificate.

(2.) For the purposes of the last preceding sub-section—

- (a) an authorized person is a person in respect of whom there is in force for the time being a delegation of any power or function under section 64 of the *Lands Acquisition Act 1955–1966*; and
- (b) a writing purporting to be a certificate referred to in that sub-section shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

18.—(1.) Where there is in force an arrangement with the Governor of a State under sub-section (2.) of section 6 of this Act, an authority of that State may exercise or perform, in relation to a person convicted under any of the applied provisions having, or having had, effect in or in relation to a Commonwealth place in that State, the same powers and functions as it would have been empowered to exercise or perform under the laws of the State if the offence had been committed in the State otherwise than in a Commonwealth place.

Grant of pardon, remission, &c.

(2.) Nothing in this section affects any power or function of the Governor-General.

19.—(1.) If, by reason of a place ceasing, or having ceased, to be a Commonwealth place at a particular time, the applied provisions cease, or ceased, to have effect in or in relation to that place—

Savings.

- (a) the previous operation of any part of the applied provisions that had effect in or in relation to that place immediately before that time is not affected;

- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any part of those provisions is not affected;
- (c) any penalty, forfeiture or punishment incurred in respect of an offence against any part of those provisions is not affected;
- (d) any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment referred to in either of the last two preceding paragraphs is not affected; and
- (e) any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the applied provisions had not so ceased to have effect.

(2.) If, upon a place becoming, or having become, a Commonwealth place, a law of a State ceases, or ceased, to have effect in or in relation to that place—

- (a) the previous operation of that law or anything duly done or suffered under that law is not affected;
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under that law is not affected;
- (c) any penalty, forfeiture or punishment incurred in respect of an offence committed against that law is not affected;
- (d) any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment referred to in either of the last two preceding paragraphs is not affected; and
- (e) any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not so ceased to have effect.

(3.) It is not the intention of either of the last two preceding sub-sections to affect the operation of a law of a State.

Certain
payments to be
made by
Commonwealth
to States.

20.—(1.) The Commonwealth shall, from time to time, pay to a State an amount equal to each amount received by the Commonwealth under the applied provisions having effect in or in relation to Commonwealth places in that State.

(2.) The last preceding sub-section does not have effect with respect to an amount received under the applied provisions having effect in or in relation to Commonwealth places in a State during a period in respect of which there is not in force an arrangement with the Governor of that State under sub-section (2.) of section 6 of this Act.

(3.) There shall be deducted from an amount payable to a State under sub-section (1.) of this section in respect of a period any amount paid by the Commonwealth during that period under the applied provisions referred to *in* that sub-section.

(4.) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of sub-section (1.) of this section.

21. The *Audit Act* 1901–1969 does not apply in relation to an amount received by an authority of a State under the applied provisions having effect in or in relation to Commonwealth places in that State

Audit Act not to apply to certain receipts.

22. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

THE SCHEDULE

Section 5 (3.).

INAPPLICABLE PROVISIONS OF CERTAIN ACTS

1. Sections 8A, 9, 10, 13, 14, 15, 17, 18, 18A, 19, 19A, 19B, 20, 20A, 20B, 20C, 21, 21A, 21B and 21C of the *Crimes Act* 1914–1966.
 2. Sections 69, 70, 71 and 71A of the *Judiciary Act* 1903–1969.
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