

BETWEEN:

STATE OF QUEENSLAND
Appellant

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**TOM CONGOO, LAYNE MALTHOUSE
AND JOHN WATSON ON BEHALF OF
THE BAR-BARRUM PEOPLE #4**
First Respondents

**ATTORNEY-GENERAL OF THE
COMMONWEALTH OF AUSTRALIA**
Second Respondent

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**ATTORNEY-GENERAL
NORTHERN TERRITORY**
Third Respondent

TABLELANDS REGIONAL COUNCIL
Fourth Respondent

**ERGON ENERGY CORPORATION
LIMITED CAN 087 646 062**
Fifth Respondent

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TELSTRA CORPORATION LIMITED
Sixth Respondent

CONSOLIDATED TIN MINES LIMITED
Seventh Respondent

MS LAURELLE URSULA GUNDERSEN
Eighth Respondent

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MR GRANT HENRIK GUNDERSEN
Ninth Respondent

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THOMAS SAMUEL MAULONI
Tenth Respondent

DIANNE CALMSDEN MAULONI
Eleventh Respondent

MATHEW JOHN MAULONI
Twelfth Respondent

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ROBERT THOMAS MAULONI
Thirteenth Respondent

THOMAS JOHN MAULONI
Fourteenth Respondent

MR ROBERT GRAHAM WHITE
Fifteenth Respondent

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MS ROBYN DORIS WHITE
Sixteenth Respondent

STEPHEN JOHN CROSSLAND
Seventeenth Respondent

DALE ALBERT CROSSLAND
Eighteenth Respondent

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**ELIZABETH HAZEL DAWN
CROSSLAND**
Nineteenth Respondent

RENATO DOVESI
Twentieth Respondent

LINA DOVESI
Twenty-First Respondent

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WILLIAM DAVID MCGRATH
Twenty-Second Respondent

SHARON LESLEY MCGRATH
Twenty-Third Respondent

SUBMISSIONS ON BEHALF OF THE APPELLANT

I. CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

II. THE ISSUES

2. The appeal raises two issues:

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- (i) Did orders made under reg 54 of the National Security (General) Regulations (Cth) ('the Security Regulations') have the effect of extinguishing all native title rights and interests on the special case land?
- (ii) Did reg 54 enable the Commonwealth to take possession of the special case land simply by making orders purporting to take possession of such land?

III. SECTION 78B NOTICES

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3. The proceedings do not raise a matter arising under the Constitution or involving its interpretation. The State therefore does not consider that a notice under s 78B of the *Judiciary Act 1903* (Cth) is required.

IV. AUTHORISED REPORTS

4. The judgment of the Full Federal Court is reported in (2014) 218 FCR 358.

V. FACTS

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(a) *The National Security legislation and the military orders*

5. Section 5(1) of the *National Security Act 1939* (Cth) ('the NSA') was enacted shortly after Australia's entry into World War II. It provided for the Governor-General to make regulations for securing the public safety and defence of the Commonwealth. It relevantly provided for the making of regulations for authorising:

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- (i) the taking of possession or control, on behalf of the Commonwealth, of any property or undertaking; and
- (ii) the acquisition on behalf of the Commonwealth of any property other than land.

6. Under s 10 of the NSA, it was an offence for a person to contravene or fail to comply with any provision of a regulation made under the NSA or any order made pursuant to such a regulation.

7. Further, s 19 provided that that the NSA would continue in operation until a date to be fixed by proclamation, but in any event not longer than six months after the King had ceased to be engaged in war.

8. Pursuant to s 5(1) of the NSA, the Governor-General made a regulation that provided, amongst other things, for the Commonwealth to take possession of, and use, land for defence purposes.
9. Subregulation 54(1) of the Security Regulations provided for the taking of possession of land in these terms:
- 10 If it appears to the Minister of State for the Army to be necessary or expedient so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, he may, on behalf of the Commonwealth, take possession of any land, and may give such directions as appear to him to be necessary or expedient in connexion with the taking of possession of the land.
10. Subregulation 54(2) of the Security Regulations prescribed the consequences of the land being in the Commonwealth's possession. It provided:
- 20 While any land is in the possession of the Commonwealth in pursuance of a direction given under this regulation, the land may, notwithstanding any restriction imposed on the use thereof (whether by law or otherwise), be used by, or under the authority of, that Minister for such purpose, and in such manner, as he thinks expedient in the interests of the public safety or the defence of the Commonwealth, or for maintaining supplies and services essential to the life of the community; and that Minister, so far as appears to him to be necessary or expedient in connexion with the taking of possession or use of the land in pursuance of this sub-regulation—
- (a) may do, or authorize persons so using the land to do, in relation to the land, anything which any person having an unencumbered interest in fee simple in the land would be entitled to do by virtue of that interest; and
- (b) may by order provide for the prohibiting or restricting the exercise of rights of way over the land, and of other rights relating thereto which are enjoyed by any person, whether by virtue of an interest in land or otherwise.
- 30 11. Between 1943 and 1945 a delegate for the Minister of State made five orders under reg 54 over land in lot 619 on plan OL2, Parishes of Myosotis and Western, County of Hodgkinson ('the special case land').¹
12. Under each of the orders made under reg 54 ('the military orders'), the delegate of the Minister purported, by the terms of the order, to take possession of identified land. In simple terms, he then did the following:²
- 40 (i) directed the Deputy Assistant Quartermaster General Number 17 Lines of Communication Sub Area (or any person authorised by that officer) to occupy the identified land;
- (ii) authorised the Deputy Assistant Quartermaster General Number 17 Lines of Communication Sub Area (or any person authorised by him) to do anything

¹ Examples of the terms of an order are set out at (2014) 218 FCR 358 at [15] and [84]. Although the area covered by each order varied, the terms of the orders were otherwise very similar. Upon each order being made it, inter alia, cancelled the previous order.

² (2014) 218 FCR 358 at [15].

in relation to the land that the holder of a fee simple could do by virtue of that interest; and

(iii) prohibited all other persons from exercising ‘any right of way over the land or any other right relating thereto, whether by virtue of an interest in land or otherwise’.

10 13. At about the time of the first military order, the Commonwealth occupied at least some of the special case land and used it as an artillery range and live fire manoeuvre range for the training of infantry and armoured units preparing to deploy to the South West Pacific area during World War II.³ It ceased its occupation at the end of August 1945.⁴

(b) *The special case*

20 14. In September 2001, the Bar Barrum People made an application for a determination of native title over an area that included the special case land that had formerly been subject to the military orders. In August 2013, Justice Logan referred several questions, together with a special case, to the Full Federal Court.

15. The questions centred on the effect of the military orders on the native title rights and interests of the Bar Barrum People, and on whether the orders were invalid because of s 51(xxxi) of the Constitution.

16. Question 3 of the special case asked:

“Did the act of the Commonwealth in-

30 (a) *making the Military Orders wholly extinguish all native title rights and interests that then subsisted on the special case land, and, if not,*

(b) *being in physical occupation of at least some of the special case land pursuant to the Military Orders wholly extinguish all native title rights and interests that then subsisted on the special case land or that part of the special case land that had been physically occupied?”*

40 17. For the purpose of the special case, the parties agreed that subject to the extinguishing affect of the military orders, the Bar Barrum claimants hold at least non-exclusive native title rights and interests over the special case land as set out in paragraph 41 of the special case.⁵

³ (2014) 218 FCR 358 at [16].

⁴ (2014) 218 FCR 358 at [16].

⁵ Also set out in (2014) 218 FCR 358 at [94].

18. Subject to the question of whether military orders were invalid owing to the operation of s 51(xxxi) of the Constitution, the parties accepted that the military orders were validly made.⁶

19. A majority of the Full Federal Court (North and Jagot JJ) held that the military orders did not extinguish any native title rights of the Bar Barrum People.⁷ The majority also construed reg 54 as requiring more than simply the making of an order before the Commonwealth could take possession.⁸

10 20. Justice Logan dissented on each point.⁹

21. No member of the Full Court, however, held that the orders breached s 51(xxxi) of the Constitution.¹⁰ That finding is not subject to challenge in this appeal.

VI. ARGUMENT

(a) Common law extinguishment

20 22. It is common ground that the provisions of the *Native Title Act* 1993 (Cth) which provide expressly for extinguishment of native title are not engaged.¹¹ The extinguishing effect of the military orders is determined at common law.¹²

23. It is well established that native title can be extinguished by ‘a valid exercise of sovereign power inconsistent with the continued enjoyment or unimpaired enjoyment of native title’.¹³ Such an exercise of sovereign power can take various forms; it is not necessary that it take the form of an estate or interest in land granted to a third party. In *Ward v Western Australia* (‘*Ward*’), for example, Gleeson CJ, Gaudron, Gummow and Hayne JJ acknowledged this in stating:¹⁴

30 Whether native title rights have been extinguished by a grant of rights to third parties or *an assertion of rights by the executive* requires comparison between the legal nature and incidents of the right granted or asserted and the native title right asserted.

24. Where rights are created by a sovereign act, the question of whether there is a clear and plain intention to extinguish native title is determined not by reference to the subjective processes of those whose act is alleged to have extinguished native title.

⁶ Paragraph 37(a) Special Case.

⁷ (2014) 218 FCR 358 at [52]-[57].

⁸ (2014) 218 FCR 358 at [64].

40 ⁹ (2014) 218 FCR 358 at [85]-[89] and [112]-[114].

¹⁰ (2014) 218 FCR 358 at [67]-[70] (North and Jagot JJ), [116]-[125] (Logan J).

¹¹ Part 2 Division 2 in relation to past acts; Part 2 Division 2A in relation to intermediate period acts and Part 2 Division 2B in relation to previous exclusive possession acts and previous non-exclusive possession acts.

¹² *Western Australia v Brown* (2014) 306 ALR 168 at [31].

¹³ *Western Australia v Commonwealth* (1995) 183 CLR 373 at [468] pnt 5 (Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ); *Akiba v Commonwealth* (2013) 250 CLR 209 at [52] (Hayne, Kiefel, Bell JJ).

¹⁴ (2002) 213 CLR 1 at [468(5)] (emphasis added), adopted by Hayne, Kiefel and Bell JJ in *Akiba v Commonwealth* (2013) 250 CLR 209 at [61].

The question is whether the rights are inconsistent with the alleged native title rights and interests.¹⁵

25. The authorities establish several propositions about the comparison required.
26. First, it is an objective inquiry which requires identification of and comparison between the two sets of rights. That requires the legal nature of the rights to be ascertained.¹⁶

- 10 27. Secondly, there are no degrees of inconsistency. As Gleeson CJ, Gaudron, Gummow and Hayne JJ explained in *Ward*:¹⁷

Two rights are inconsistent or they are not. If they are inconsistent, there will be extinguishment to the extent of the inconsistency; if they are not, there will not be extinguishment. Absent particular statutory provision to the contrary, questions of suspension of one set of rights in favour of another do not arise.

28. Thirdly, there is no need to find permanent inconsistency between the two sets of rights.¹⁸ In other words, once inconsistency is found, then native title is extinguished.

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29. A detailed comparison between the rights granted and the native title rights and interests claimed to be held is not, however, always required. It is well established that a right to exclusive possession is inconsistent with native title.¹⁹ In *Fejo v Northern Territory*, for example, six members of the Court stated:²⁰

For present purposes let it be assumed that [the native title] rights may encompass a right to hunt, to gather or to fish, a right to conduct ceremonies on the land, a right to maintain the land in a particular state or other like rights and interests. They are rights that are inconsistent with the rights of a holder of an estate in fee simple. Subject to whatever qualifications may be imposed by statute or the common law, or by reservation or grant, the holder of an estate in fee simple may use the land as he or she sees fit *and may exclude any and everyone from access to the land.*

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¹⁵ *Ward* (2002) 213 CLR 1 at [78] (Gleeson CJ, Gaudron, Gummow and Hayne JJ).

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¹⁶ *Ward* (2002) 213 CLR 1 at 89 [78] (Gleeson CJ, Gaudron, Gummow and Hayne JJ), [619] (Callinan J); *Akiba* (2013) 250 CLR 209 at [35] (French CJ and Crennan J), [52], [61]-[62] (Hayne, Kiefel and Bell JJ). *Western Australia v Brown* (2014) 306 ALR 168 at [33]-[34].

¹⁷ (2002) 213 CLR 1 at [82]; see also *Akiba* (2013) 250 CLR 209 at [35] (French CJ and Crennan J).

¹⁸ *Ward* (2002) 213 CLR 1 at [80] (Gleeson CJ, Gaudron, Gummow and Hayne JJ), [472] (McHugh J, agreeing with Callinan J), [625]-[627] (Callinan J).

¹⁹ *Fejo v Northern Territory* (1998) 195 CLR 96 at [43], [47] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ), [105] (Kirby J); *Ward* (2002) 213 CLR 1 at 91 [82], [369] (Gleeson CJ, Gaudron, Gummow and Hayne JJ), [472] (McHugh J, agreeing with Callinan J), [620]-[627] (Callinan J); *Wilson v Anderson* (2002) 213 CLR 401 at [11]-[16] (Gleeson CJ), [36] (Gaudron, Gummow and Hayne JJ); *Western Australia v Brown* (2014) 306 ALR 168 at [36], [46].

²⁰ (1998) 195 CLR 96 at [47] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ) (emphasis added).

30. The grant of exclusive possession is not confined to exclusive possession arising from the grant of a fee simple or a common law lease, but may be granted pursuant to a statute.²¹

31. The question of whether a right of exclusive possession has been granted is not simply determined by the terminology employed but may require an examination of the actual rights conferred.²²

10 32. In *Western Australia v Brown*, the Court considered what constituted a right of exclusive possession in relation to the statutory grant of a mineral lease. In that regard, the court considered that a right of exclusive possession affords the holder of the right 'to use the land as he or she sees fit and [to] *exclude any and everyone from access to the land*'.²³

33. In terms of the question of inconsistency where a right of exclusive possession has been conferred the Court further stated:²⁴

20 'The grant of a right to exclude any and everyone from access to the land for any reason or no reason is inconsistent with a continued existence not only of a right in any person other than the grantee to gain access to the land but also of any right which depends on access to the land'.

(b) *Military orders extinguished native title over the special case land*

34. The NSA, and the Security Regulations made pursuant to it, were designed to make provision for the safety and defence of the Commonwealth and its territories during the present state of war. It was acknowledged that the NSA was a far reaching measure which gave far reaching powers to the Government.²⁵

30 35. The scope of matters which can be regulated under the defence power in s 51(vi) of the Constitution are considerably broad. In *R v Foster*, for example, the Court stated:²⁶

During the actual course of war in the sense of prosecution and continuance of hostilities defence necessities may reasonably be considered to require extensive and detailed control of the community by the Commonwealth in relation not only to war service and war supplies, but also to industry in

40 ²¹ For example *Ward* (2002) 213 CLR 1 at [355]-[357] in relation to a special lease and at [432] in relation to a perpetual lease: see also *Wilson v Anderson* (2002) 213 CLR 401 at [12] in the context of a perpetual lease.

²² *Western Australia v Brown* (2014) 306 ALR 168 at [43]. In *Wik* (1996) 187 CLR 1, while the majority accepted exclusive possession necessarily extinguished native title they found that the pastoral leases did not confer a right of exclusive possession such that they necessarily extinguished native title rights and interests: at 132 (Toohey J, with the concurrence of Gaudron, Gummow and Kirby JJ). (2014) 306 ALR 168 at [36] (original emphasis).

²³ (2014) 306 ALR 168 at [36]. See also *Ward* (2002) 213 CLR 1 at [52] where the plurality stated that the holder of a right as against the whole world, to possession of the land, may control access by others and in general decide how the land will be used.

²⁵ Second Reaching Speech, Mr Menzies, Hansard, 17 September 1939, 163.

²⁶ (1949) 79 CLR 43 at 81.

general, food, clothing and housing, and financial, economic and social conditions.

36. Consistently with the breadth of the defence power reg 54 provided a wide power to the Minister to take possession of land if satisfied that it appeared to 'be necessary or expedient so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community'. In the context of wartime any of those matters would not have been difficult to satisfy.
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37. The rights created by the military orders under reg 54 enjoyed by the Commonwealth were proprietary.²⁷ Under each order, the Minister directed the Deputy Assistant Quartermaster General Number 17 Lines of Communication Sub Area (or any person authorised by him) to occupy the land and to remove all personal property not required for Commonwealth purposes and authorised that officer to do anything in relation to the land that the holder of an unencumbered estate in fee simple could do by virtue of that interest. More specifically, by paragraph 3 of the orders, the Minister also prohibited all other persons from exercising 'any right of way over the land or any other right relating thereto, whether by virtue of an interest in land or otherwise' while the land remained in the possession of the Commonwealth.
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38. The Commonwealth's possession was plainly exclusive of the rights of all others.²⁸ The right granted by the terms of the military orders was a right of exclusive possession. As Williams J observed in *Minister of State for the Army v Dalziel* ('*Dalziel*'), the Commonwealth had 'for an indefinite period, which [might] last during the war and for six months thereafter, an exclusive right to possess the land against the whole world, including the persons rightfully entitled to the possession of the land at common law'.²⁹
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39. Consistently with *Dalziel*, all members of the Full Federal Court accepted that the military orders gave a right of exclusive possession to the Commonwealth. Justices North and Jagot, who formed part of the majority, repeatedly recognised that the Commonwealth's 'possession' was 'exclusive possession' under the military orders.³⁰ They observed, for example, that 'the Commonwealth's exclusive possession, for the duration of the exercise of the power, precluded the exercise of native title rights and interests'.³¹ Justice Logan, who dissented, also referred to the

40 ²⁷ *Minister of State for the Army v Dalziel* (1944) 68 CLR 261 at 289 (Rich J), 290 (Starke J) and 299 and 305 (Williams J) where the orders made were relevantly indistinguishable from terms of the orders presently being considered.

²⁸ *Minister of State for the Army v Dalziel* (1944) 68 CLR 261 at 285-286, 289 (Rich J) (speaking of 'the appropriation by the Commonwealth to itself, for an indefinite period of exclusive possession'); and the comments at 290 (Starke J), 301-302, 305 (Williams J). In addition, anyone who contravened the direction would also have committed an offence: see s 10(1) of the NSA. Regulation 90 of the National Security Regulations also obliged persons to comply with a direction.

²⁹ (1944) 68 CLR 261 at 299. See also *JT International SA v Commonwealth* (2012) at [280] (Crennan J), [358] (Kiefel J).

³⁰ (2014) 218 FCR 358 at [51], [52], [53], [57].

³¹ (2014) 218 FCR 358 at [57].

Commonwealth's 'unfettered and exclusive possession' of the land.³² It followed that the Federal Court implicitly accepted that the Commonwealth could prevent anyone and everyone from accessing the special case land while the Commonwealth remained in possession of it pursuant to the military orders.

10 40. Consistent with the authorities referred to above, and the majority's acceptance that the Commonwealth enjoyed exclusive possession, had the majority correctly applied the inconsistency of rights test they would have concluded that any native title rights were extinguished.³³ However, the majority in the Full Federal Court held that native title was not extinguished by the military orders. Their Honours found that notwithstanding the grant of exclusive possession, the context of the present case was different. In this regard their Honours distinguished the effect of military orders from the effect of leases and fee simple grants. In the latter cases, they claimed, 'the Crown as radical title holder may be said to have evinced an objective intention by the nature of the third party grant that the common law no longer recognise holding of native title rights'.³⁴

20 41. In terms of inconsistency of rights, Justices North and Jagot considered that the inquiry did not 'begin and end with the fact that the Commonwealth took to itself a right of exclusive possession'.³⁵ The Commonwealth did not grant to any person, including itself, some estate or interest in the land inconsistent in its incidents with continuing native title rights and interests.³⁶ Key to the majority's findings was their conclusion that the objective intention of the Commonwealth was that all rights and interests in the land should yield to the Commonwealth's exclusive possession for the duration of the exercise of power under reg 54 but should otherwise continue.³⁷ Further, the fact that the Commonwealth 'took to itself exclusive possession for a limited purpose for a limited time on the objectively ascertainable premise apparent from the legislative scheme that all underlying rights and interests should continue'³⁸ was not inconsistent with the continuing existence of native title rights. Justices North and Jagot encapsulated their views in this way:³⁹

Neither the broad nature of the Commonwealth's rights (as if it held fee simple title) nor the absolute prohibition on other right holders enjoying their rights for the duration of the Commonwealth's power alters the fact that the legislation effected a scheme under which the rights of others would continue but would not be able to be exercised only for so long as required given the exigencies presented by the war.

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³² (2014) 218 FCR 358 at [115].

³³ *Ward* (2002) 213 CLR 1 at [370].

³⁴ (2014) 218 FCR 358 at [51] and [54] cf para [36].

³⁵ (2014) 218 FCR 358 at [52].

³⁶ (2014) 218 FCR 358 at [52].

³⁷ (2014) 218 FCR 358 at [52].

³⁸ (2014) 218 FCR 358 at [53].

³⁹ (2014) 218 FCR 358 at [54].

42. Their Honours' reasoning, with respect, should be rejected. The approach of the majority does not accord with authority nor are their findings as to the statutory intention sustainable.
43. In *Akiba*, Hayne, Kiefel and Bell JJ observed that inconsistency of rights lies at the heart of any question of extinguishment.⁴⁰ It is therefore essential to engage in an objective comparison of the rights created by legislation or asserted by the executive. That accords with the fact that the inconsistency of rights test was developed in order to avoid the difficulties with determining the purpose of legislation enacted at a time when native title had not been recognised by the common law.⁴¹ The NSA and the Security Regulations were enacted at such a time. While the terms of the legislation are critical to identifying the legal right conferred, it is the process of comparison which reveals the objective intention.
44. In these circumstances, North and Jagot JJ ought to have applied the inconsistency of rights test. Their Honours did not do so.⁴² Instead, while acknowledging the right given to the Commonwealth (a right of exclusive possession), they purported to derive an 'objective legislative intention' from a number of factors, including the lack of radical title, that had little or no bearing on the issue of extinguishment. In doing so, their Honours went astray.
45. The specific errors made by the majority are outlined below.
46. First, the majority's emphasis on the Commonwealth's lack of radical title to the special case land was mistaken. The concept of radical title 'is a tool of legal analysis which is important in identifying that the Crown's rights and interests in relation to land can co-exist with native title rights and interests'.⁴³ But that is the limit of its use. The fact that a sovereign responsible for the relevant act in question lacks radical title to land does not give rise to any presumption that the sovereign does not intend to extinguish native title. No authority of this Court holds that to be the case. On that basis alone, the majority's reliance on radical title was unwarranted.
47. Furthermore, reg 54 undercuts the approach taken by North and Jagot JJ. That regulation allowed the Commonwealth to take possession of land anywhere in Australia; it did not distinguish between land to which the Commonwealth had radical title (such as land in the Northern Territory) and land to which the Commonwealth did not have radical title (such as land in Queensland). Put differently, nothing in the terms or subject matter of reg 54 indicated that the effect of orders on native title could depend on whether the Commonwealth held radical

⁴⁰ (2013) 250 CLR 209 at [52]. French CJ and Crennan J also recognised the pre-eminence of inconsistency as a criterion of extinguishment of native title rights by the grant of rights by the Crown or pursuant to statutory authority: at [35]; see also *Western Australia v Brown* (2014) 306 ALR 168 at [36].

⁴¹ *Akiba* (2013) 250 CLR 209 at [35] (French CJ and Crennan J). See also at [61]-[62] (Hayne, Kiefel and Bell JJ).

⁴² cf (2014) 218 FCR 358 at [53].

⁴³ *Commonwealth v Yarmirr* (2001) 208 CLR 1 at [49] (Gleeson, Gaudron, Gummow and Hayne JJ).

title to the land that it possessed. Whether the Commonwealth did or did not hold radical title to that land could not objectively indicate any intention on behalf of the Commonwealth in terms of extinguishment. For the majority to have relied upon the absence of radical title to the special case land was therefore an error.

- 10 48. Secondly, contrary to the majority in the Full Federal Court,⁴⁴ the fact that the military orders did not grant an estate or interest in land to a third party did not suggest an objective intention not to extinguish native title. Such a view finds little support in the authorities on inconsistency of rights.⁴⁵ Nor could such an approach be correct since it fails to acknowledge the variety of different ways that an exercise of sovereign power can extinguish native title. The question of inconsistency of rights depends on the nature of the right created not the party to whom it is granted. The proprietary right enjoyed by the Commonwealth whereby it was conferred with exclusive possession was not, in terms of determining inconsistency, any different from that granted under a short term grazing lease.⁴⁶
- 20 49. Thirdly, the majority's claim that the Commonwealth took to itself exclusive possession 'for a limited purpose for a limited time' offers no basis for distinguishing the military orders from cases where the grant of exclusive possession has been found to extinguish native title rights. Leases granted for particular purposes, such as grazing or for wharves or factories, may nonetheless confer a right of exclusive possession.⁴⁷
- 30 50. Regulation 54, under which the orders were made, enabled the Minister of State for the Army to take possession of land on behalf of the Commonwealth if it appeared to him to be necessary or expedient to do so in the interests of public safety or the defence of the Commonwealth, the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community.⁴⁸ Once

⁴⁴ (2014) 218 FCR 358 at [51].

⁴⁵ Indeed such an approach runs counter to the approach to inconsistency identified in *Ward* (2002) 213 CLR 1 at [468(5)] (Gleeson, Gaudron, Gummow and Hayne JJ); *Akiba* (2013) 250 CLR 209 at [61] referred to in [23] above.

⁴⁶ *Ward* (2002) 213 CLR 1 at [370]. Indeed the right conferred by the order is arguably a wider one given it confers upon the Commonwealth the rights that could be exercised by a fee simple owner.

40 ⁴⁷ See, for example, the special leases discussed in *Ward* (2002) 213 CLR 1 at [355]-[357] (Gleeson, Gaudron, Gummow and Hayne JJ), [739]-[745] (Callinan J); and the grazing lease in *Wilson v Anderson* (2002) 213 CLR 401 at [27] (Gaudron, Gummow and Hayne J), [190] (Callinan J) (pointing out that the covenant required the lease to be used for grazing purposes only). It is noteworthy that the grazing lease in *Wilson* contained a covenant that the lessee was not to interfere with any reserves, roads, tracks or the use thereof by any person, and a covenant to permit the Commissioner and all persons authorised by the Minister or the Commissioner to enter and view the whole or any part of the lease or buildings or other improvements thereon: see (2002) 213 CLR 401 at [189]. Neither of these covenants detracted from the right of exclusive possession.

⁴⁸ The scope for judicial review of the state of mind provisions of the kind contained in Reg 54 would have been limited: see *Buck v Bavone* (1976) 135 CLR 110 at 118-119 (Gibbs J); *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 276. That is particularly so in wartime, when the control of the economy and civil society is regarded as vital to the defence of the nation: see *Farvey v Burvett* (1916) 21 CLR 433 at 453, 455 (Isaacs J); *Andrews v Howell* (1941) 65 CLR 255; *South Australia v Commonwealth (First Uniform Tax Case)* (1942) 65 CLR 373 at 450-1 (McTiernan J); *R v Foster* (1949) 79 CLR 43 at 81.

possessed, the Minister, and persons whom he authorised, could essentially do anything in relation to the land which any person having an unencumbered interest in fee simple in the land would be entitled to do by virtue of that interest given the breadth of matters to which reg 54 extended. The Minister and those authorised by him upon taking possession under reg 54, were not confined to entry upon the land for a particular or limited purpose.⁴⁹ In addition, the Minister, upon being satisfied of the matters referred to in reg 54, could by order prohibit all other persons from exercising 'any right of way over the land or any other right relating thereto, whether by virtue of an interest in land or otherwise'.⁵⁰ Reg 54 and the military orders made under it therefore conferred a vast range of rights and powers upon the Commonwealth in respect of the whole of the land possessed. As several judges in *Dalziel* recognised, the Commonwealth obtained the right to exclude any and everyone from access to the land while the Commonwealth remained in possession of it.⁵¹

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51. Further, the prohibition related to the exercise of any right by anyone relating to the land whether by virtue of an interest in the land or otherwise and therefore extended to native title rights in the land. By virtue of the fact that the Deputy Assistant Quartermaster was vested with the power to do anything that the holder of an unencumbered estate in fee simple could do, the Deputy Assistant Quartermaster would have been entitled to bring an action in trespass against any person on the land.⁵² No exception was made by the terms of the order for any person to be present on the land under any right other than the order.⁵³ By the terms of the orders the Deputy Assistant Quartermaster could exclude any and everyone from access to the land for any reason or no reason. He was not confined to being able to exclude persons who were seeking to use the land for a particular purpose.⁵⁴

52. No analogy can be drawn between the rights given to the Commonwealth by the military orders and the limited rights conferred by a mineral lease or a pastoral lease.⁵⁵ The purpose in those cases was relevant in determining whether the right

⁴⁹ These points were recognised by Logan J: (2014) 218 FCR 358 at [109], [114].

⁵⁰ See paragraph 3 of each of the military orders, which applied to the 'said land' described in the schedule.

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⁵¹ Any other view would be difficult to reconcile with the terms of reg 54(2) and the ability to prohibit others having an interest in land from exercising their rights. It would be incredible if the Commonwealth, having validly taken possession of land for the purpose of, say, a live fire training range and having ordered that no one could exercise their rights over the land, could not exclude persons from it.

⁵² Aside the fact that acting in contravention of the military orders would have constituted an offence under s 10 NSA.

⁵³ In any event, a statutory provision for entry would not necessarily preclude a finding of exclusive possession: see *Ward* (2002) 213 CLR 1 at [354] (Gleeson CJ, Gaudron, Gummow and Hayne JJ); *Wilson v Anderson* (2002) 213 CLR 401 at [114] (Gaudron, Gummow and Hayne JJ).

⁵⁴ Cf *Western Australia v Brown* 306 ALR 168 at [46].

⁵⁵ See *Western Australia v Brown* [2014] (2014) 306 ALR 168 at [44] (describing the right granted by the instrument of lease to the joint venturers as 'liberty to go into and under the land, during the currency of the mineral lease, and to get and take away the iron ore that they found there'). See also *Ward* (2002) 213 CLR 1 at [308] (Gleeson CJ, Gaudron, Gummow and Hayne JJ).

conferred was truly one of exclusive possession or not.⁵⁶ Unlike such leases, the orders secured to the Commonwealth exclusive possession of the land, something that the majority in the Full Federal Court accepted.⁵⁷

53. Further, although impermanent, the orders were no different in that respect from leases for a term of years.⁵⁸ The majority therefore erred in regarding the limitations as to time and purpose as negating any inconsistency between the rights asserted pursuant to the orders and the native title rights. Their approach is inconsistent with the proposition that there are no degrees of inconsistency of rights⁵⁹ and that inconsistency need not be permanent.⁶⁰

54. Fourthly, and relatedly, the majority's approach is difficult to reconcile with that in *Western Australia v Brown*.⁶¹ The Court found in that case that the mining leases did not extinguish native title and distinguished leases that conferred a right of exclusive possession. However, the Court added:⁶²

That the rights [of the joint venturers] were not inconsistent can readily be demonstrated by considering the position which would have obtained on the day following the grant of the first of the mineral leases. *On that day, the native title holders could have exercised all of the rights that now are claimed anywhere on the land without any breach of any right which had been granted to the joint venturers. That being so, there was not then, and is not now, any inconsistency between the rights granted to the joint venturers and the claimed native title rights and interests.*

55. The present case is distinguishable from *Western Australia v Brown*. None of the rights of the Bar Barrum People over the special case land were exercisable from the moment that the Commonwealth took possession under the military orders. That supports the conclusion that their native title rights were inconsistent with the rights conferred. The majority of the Full Court, however, did not give this matter any consideration. Instead they inferred an intention that the rights would continue even though they could not be exercised from the time possession was taken.

⁵⁶ Eg *Ward* at [178], [181]-[186] in relation to pastoral leases, [308] where a lease granted for mining purposes only permitted the lessee to exclude others from the lease area seeking to use it for those purposes; *Western Australia v Brown* (2014) 306 ALR 168 at [44]-[45].

⁵⁷ (2014) 218 FCR 358 at [51]-[52] (North and Jagot JJ); cf *Western Australia v Brown* [(2014) 306 ALR 168 at [55]; even though the land could only be used for defence purposes, the right to exclusive possession was unqualified. Further, providing for the exercise of the rights of a holder of an estate in fee simple together with the prohibition on the exercise of rights provided the Commonwealth with similar rights to an owner of land in fee simple cf (2014) 218 FCR 358 at [56] (North and Jagot JJ).
⁵⁸ (2014) 218 FCR 358 at [114] (Logan J). See also *Western Australia v Ward* (2002) 213 CLR 1 ('*Ward*') at [354]-[357], [369]-[370] (Gleeson, Gaudron, Gummow and Hayne JJ); *Wilson v Anderson* (2002) 213 CLR 410 at [204] (Callinan J) (accepting that leases for a term of years may extinguish native title).

⁵⁹ *Western Australia v Brown* [2014] HCA 8 at [38].

⁶⁰ *Ward* (2002) 213 CLR 1 at 91 [82] (Gleeson CJ, Gaudron, Gummow and Hayne JJ), [472] (McHugh J, agreeing with Callinan J), [625]-[627] (Callinan J).

⁶¹ (2014) 306 ALR 168.

⁶² (2014) 306 ALR 168 at [57] (emphasis added).

56. Fifthly, while the Security Regulations were directed to possession of property as opposed to its acquisition, that did not manifest an objective intention that all interests in land, including native title rights, would continue despite the Commonwealth taking possession.⁶³ It is true that reg 54(3) gave the Commonwealth the power to request information from the ‘owner or occupier’ of any land in relation to the execution of reg 54. But such a generally expressed power to obtain information from a person who is the ‘owner or occupier’ did no more than identify persons who are obliged to provide the Commonwealth with the information requested; it does not presuppose that those rights necessarily continue.
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57. The compensation provision in reg 60D contemplated that property rights or interests, as well as contractual rights, might be lost by the exercise of powers under reg 54 and certain other regulations. That suggests that the precise effect of an exercise of power under reg 54 was to be determined by application of the general law to the facts of the particular case. The regulation therefore did not support an objective intention that *all* interests in land, any more than all contracts, would necessarily continue.
58. Put differently, the relevant intention of the legislation was to permit the Commonwealth to take possession of the land with potentially the full rights of a fee simple owner, without acquiring the property. This was correctly identified by Logan J.⁶⁴ The Commonwealth was not concerned with preserving any interest; what mattered was that it took possession of land for its purposes, and those who suffered loss or damage as a result could seek compensation.
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59. Sixthly, the findings in *Dalziel*⁶⁵ and *Brisbane Amateur Turf Club*⁶⁶ that the leases continued notwithstanding the Commonwealth’s possession support no different view.⁶⁷
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60. Estates or interests in land continued by virtue of the non-derogation principle, whereby a grant of an interest in land cannot be superseded by a subsequent inconsistent grant made to another person without clear statutory authority.⁶⁸ In accordance with that principle, the acquisition by the Commonwealth of possession

⁶³ Cf (2014) 218 FCR 358 at [51].

⁶⁴ (2014) 218 FCR 358 at [115].

⁶⁵ See, for example, *Dalziel* (1944) 68 CLR 261 at 301 (Williams J): ‘It is true that the entry into possession by the Commonwealth does not determine any estate or interest in the land, so that in the present case the Bank of New South Wales continues to be the owner of the land in fee simple and the respondent continues to be a tenant of the Bank of New South Wales from week to week...’

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⁶⁶ (1949) 80 CLR 123 at 148 (Latham CJ), 162 (Dixon J).

⁶⁷ cf (2014) 218 FCR 358 at [53]. Although the majority stated that their findings did not involve a question of ‘suspension’ of rights, that was arguably what they found. Native title, on their view, would be suspended until such time as the Commonwealth’s exclusive possession ceased to exist. In *Ward*, however, the proposition that, absent statutory provision, suspension could result from inconsistency of rights was rejected: see (2002) 213 CLR 1 at [78].

⁶⁸ *Mabo v Queensland (No. 2)* (1992) 175 CLR 1 at 64 (Brennan J); *Western Australia v Commonwealth* (‘*Native Title Case*’) (1995) 183 CLR 373 at 439 (Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ).

pursuant to military orders would be presumed not to have extinguished the underlying estates or interests in the land, such as the tenancy of Mr Dalziel.⁶⁹

61. The non-derogation principle, however, does not apply to native title rights. They remain inherently vulnerable to extinguishment.⁷⁰ The rights conferred on the Commonwealth were inconsistent with the continued existence of native title rights. The orders therefore extinguished the existing rights.
- 10 62. As Logan J found, moreover, there was nothing on the face of the NSA, the Security Regulations or the military orders which manifested any intention to preserve any native title right at all.⁷¹ That fact, combined with the factors in paragraphs 55-57, makes it difficult to glean any objective intention not to extinguish native title despite the conferral of a right of exclusive possession on the Commonwealth.⁷²
- 20 63. Intertwined with its finding of an intention that all underlying rights and interests continued, the majority incorrectly characterised the NSA and the Security Regulations as being directed to the exercise of rights rather than recognising that the orders created rights in the Commonwealth.⁷³
64. The orders conferred rights upon the Commonwealth and did not simply seek to regulate native title rights. The regulation of the exercise of rights would call for the application of a different test; namely, whether there was inconsistency between native title rights and the legislative scheme, not whether there was an inconsistency of rights, as was the case in *Akiba*.⁷⁴
- 30 65. However, even if such an analysis were called for, while an examination of rights cannot be at a high level of generality, the majority erred in finding that the rights granted under the military orders did not as a matter of substance prohibit the exercise of native title rights such that they were extinguished.⁷⁵ The direction that 'no person shall exercise any right of way over the land or any other right relating thereto' was not regulatory but, as Logan J found, was destructive of the native title rights claimed.⁷⁶ It was, in substance, a prohibition.
66. Accordingly, the Full Court's findings on the effect of the military orders were erroneous. The military orders extinguished all the native title rights of the Bar Barrum People over the special case land.

40 ⁶⁹ See (2014) 218 FCR 358 at [113] (Logan J).

⁷⁰ *Mabo v Queensland (No. 2)* (1992) 175 CLR 1 at 64.

⁷¹ (2014) 218 FCR 358 at [115].

⁷² Obviously the State contends that the objective intention is established by the comparison of the right of exclusive possession conferred upon the Commonwealth by the military orders with the native title rights. It further contends, however, that there is no evident statutory intention which seeks to preserve native title rights in the face of exclusive possession, if it was relevant to ascertain that separately from the characterization of the right.

⁷³ (2014) 218 FCR 358 at [53].

⁷⁴ (2013) 250 CLR 209 at [35] (French CJ and Crennan J), [68] and [72] (Hayne, Kiefel and Bell JJ).

⁷⁵ See (2014) 218 FCR 358 at [58].

⁷⁶ See (2014) 218 FCR 358 at [111]. Subregulation 54(2) itself distinguished between a prohibition on the exercise of rights of way and a restriction on such rights. *Akiba* (2013) 250 CLR 209 at [64].

(ii) ***The Commonwealth took possession by making the military orders***

67. Given reg 54 provided for the taking of possession of the land for the Commonwealth by the Minister, the taking of possession required an act taking control of the land⁷⁷, not necessarily physical occupation. That is further evident from the distinction in reg 54 itself between ‘possession’ and ‘use’. In any event, physical possession was taken over at least part of the land in the present instance.
- 10 68. On the proper construction of reg 54 the act of making the military orders was sufficient for the Minister’s delegate to take possession. No further act was required.
69. The majority of the Full Federal Court found that the Commonwealth did not take possession of the land identified in the military orders merely by the making of those orders. In their view, although the Commonwealth did not have to occupy land before taking possession of it, the Commonwealth had to manifest its intention to take possession of land by some means additional to the act of making the military order.⁷⁸
- 20 70. The construction advanced by the Full Court does not accord with the proper construction of the regulation and leads to uncertain and arguably absurd outcomes. That is contrary to the well-established approach to statutory construction.⁷⁹
71. First, the fact that reg 54 applied to all types of land throughout Australia does not suggest that the Commonwealth could only have taken possession by taking some step in addition to making the military orders. Justices North and Jagot offer no explanation for their claim that, given the different types of land in Australia, taking possession by making an order would seem to be ‘inherently impractical and unlikely’.⁸⁰ Far from supporting that claim, the absence of any wording supporting such a requirement, as well as the wartime context, and the types of land to which reg 54 applied all support a statutory intention that possession could be taken by making an order given it would be expedient and practical. Moreover, given that the prohibition or restriction of those holding rights and interests relating to land in reg 54(2)(b) could be made by order, it is unlikely that the taking of possession itself would require more to be done.
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40 ⁷⁷ Possession has been recognized as a difficult notion to define and of more than one meaning: *Mabo v Queensland (No 2)* (1992) 175 CLR 1 at 270 (Toohey J). Possession and occupation are different concepts: *Ward* (2002) 213 CLR 1 at [518] (McHugh J).

⁷⁸ (2014) 218 FCR 358 at [64]; cf Logan J (2014) 238 FCR 358 at [85]-[89].

⁷⁹ *R v Lyon* (1906) 3 CLR 770 at 787 (O’Connor J); *Metropolitan Coal Company of Sydney Ltd v Australian Coal and Shale Employees Federation* (1917) 24 CLR 85 at 99 (Isaacs and Rich JJ); *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation* (1980) 147 CLR 297 at 320-321 (Mason and Wilson JJ); *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408 (Brennan CJ, Dawson, Toohey and Gummow JJ) Pearce and Geddes, *Statutory Interpretation in Australia*, 7th ed, 2011 at [2.39].

⁸⁰ (2014) 218 FCR 358 at [64].

72. Secondly, in contrast to other provisions in the Security Regulations,⁸¹ reg 54(1) prescribed no particular method of exercising the powers given to the Minister to take possession. That does not support a construction that an extra step was required to the making of an order. That suggests that possession could have been by the making of an order but may have been taken in other ways such as taking physical possession.⁸² Subregulation 54(2) contemplated possession could be taken by an order. It referred to land being in the possession of the Commonwealth 'in pursuance of a direction given under this regulation'. Those words contemplated that possession might have been taken pursuant to a direction made in an order.⁸³ This conclusion is further supported by the distinction between possession of the land and use of the land in reg 54(2). That distinction and a natural reading of the provision suggest that the majority's construction that the direction referred to in reg 54(2) authorises a person to take possession rather than effects possession is incorrect.

73. Of course, in regulating or prohibiting the exercise of rights of way or rights relating to the land the Minister was obliged to make an order pursuant to reg 54(2)(b). It is clear from the:

- (i) wording of reg 54(1): 'take possession of land and may give such directions...in connexion with the taking of possession';
- (ii) wording of reg 54(2): 'possessionin pursuance of a direction'; and
- (iii) wording of reg 54(2): 'in connexion with the taking of possession'

that the statutory intention was that an order could be made taking possession, making directions and prohibiting the exercise of rights relating to the land simultaneously.

74. Thirdly, the majority's construction generates considerable uncertainty. Because the majority considered what might have to be done to take possession might vary depending on the land in question, it is unclear what the Commonwealth needed to do to invoke reg 54. For example, in the case of a large area of land in the countryside that the Commonwealth sought to possess, the majority's construction leaves it unclear whether the Commonwealth would have had to fence the entire area, put up signs in one part of it, or do something else. Further, it is unclear whether taking physical possession of part of the land would be sufficient to take possession of the whole of the land which was the subject of the order. A construction that leaves it uncertain what the Commonwealth needed to do just to

⁸¹ See, for example, reg 53(2) (relevantly providing that the Minister might 'by order' provide for prohibiting or restricting the doing on any particular land of any work specified in the order); reg 55 (providing that the Minister 'by order' might authorise the use of land specified for naval, military or air force purposes during the period specified in the order); reg 57(1).

⁸² For an example where the Commonwealth took possession before an order was made, see *In re Chandler* (1944) St R Qd 195.

⁸³ (2014) 218 FCR 358 at [87].

take possession of land for defence purposes is one that should be avoided if there is a reasonable alternative.⁸⁴

- 10 75. Fourthly, the majority's reliance on s 10 of the NSA is misplaced. Justices North and Jagot ask whether a person can be said to have done something on land prohibited by the order if the direction to take possession is given but is never manifested. This factor, they claim, indicates that some manifestation of the Commonwealth's intention to take possession of the land in addition to the mere act of making a direction and order is required. Yet this reasoning conflates the act of taking possession of land with communicating that act to others. The two are distinct, and there is no guarantee that the steps taken by the Commonwealth to take possession (whatever they might be) would necessarily bring the taking of possession to the attention of anyone. Further, as set out above, the restriction or prohibition on the exercise of rights by those holding interests in the land, which would be a likely subject of contravention, was to be done by order.
- 20 76. In any event, the possible difficulties with the application of s 10 of the NSA would not distinguish reg 54 from many regulations that provided for certain powers to be exercised by order.⁸⁵ Except where specified,⁸⁶ there was no requirement to publish such orders in the Commonwealth *Gazette* or to serve them on persons who were affected. This factor therefore does not support the majority's construction.
77. Accordingly, the construction advanced by the majority should not be accepted.

VII. APPLICABLE LEGISLATION

- 30 78. A copy of the legislation as in force at the relevant times is contained in the annexure.

VIII. ORDERS

- 40 79. The State seeks orders that:
- (i) the appeal be allowed;
 - (ii) paragraph 1(c) of the orders made by the Full Federal Court on 21 February 2014 be set aside and, in their place, order that those questions in the special case be answered as follows:

Questions 3(a) and (b): Yes, and not necessary to answer.
 - (iii) the appellant pay the first respondent's costs of and incidental to the appeal, but otherwise each party bears its own costs.

⁸⁴ Compare *Shannon Realties v Ville de St Michel* [1924] AC 185 at 192-193.

⁸⁵ See for example reg 55.

⁸⁶ See, for example, regs 57(5) and (8), 66(3)-(6). See also NSA, s 5(4).

IX. ESTIMATE OF TIME REQUIRED FOR ORAL ARGUMENT

80. The appellant estimates that 3 hours should be sufficient to present its oral argument.

Dated: 16 October 2014

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ANNEXURE TO APPELLANT'S SUBMISSIONS
(Part VII Form 27A)

No	Description	Date (as made or with effect from)	Page
1.	<i>National Security Act 1939</i> (Cth) (No. 15 of 1939)	As made	1-7
2.	<i>National Security Act 1940</i> (Cth) (No. 44 of 1940)	21 June 1940	8-9
3.	<i>National Security Act 1943</i> (Cth) (No. 38 of 1943)	3 July 1943	10-11
4.	<i>National Security Act 1946</i> (Cth) (No. 15 of 1946)	16 May 1946	12
5.	<i>Part V and section 90 National Security (General) Regulations 1939</i> (Cth) (consolidation as in force on 15 November 1943)	15 November 1943	13-31
6.	Statutory Rules 1944, No. 131 (amends regulations 60E and 60G)	4 September 1944	32-33
7.	Statutory Rules 1945, No. 50 (amends regulation 60L and inserts regulation 60LA)	19 April 1945	34-35

Part VII Statement:

Act: The provisions identified in documents 1 – 3 were in force at the relevant times.

Regulations: The provisions identified in document 5 were in force at the relevant times, save for regs 60E, 60G, 60L and 60LA which were amended or inserted as set out in documents 6 and 7.

Repeal: Document 4 provides that all other documents in the index ceased to have effect from midnight on 31 December 1946.

NATIONAL SECURITY.

No. 15 of 1939.

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AN Act to make provision for the Safety and Defence of the Commonwealth and its Territories during the present state of War.

[Assented to 9th September, 1939.]

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

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1. This Act may be cited as the *National Security Act 1939*. Short title.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

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

“Australia” includes the Territories of the Commonwealth;

“Commonwealth officer” means any person holding office under the Commonwealth, and includes any person permanently or temporarily employed in the Public Service of the Commonwealth or in or in connexion with the Defence Force, or in the service of any authority or body constituted by or under any Act;

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“constable” includes any member of the Police Force of the Commonwealth or of a State or Territory of the Commonwealth, and any Peace Officer appointed in pursuance of the *Peace Officers Act 1925*;

“the present state of war” means the state of war existing between His Majesty the King and Germany during the period commencing on the third day of September, One thousand nine hundred and thirty-nine, at the hour of nine-thirty o'clock *post meridiem* reckoned according to standard time in the Australian Capital Territory and terminating on the date of the issue of a proclamation that the war between His Majesty the King and Germany has ceased;

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“the present war” means the war between His Majesty the King and Germany existing during the present state of war.

4. This Act shall extend, with such exceptions, adaptations and modifications, if any, as are prescribed, to every Territory of the Commonwealth. Application of Act to Territories.

Emergency
regulations

5.—(1.) Subject to this section, the Governor-General may make regulations for securing the public safety and the defence of the Commonwealth and the Territories of the Commonwealth, and in particular—

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(a) for providing for the apprehension, prosecution, trial or punishment, either in Australia or in any Territory of the Commonwealth, of persons committing offences against this Act;

(b) for authorizing—

(i) the taking of possession or control, on behalf of the Commonwealth, of any property or undertaking; or

(ii) the acquisition, on behalf of the Commonwealth, of any property other than land in Australia;

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(c) for prescribing any action to be taken by or with respect to alien enemies, or persons having enemy associations or connexions, with reference to the possession or ownership of their property, the conduct or non-conduct of their trade or business, and their civil rights or obligations;

(d) for prescribing the conditions (including the times, places and prices) of the disposal or use of any property, goods, articles or things of any kind;

(e) for requiring or authorizing any action to be taken by or with respect to aliens, and for prohibiting aliens from doing any act or thing;

(f) for applying to naturalized persons, with or without modifications, all or any of the provisions of any regulations relating to aliens;

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(g) for requiring any person to disclose any information in his possession as to any prescribed matter;

(h) for preventing money or goods being sent out of the Commonwealth except under conditions approved by any Minister of State;

(i) for authorizing the entry upon or search of any premises; and

(j) for providing for the charging, in respect of the grant or issue of any licence, permit, certificate or other document or the giving of any consent for the purposes of the regulations, of a fee not exceeding five pounds,

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and for prescribing all matters which, by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for the more effectual prosecution of the present war, or for carrying out or giving effect to this Act.

(2.) Any provision of any regulation made under this section with respect to aliens may relate either to aliens in general or to any class or description of aliens.

(3.) The regulations may provide for empowering such persons or classes of persons as are prescribed and thereto authorized in pursuance of the regulations, to make orders, rules or by-laws for any of the purposes for which regulations are authorized by this Act to be made, and orders, rules and by-laws so made shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act 1903-1934*.

(4.) Section forty-eight (except paragraphs (a) and (b) of sub-section (1.) and sub-section (2.)) and section forty-nine of the *Acts Interpretation Act 1901-1937* shall apply to orders, rules and by-laws, which are of a legislative and not an executive character, in like manner as they apply to regulations.

(5.) The *Acts Interpretation Act 1901-1937* shall apply to the interpretation of any orders, rules or by-laws made in pursuance of the regulations in like manner as it applies to the interpretation of regulations, and, for the purposes of section forty-six of that Act, those orders, rules and by-laws shall be deemed to be Acts.

(6.) Where a regulation made in pursuance of this Act confers a power to make orders, rules or by-laws, the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to rescind, revoke, amend or vary any such orders, rules or by-laws.

(7.) Nothing in this section shall authorize—

(a) the imposition of any form of compulsory naval, military or air-force service, or any form of industrial conscription, or the extension of any existing obligation to render compulsory naval, military or air-force service; or

(b) the making of provision for trial by courts-martial of persons not subject to naval, military or air-force law under the *Naval Defence Act 1910-1934*, the *Defence Act 1903-1939* or the *Air Force Act 1923*.

6. Unless the contrary intention appears, any provisions contained in, or having effect under, any regulation made under this Act shall—

Extra-territorial operation of regulations.

(a) in so far as they specifically impose prohibitions, restrictions or obligations in relation to ships, vessels or aircraft, or specifically authorize the doing of anything in relation to ships, vessels or aircraft, apply in relation to all ships, vessels or aircraft in or over Australia, and in relation to all ships, vessels or aircraft registered in Australia, wherever they may be; and

(b) in so far as they impose prohibitions, restrictions or obligations on persons, apply to and in relation to all persons in Australia, and to and in relation to all persons on board any ship, vessel or aircraft registered in Australia, wherever it may be.

Indemnity in respect of things done before passing of Act, and validation of regulations, &c.

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7.—(1.) A person shall not, by reason of anything done by him on behalf of the Commonwealth during the period commencing on the twenty-fifth day of August, One thousand nine hundred and thirty-nine, and ending on the date of the commencement of this Act, be liable to any proceedings if the doing of that thing could validly have been authorized had this Act been in force throughout that period.

(2.) Where during the period specified in sub-section (1.) of this section the Governor-General or any Minister or officer has purported to make any regulation or order, or to do any act or thing which could have been validly made or done if this Act had been in force throughout that period, that regulation, order, act or thing shall be deemed to be as valid and effectual, and shall, at all times, as on and from the date of the making or doing of the regulation, order, act or thing, be deemed to have been as valid and effectual, as if this Act had been in force on that date, and the regulation, order, act or thing had been made or done under or in pursuance of this Act.

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Hearing of proceedings in camera.

8.—(1.) If, with respect to any proceedings (whether instituted before or after the commencement of this Act), the court (not being a court of summary jurisdiction) before which the proceedings are taken is satisfied that it is necessary in the interests of the public safety or the defence of the Commonwealth or any Territory of the Commonwealth so to do, the court—

(a) may give directions that throughout or during any part of the proceedings such persons or classes of persons as the court determines shall be excluded; and

(b) may give directions prohibiting or restricting the disclosure of information with respect to the proceedings.

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(2.) The powers conferred by sub-section (1.) of this section shall be in addition to and not in derogation of any other powers of the court.

(3.) If any person contravenes any directions given by a court under sub-section (1.) of this section, then, without prejudice to the law relating to contempt of court, he shall be guilty of an offence against this Act.

Proof of instruments.

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9.—(1.) Every document purporting to be an instrument made or issued by the Minister or any other authority or person in pursuance of any provision contained in, or having effect under, the regulations, and to be signed by or on behalf of the Minister, authority or person, shall be received in evidence, and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Minister, authority or person.

(2.) Prima facie evidence of any such instrument may, in any legal proceedings (including arbitrations), be given by the production of a document purporting to be certified to be a true copy of the instrument by, or on behalf of, the Minister or other authority or person having power to make or issue the instrument.

10.—(1.) Any person who contravenes, or fails to comply with, any provision of any regulation made in pursuance of this Act, or with any order, rule or by-law made in pursuance of any such regulation, shall be guilty of an offence against this Act. Trial of offences.

(2.) An offence against this Act may be prosecuted either summarily or upon indictment, but an offender shall not be liable to be punished more than once in respect of the same offence.

(3.) The punishment for an offence against this Act shall be—

(a) if the offence is prosecuted summarily—a fine not exceeding One hundred pounds or imprisonment for a term not exceeding six months, or both; or

(b) if the offence is prosecuted upon indictment—a fine of any amount or imprisonment for any term, or both.

(4.) An offence against this Act shall not be prosecuted summarily without the written consent of the Attorney-General, or the Minister of State for Defence, or a person thereto authorized in writing by the Attorney-General or the Minister of State for Defence, and an offence against this Act shall not be prosecuted upon indictment except in the name of the Attorney-General.

(5.) For the purpose of the trial of a person summarily or upon indictment for an offence against this Act, the offence shall be deemed to have been committed either at the place in which it was actually committed or (subject to the Constitution) at any place in which the person may be.

(6.) In addition to any other punishment, a court may, if it thinks fit, order the forfeiture of any money or goods in respect of which an offence against this Act has been committed.

11. Any person who does any act preparatory to the doing of any act the doing of which would be an offence against this Act, shall be guilty of an offence against this Act and shall be punishable as if he had committed the first-mentioned offence. Acts preparatory to commission of offence.

12. Where a person convicted of an offence against this Act is a body corporate, every person who, at the time of the commission of the offence, was a director or officer of the body corporate shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence. Offences by corporations

13.—(1.) Any person who is found committing an offence against this Act, or who is suspected of having committed, or of being about to commit, such an offence, may be arrested without warrant by any constable or Commonwealth officer acting in the course of his duty as such, or by any person thereto authorized by the Minister, in the same manner as a person who is found committing a breach of the peace may, at common law, be arrested by any constable or person. Arrest of offenders.

(2.) If a person suspected of having committed, or of being about to commit, an offence against this Act, is arrested under the provisions of this section, a report of the fact and circumstances shall forthwith be made to the Attorney-General or to a person appointed in that behalf by the Attorney-General, and—

10

(a) if no charge is laid against the suspected person within ten days from the date of his arrest, he shall be released from detention; or

(b) if a charge is laid against the suspected person, he shall be dealt with according to law.

(3.) No action shall lie against the Commonwealth, any Commonwealth officer, any constable or any other person acting in pursuance of this section in respect of any arrest or detention in pursuance of this section, but if the Governor-General is satisfied that any arrest was made without any reasonable cause, he may award such compensation in respect thereof as he considers reasonable.

20

Power to order recognizances.

14.—(1.) When any person is convicted of an offence against this Act, the court before which he is convicted may, either in addition to or in lieu of any punishment provided for the offence, require him to enter into recognizances with or without sureties to comply with the provisions of the regulations, orders, rules or by-laws in relation to which the offence was committed.

(2.) If any person fails to comply with an order of the court requiring him to enter into recognizances, the court may order him to be imprisoned for any term not exceeding six months.

Onus of proof.

30

15. If any question arises in any proceedings under any regulation made in pursuance of this Act or to which sub-section (2.) of section seven of this Act applies, or under any order, rule or by-law made in pursuance of any such regulation, or with reference to anything done or proposed to be done under any such regulation, order, rule or by-law, whether any person is an alien or not, or is an alien of a particular class or not, the onus of proving that that person is not an alien or, as the case may be, is not an alien of that class, shall lie upon that person.

Act not to derogate from other powers.

40

16. All powers given by or in pursuance of this Act or the regulations, or by or in pursuance of any instrument made or issued in pursuance of this Act or the regulations, shall be in addition to and not in derogation of any other powers exercisable apart from this Act.

Delegation of powers under regulations.

17.—(1.) Any Minister of State may, in relation to any matters or class of matters, or in relation to any particular State or part of Australia, by writing under his hand, delegate all or any of his powers and functions under the regulations (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate with respect to the matters or class of matters, or the State or part of Australia, specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Minister of State.

10 18. A regulation made under this Act shall, subject to the *Acts Interpretation Act 1901-1937*, have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. Effect of regulations, &c.

19. This Act shall continue in operation during the present state of war and for a period of six months thereafter, and no longer. Duration:

SALES TAX (No. 1).

20

No. 16 of 1939.

An Act to amend the *Sales Tax Act (No. 1) 1930-1938*.

[Assented to 15th September, 1939.]

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

30

1.—(1.) This Act may be cited as the *Sales Tax Act (No. 1) 1939*. Short title and citation.

(2.) The *Sales Tax Act (No. 1) 1930-1938*,* as amended by this Act, may be cited as the *Sales Tax Act (No. 1) 1930-1939*.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. Section three of the *Sales Tax Act (No. 1) 1930-1938* is amended— Implication of law.

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(a) by omitting the words and figures "on or after the 22nd September, 1938" and inserting in their stead the words and figures "during the period commencing on the 22nd September, 1938, and terminating on the 8th September, 1939"; and

(b) by adding at the end thereof the words and figures "on or after the 9th September, 1939 6 per centum."

* Act No. 29, 1930, as amended by No. 63, 1930; No. 26, 1931; No. 32, 1936; and No. 30, 1938.

Sec. 2.

ABSTRACT OF THE SCHEDULE TO WHICH THIS ACT REFERS.

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	£
PART I.—DEPARTMENTS AND SERVICES—OTHER THAN BUSINESS UNDERTAKINGS AND TERRITORIES OF THE COMMONWEALTH	34,729
II.—BUSINESS UNDERTAKINGS	54,178
III.—TERRITORIES OF THE COMMONWEALTH	2,461
TOTAL ADDITIONS, NEW WORKS, BUILDINGS, ETC.	91,368

20

NATIONAL SECURITY.

No. 44 of 1940.

An Act to amend the *National Security Act 1939*.

30

[Assented to 21st June, 1940.]

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

Short title and citation.

1.—(1.) This Act may be cited as the *National Security Act 1940*.
(2.) The *National Security Act 1939** is in this Act referred to as the Principal Act.

40

Commencement.

(3.) The Principal Act, as amended by this Act, may be cited as the *National Security Act 1939-1940*.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Title.

3. The title of the Principal Act is amended by omitting the words "the present state of War" and inserting in their stead the words "any War in which His Majesty is or may be engaged".

Definitions.

4. Section three of the Principal Act is amended by omitting the definitions of "the present state of war" and "the present war".

* Act No. 15, 1939.

5. Section five of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (1.) the words "in Australia"; and
- (b) by omitting from that sub-section the words "the present war" and inserting in their stead the words "any war in which His Majesty is or may be engaged".

Emergency regulations.

10

6. Section ten of the Principal Act is amended by omitting from sub-section (4.) the words "of State for Defence" (wherever occurring).

Trial of offences.

7. Section thirteen of the Principal Act is amended by omitting from sub-section (1.) the words ", in the same manner as a person who is found committing a breach of the peace may, at common law, be arrested by any constable or person".

Arrest of offenders.

8. After section thirteen of the Principal Act the following sections are inserted :—

20

" 13A. Notwithstanding anything contained in this Act, the Governor-General may make such regulations making provision for requiring persons to place themselves, their services and their property at the disposal of the Commonwealth, as appear to him to be necessary or expedient for securing the public safety, the defence of the Commonwealth and the Territories of the Commonwealth, or the efficient prosecution of any war in which His Majesty is or may be engaged :

Emergency powers.

Provided that nothing in this section shall authorize the imposition of any form of compulsory service beyond the limits of Australia.

" 13B. Notwithstanding anything contained in this Act, the power to make regulations conferred by this Act shall include the power to make regulations—

Discipline of prisoners of war, &c.

30

- (a) for the purpose of carrying out and giving effect to the International Convention relative to the Treatment of Prisoners of War, signed at Geneva on the twenty-seventh day of July, One thousand nine hundred and twenty-nine ;
- (b) providing for the custody of, and maintenance of discipline among, persons detained in pursuance of any instrument made or issued under any regulation made in pursuance of this Act; and
- (c) providing for the prescription and imposition of penalties for breaches of discipline by prisoners of war and persons so detained."

40

9. Section nineteen of the Principal Act is repealed and the following section inserted in its stead :—

" 19. This Act shall continue in operation until a date to be fixed by Proclamation, and no longer, but in any event not longer than six months after His Majesty ceases to be engaged in war."

Duration of Act.

NATIONAL SECURITY.

10

No. 38 of 1943.

An Act to amend section five of the *National Security Act 1939-1940* and to validate certain regulations and certain matters which arose under those regulations.

[Assented to 3rd July, 1943.]

20

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

Short title
and citation.

1.—(1.) This Act may be cited as the *National Security Act 1943*.

(2.) The *National Security Act 1939-1940** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *National Security Act 1939-1943*.

30

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Emergency
regulations.

3. Section five of the Principal Act is amended by inserting in sub-section (1.), after paragraph (a), the following paragraphs:—

“(aa) for conferring original jurisdiction on the High Court in any matter arising under the regulations;

(ab) for defining the jurisdiction of any federal court, other than the High Court, with respect to any matter arising under the regulations;

(ac) for investing any court of a State with federal jurisdiction with respect to any matter arising under the regulations.”

40

Validation.

4.—(1.) All regulations which were made under the *National Security Act 1939* or the Principal Act, prior to the commencement of this Act, and which were unrepealed at the commencement of this Act and which were expressed or which operated—

(a) to confer original jurisdiction on the High Court;

* Act No. 15, 1939, as amended by No. 44, 1940.

(b) to define the jurisdiction of any federal court other than the High Court; or

(c) to invest any court of a State with federal jurisdiction,

shall be as valid and effectual as if this Act had been in operation when they were made.

10

(2.) All judgments, decisions, orders, determinations, directions and other acts or things given, made or done, prior to the commencement of this Act, by any court purporting to exercise any jurisdiction by virtue of any regulation to which the last preceding sub-section applies shall be as valid and effectual, and shall be deemed to have been at all times as valid and effectual, for all purposes as if this Act had been in operation on the date of the making of the regulation under which they were given, made or done.

20

WAR SERVICE ESTATES.

No. 38 of 1943.

An Act to amend the *War Service Estates Act 1942*.

[Assented to 3rd July, 1943.]

30

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

1.—(1.) This Act may be cited as the *War Service Estates Act 1943*. Short title and citation.

(2.) The *War Services Estates Act 1942** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *War Service Estates Act 1942-1943*.

2. This Act shall be deemed to have come into operation on the date of commencement of the Principal Act. Commencement.

40

3. Section seven of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the word "deliver", the words "the whole or any part of";

(b) by omitting from paragraph (c) of that sub-section the word "or"; and

War service estates—how dealt with.

* Act No. 67, 1942.

NATIONAL SECURITY.

10

No. 15 of 1946.

An Act to provide for the termination of the *National Security Act 1939-1943.*

[Assented to 18th April, 1946.]

[Date of commencement, 16th May, 1946.]

20

Preamble.

WHEREAS it is by the *National Security Act 1939-1943* provided that that Act shall continue in operation until a date to be fixed by Proclamation, and no longer, but in any event not longer than six months after His Majesty ceases to be engaged in war :

AND WHEREAS a state of war still exists between His Majesty and Germany, Italy, Japan and other countries :

AND WHEREAS some considerable time must elapse before a state of peace comes into existence with each of the countries with which a state of war still exists, and it is desirable that the *National Security Act 1939-1943* should be terminated before a state of peace with all of those countries has come into existence :

30

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

Short title and citation.

- 1.—(1.) This Act may be cited as the *National Security Act 1946*.
- (2.) The *National Security Act 1939-1943** is in this Act referred to as the Principal Act.
- (3.) The Principal Act, as amended by this Act, may be cited as the *National Security Act 1939-1946*.

40

Duration of Act, regulations, &c.

2. Section nineteen of the Principal Act is repealed, and the following section inserted in its stead :—

"19. This Act, and all regulations made thereunder, and all orders, rules and by-laws made in pursuance of any such regulation, shall cease to have effect at midnight on the thirty-first day of December, One thousand nine hundred and forty-six."

* Act No. 15, 1939, as amended by No. 44, 1940; and No. 38, 1943.

52. The powers contained in the Air Navigation Regulations made under the *Air Navigation Act 1920-1936* shall be exercisable in relation to the navigation of aircraft registered in Australia, over any area outside Australia, as they are exercisable in relation to the navigation of aircraft over Australia.

Extension of application of Air Navigation Regulations

PART V. ESSENTIAL SUPPLIES AND WORK.

General Provisions.

10

53.*—(1.) Any member of the Defence Force acting in the course of his duty as such, and any person thereto authorized by the Minister of State for the Army, may, for any purpose connected with the defence of the Commonwealth, the prosecution of the war, the securing of the public safety or the maintenance of supplies and services essential to the life of the community, do any work on any land, or place anything in, on or over any land.

Power to do work on land. Amended by 1942, No. 402.

20

(2.) If it appears to the Minister of State for the Army to be necessary or expedient so to do in the interests of the public safety, the defence of the Commonwealth, the efficient prosecution of the war or the maintenance of supplies and services essential to the life of the community, he may by order provide for prohibiting or restricting the doing on any particular land of any work specified in the order.

(3.) A person (other than a person in the service of the Crown or constable acting in the course of his duty as such) shall not, except with permission granted by or on behalf of the Minister of State for the Army, remove, alter or tamper with any work done, or thing placed, in, on or over any land in pursuance of this regulation.

30

(4.) For the purpose of this regulation, the doing of work shall, in relation to any land, be deemed to include the demolition, pulling down, destruction or rendering useless of anything placed in, on or over the land, the maintenance of any work or thing in, on or over the land, and the removal from the land of anything so placed, demolished or pulled down in pursuance of this regulation.

54.*—(1.) If it appears to the Minister of State for the Army to be necessary or expedient so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, he may, on behalf of the Commonwealth, take possession of any land, and may give such directions as appear to him to be necessary or expedient in connexion with the taking of possession of the land.

Taking possession of land. Amended by 1940, No. 120, by 1941, No. 248, and by 1942, No. 402.

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(2.) While any land is in the possession of the Commonwealth in pursuance of a direction given under this regulation, the land may, notwithstanding any restriction imposed on the use thereof (whether by law or otherwise), be used by, or under the authority of, that Minister for such purpose, and in such manner, as he thinks expedient in the interests of the public safety or the defence of the Commonwealth, or for maintaining supplies and services essential to the life of the community; and that Minister, so far as appears to him to be necessary or

* See regulations 40a to 40z of these Regulations, relating to compensation, and the National Security (Finance Administration) Regulations, *infra*.

expedient in connexion with the taking of possession or use of the land in pursuance of this sub-regulation—

(a) may do, or authorize persons so using the land to do, in relation to the land, anything which any person having an unincumbered interest in fee simple in the land would be entitled to do by virtue of that interest; and

(b) may by order provide for prohibiting or restricting the exercise of rights of way over the land, and of other rights relating thereto which are enjoyed by any person, whether by virtue of an interest in land or otherwise.

(3.) The owner or occupier of any land shall, if requested by the Minister of State for the Army or a person thereto authorized by him so to do, furnish to that Minister or such person as is specified in the request such information in his possession relating to the land (being information which reasonably may be demanded in connexion with the execution of this regulation) as is so specified.

Sub-reg. (4.)
omitted by
1961, No. 291.*
Use of land.
Amended by
1962, No. 402.

55.† Without prejudice to any other of these Regulations, the Minister of State for the Army may by order‡ authorize, subject to any restrictions and conditions imposed by the order, the use of any land specified therein for naval, military or air force purposes, during the period specified in the order; and any such order may, so far as appears to that Minister to be necessary or expedient for the purposes thereof, provide—

(a) for entitling persons using any land in pursuance of the order to do such acts in relation to that land as are specified in the order; and

(b) for prohibiting or restricting the exercise of rights of way over that land, and of other rights relating thereto which are enjoyed by any person, whether by virtue of an interest in that land or otherwise.

Compensation
for the
acquisition of
lands on which
improvements
have been
made by the
Commonwealth.
Inserted by
1962, No. 402.

55AA. Where any of the powers conferred by or under regulation 53, 54 or 55 of these Regulations has been exercised in relation to any land, and the land is later compulsorily acquired in pursuance of any law of the Commonwealth or of a Territory of the Commonwealth, the value of the land shall, for the purpose of fixing the compensation to which any person is entitled under that law in respect of the acquisition, be assessed without reference to any increase in value arising from anything done on or in relation to the land by or on behalf of the Commonwealth or the Administration of the Territory or by or on behalf of any authority of the Commonwealth or the Territory.

Fixtures
to land
to remain
property of the
Commonwealth.
Inserted by
1960, No. 120.

55A. All buildings, fittings, fixtures or other structures of whatsoever nature (and all materials constituting the same) placed, built or erected by the Commonwealth in or on, or affixed by the Commonwealth to, any land possessed or used by the Commonwealth in pursuance of powers contained in these Regulations shall remain the sole property of the Commonwealth and the Commonwealth shall have the right at any time to remove any such buildings, fittings, fixtures or other structures and the materials constituting the same.

* See footnote † *infra*, p. 421.

† See footnote * *supra*, p. 411.

‡ For Order under this regulation relating to Port Stephens, New South Wales, see *Gazette*, 17th February, 1963, p. 403.

55a. (1.) Where any property of the Commonwealth (other than land) is in the possession, custody or control of any person for any purpose connected with the defence of the Commonwealth, the prosecution of the war, the securing of the public safety or the maintenance of supplies essential to the life of the community, the right, title and interest of the Commonwealth thereto shall not be affected or prejudiced in any way by any rights in relation thereto conferred on or possessed by any mortgagee, licensee, chargee, encumbrancee, landlord, creditor, liquidator, official receiver or trustee in bankruptcy, or by any other person whatsoever, whether or not the property is placed, built or erected in or on, or affixed to, land not owned by the Commonwealth.

Commonwealth property hired to contractor.
Inserted by 1942, No. 132

(2.) Subject to any agreement or arrangement (whether oral or in writing) under which any person has the custody, possession or control of any property of the Commonwealth, any member of the Police Force of the Commonwealth or of a State or Territory of the Commonwealth, if not below the rank of sergeant, or if thereto authorized in writing by a member of the Force not below that rank, or any person thereto authorized in writing by a Minister, may seize and remove any property to which this regulation applies, and for that purpose shall at all times have full and free access to, and may, if need be by force and with such assistance as is necessary, break open, enter and search any premises or place in or at which the property is situated or in or at which he suspects the property is situated.

56.† Any member of the Defence Force acting in the course of his duty as such, and any person thereto authorized by a Minister—

Entry and inspection of land.

- (a) may enter on any land for the purpose of exercising any of the powers conferred in relation to that land by regulations 53, 54 and 55 of these Regulations;
- (b) may enter and inspect any land for the purpose of determining whether, and, if so, in what manner, any of those powers are to be exercised in relation to the land; and
- (c) may, for any purpose connected with the defence of the Commonwealth, the prosecution of the war, the securing of the public safety or the maintenance of supplies and services essential to the life of the community, pass (with or without animals or vehicles) over any land.

57.-- (1.)† Subject to these Regulations, if it appears to a Minister to be necessary or expedient so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, he may by order‡ requisition or provide for the requisitioning of—

Requisitioning of property other than land.
Amended by 1942, No. 246.

- (a) any property (other than land), including any vessel or aircraft and any article on board a vessel or aircraft; and
- (b) any ship or aircraft registered in Australia or any article on board any such ship or aircraft, wherever the ship or aircraft may be.

* This regulation was renumbered " 65a " by Statutory Rules 1942, No. 235.
 † See also regulations 60n to 60r of these regulations, relating to compensation.
 ‡ See Defence Impressment Order (Vol. 2); Requisitioning of Binoculars Order (Gazette, 5th January, 1942, p. 5; 11th March, 1942, p. 622; 21st April, 1942, p. 675; and 1st August, 1942, p. 1657); Requisitioning of Earth-moving Plant Order (Gazette, 14th April, 1942, p. 625); Requisitioning of Agricultural Implements and Machinery Order (Gazette, 20th October, 1942, p. 2494); and Requisitioning of Span Parts Order (Gazette, 25th January, 1943, p. 738)

Inscribed by
1940, No. 245.

(1A.) Where any property is requisitioned by or in pursuance of an order made under this regulation, any member of the Police Force of the Commonwealth or of a State or Territory of the Commonwealth, if not below the rank of sergeant, or if thereto authorized in writing by a member of the Force not below that rank, or any person thereto authorized in writing by a Minister, may seize and remove that property for the purpose of giving effect to the requisition, and for that purpose shall at all times have full and free access to, and may, if need be by force and with such assistance as is necessary, break open, enter and search, any premises or place, in or at which the property is situated or he suspects that the property is situated.

10

Inscribed by
1940, No. 245.

(1B.) Where any property is requisitioned by or in pursuance of an order made under this regulation, the person to whom the requisition is directed shall deliver up possession of the property in accordance with the terms of the requisition.

Amended by
1940, No. 245.

(2.)^a Where any property is requisitioned by or in pursuance of an order made under this regulation, a Minister may use or deal with, or authorize the use of or dealing with, the property for such purpose and in such manner as he thinks expedient in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, and may hold, or sell or otherwise dispose of, the property as if he were the owner thereof.

20

Substituted by
1941, No. 255.

(3.) An order under sub-regulation (1.) of this regulation may contain such incidental and supplementary provisions as appear to the Minister to be necessary or expedient for the effectual operation of the order, including provisions--

- (a) for requiring returns or information to be furnished by any person or class of persons in relation to any property which is or may be requisitioned by or under that order;
- (b) for requiring any person or class of persons to produce any such property for examination;
- (c) for prohibiting or restricting the removal of any such property; and
- (d) with a view to securing compliance with that order, for empowering persons to enter and inspect premises and any such property therein and to require facilities to be afforded to enable any such inspection to be made.

30

Sub-reg. (4.)
omitted by
1941, No. 291.†

Regulation 57A
repealed by
1943 No. 7,
regulation
3(1).‡

Special powers
as to the
requisitioning
of space, &c., in
aircraft and
public transport
vehicles.

40

Substituted by
1941, No. 325.

58.*—(1.) Subject to these Regulations, the Minister may, by order, require any space or accommodation in any aircraft registered in Australia or in any public transport vehicle to be placed at his disposal, and may give such directions as appear to him to be necessary or expedient in connexion with any such requirement. The pilot of any such aircraft, and the person having the management of the aircraft or any such public transport vehicle, shall comply with all directions given under this sub-regulation with respect to the aircraft or vehicle.

* See also regulations 60N to 60Z of these regulations, relating to compensation.

† See footnote † *infra*, p. 421.

‡ Sub-regulation (3.) of regulation 3 of Statutory Rules 1943, No. 7 is as follows:—

"(3.) Notwithstanding the repeal of regulation 57A of the National Security (General) Regulations, the terms of any agreement or licence which are imperatively by virtue of sub-regulation (3.) of that regulation shall continue to be imperatively."

10 (2.) Where, in respect of any aircraft, there subsists between a person to whom this sub-regulation applies and any other person a charter party or other contract under which the first-mentioned person is entitled to possession of the aircraft or public transport vehicle or has the right to have any article carried or to use any space or accommodation therein, the Minister may serve on the first-mentioned person, in any manner appearing to the Minister to be convenient, a notice stating that, on the date specified in the notice, his rights and liabilities under the contract will be transferred to the Minister. Upon the service of such notice, the contract shall, with respect to any rights exercisable, or liabilities incurred, on or after the date of service, have effect, subject to the provisions of sub-regulation (4.) of this regulation, as if the Minister were a party to the contract instead of the person on whom the notice was served, and as if for any reference in the contract to that person there were substituted a reference to the Minister.

(3.) The persons to whom sub-regulation (2.) of this regulation applies are—

- (a) every British subject resident in Australia; and
- (b) every body corporate incorporated under the law of the Commonwealth or of any part of Australia.

20 (4.) The Minister may at any time cancel a notice served under sub-regulation (2.) of this regulation in respect of a contract, and thereupon that sub-regulation shall, unless and until a further notice is served thereunder in respect of that contract, cease to operate in relation to the contract with respect to any rights exercisable, or liabilities incurred, on or after the date on which the cancellation takes effect.

(5.) Notice of any such cancellation shall be given as soon as may be by the Minister in such manner as he thinks fit.

(6.) For the purposes of this regulation, "public transport vehicle" includes a rail or road passenger or goods vehicle.

30 59.—(1.) A Minister, so far as appears to him to be necessary in the interests of the defence of the Commonwealth or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order* provide—

General
control of
industry.

- (a) for regulating, restricting or prohibiting the production, treatment, repair, servicing, reconditioning, keeping, storage, movement, transport, distribution, sale, purchase, use or consumption of essential articles, and, in particular, for controlling the prices at which the articles may be sold;
- (b) for regulating the carrying on of any undertaking engaged in essential work, and, in particular, for controlling the charges which may be made by the undertakers in respect of the doing of any work by them;
- 40 (c) for regulating, restricting or prohibiting the production, importation, treatment, repair, servicing, reconditioning, keeping, storage, transport, distribution or sale of articles other than essential articles;
- (d) for requiring persons carrying on, or employed in connexion with, any trade or business specified in the order to produce to the authority or person so specified any books,

Amended by
1948, No. 82.

Amended by
1948, No. 82.

* For list of orders in force under this regulation see Vol. 2

accounts or other documents relating to that trade or business, and for requiring any persons to furnish to the authority or person specified in the order such estimates or returns as that Minister considers it desirable to obtain for the efficient exercise of any of his powers under paragraphs (a), (b) and (c) of this sub-regulation; and

10 (c) for any incidental and supplementary matters for which that Minister thinks it expedient for the purposes of the order to provide, including, in particular, the entering and inspection of premises to which the order relates by persons authorized in that behalf by a Minister, with a view to securing compliance with the order.

(2.) An order under this regulation may prohibit the doing of anything regulated by the order except under the authority of a licence granted by the authority or person specified in the order, and may be made so as to apply either to undertakings generally or to any particular undertaking or class of undertakings, and either to the whole or to any part of any undertaking, and so as to have effect either throughout Australia or in any particular area therein.

20 (3.) Where the right to make charges in connexion with the carrying on of any undertaking with respect to which an order may be made under this regulation is limited by law, any order so made in relation to that undertaking may authorize the undertakers to make in that connexion charges in excess of, or in addition to, those which they would otherwise be authorized to make.

(4.)* If it appears to a Minister to be necessary so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, he may carry on or authorize a person to carry on the whole or any part of any existing undertaking; and while in pursuance of this paragraph a Minister or a person so authorized is carrying on the whole or any part of an undertaking—

30 (a) that Minister or person shall be deemed to be acting as the agent of the undertakers, except that the undertakers shall not have any right to control the carrying on of the undertaking or part of the undertaking; and

(b) the undertakers shall not be bound, or, as the case may be, shall not in respect of such matters as are specified by order of that Minister, be bound, by any obligation or limitation imposed on them by or by virtue of any law or instrument determining their functions.

Amended by
1942, No. 373.

40 (4A.) If it appears to a Minister to be necessary so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, he may, by order, provide for regulating, restricting or prohibiting the employment of—

(a) the persons included in any class of persons specified in the order; or

(b) the persons engaged in any class of employment specified in the order.

* See also regulations 10B to 10X of these regulations, relating to compensation.

- (41.) An order under the last preceding sub-regulation may—
- (a) be made to apply either throughout Australia or to any part thereof;
 - (b) make different provision with respect to different classes of employment;
 - (c) exempt any classes of persons or any specified persons or any classes of employers or specified employers from the operation of all or any of the provisions of the order; and
 - (d) contain such incidental and supplementary provisions as are necessary or expedient for the purposes of the order.

Inserted by
1942, No. 576

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(42.) In this regulation—

- (a) the expressions "essential articles" and "essential work" mean respectively articles and work appearing to a Minister to be essential for the defence of the Commonwealth or the efficient prosecution of the war, or to be essential to the life of the community; and
- (b) the expression "undertaking" means any public utility undertaking or any industrial or commercial enterprise, and includes any undertaking or service which in the opinion of a Minister is essential to the life of the community, and the expression "undertakers", in relation to any such undertaking, means the person by whom it is carried on,

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and any reference in this regulation to articles shall be construed as including a reference to substances, vehicles, vessels or animals.

59AA.—(1.) A person shall not, without the consent in writing of the Minister—

Restrictions
on new
manufactures.
Inserted by
1942, No. 587.

- (a) manufacture, treat or produce for commercial or industrial purposes any goods, or any part of any goods, unless the goods are of a description, make, form, style, type, design or composition which that person was manufacturing, treating or producing for commercial or industrial purposes at the date of commencement of this regulation; or
- (b) establish, commence or carry on any enterprise, business or undertaking, or any part of any enterprise, business or undertaking, for the manufacture, treating or production for commercial or industrial purposes of any goods, or any part of any goods, on any premises on which he was not carrying on the enterprise, business or undertaking, or part thereof, at the date of commencement of this regulation.

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(2.) For the purposes of this regulation, a person shall be deemed to be manufacturing, treating or producing goods, or part of any goods, of a particular description, make, form, style, type, design or composition, or to be carrying on an enterprise, business or undertaking or part thereof, on particular premises, at the date of commencement of this regulation, if he manufactured, treated or produced goods, or part of any goods, of that description, make, form, style, type, design or composition, or carried on that enterprise, business or undertaking, or part thereof, on those premises, as the case may be, within the period of three months prior to that date.

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(3.) This regulation shall not apply to the manufacture, treating or production of any goods, or of part of any goods, or to the establishment, commencing or carrying on of any enterprise, business or undertaking, or of any enterprise, business or undertaking included in a class of enterprises, businesses or undertakings, declared by the Minister, by order published in the *Gazette*,* to be goods or an enterprise, business or undertaking, or class thereof, to which this regulation shall not apply.

10 (4.) Where application is made for the consent of the Minister under this regulation, the Minister may, in his absolute discretion, grant consent, either unconditionally or subject to such conditions as he thinks fit, or may refuse to grant consent.

(5.) Where the consent of the Minister is granted subject to conditions, a person shall comply with all such conditions as are applicable to him.

20 (6.) Where the consent of the Minister is granted, whether unconditionally or subject to conditions, the Minister may, in his absolute discretion, at any time, by notice in writing, give to the person to whom the consent was granted such directions in relation to the manufacture, treating or production of the goods, or part of any goods, or to the establishment, commencement or carrying on of the enterprise, business or undertaking, or part thereof, as the Minister thinks necessary, or may revoke the consent.

(7.) A person shall not—

- 30 (a) manufacture, treat or produce, or continue the manufacture, treating or production of, any goods, or part of any goods, or establish, commence or continue to carry on any enterprise, business or undertaking, or any part thereof, in respect of which directions have been given to him under the last preceding sub-regulation, otherwise than in accordance with those directions; or
- (b) manufacture, treat or produce, or continue the manufacture, treating or production of, any goods, or part of any goods, or establish, commence or continue to carry on any enterprise, business or undertaking, in respect of which the consent of the Minister has been revoked under that sub-regulation.

(8.) In this regulation—

- 40 "manufacture" includes putting up or preparing for sale and "manufacturing" and "manufactured" have corresponding meanings;
- "the Minister" means the Minister of State for War Organization of Industry;
- "treating" includes mining, quarrying, sawmilling, lime-crushing, and canning and preserving and "treat" and "treated" have corresponding meanings.

Use of land for
defence
purposes.
inserted by
1961, No. 301.

59A. If it appears to a Minister to be necessary so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, he may, in relation to any land,

* See Order published in Vol. 2.

by order, direct that the land may be used for any purposes specified in the order, and that any law, regulation, rule or by-law of any State or State instrumentality (including a local governing body) which would prevent the use of that land (whether by the Commonwealth or by any person) for those purposes shall cease to apply in relation to that land, and thereupon all such laws, regulations, rules and by-laws shall cease to apply in relation to that land.

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55a. After the date on which this regulation comes into operation, a person shall not, without the consent of the Minister of State for Munitions, for the purpose of manufacturing or producing any article of a new design, make, at a cost exceeding One hundred pounds, any alteration in or re-adjustment of any machinery, or provide or install at a cost exceeding One hundred pounds any machinery, tools, gauges, jigs, dies or fixtures differing from those used by that person prior to that date.

Articles of new design not to be manufactured or produced.
inserted by 1946, No. 116.

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55c. For the purpose of providing for the execution of any work connected with the defence of the Commonwealth, the prosecution of the war, the securing of public safety or the maintenance of supplies and services essential to the life of the community, a Minister may make arrangements with any constructional body or authority constituted or appointed by or under the laws of any State or Territory of the Commonwealth for the execution of the work by that body or authority, and the powers and functions of any such body or authority shall, by virtue of this regulation, be enlarged to such extent as is necessary to enable it to enter into any arrangements so made and to execute the work (whether within the State or Territory or in any other part of Australia) for and on behalf of the Commonwealth.

Power to provide for execution of work by State constructional bodies or authorities.
inserted by 1941, No. 6 ; amended by 1942, No. 124.

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55n.—(1.) Where the Minister is satisfied that the owner of any dead timber (whether standing or fallen) has been requested by any person to grant to that person the right to enter on any land owned or occupied by that owner and to cut down or remove therefrom any standing trees or fallen timber which in the opinion of the Minister is suitable for the production of charcoal or for the production of fire-wood on terms which appear to the Minister to be fair and reasonable, and has refused or failed to grant any such right, the Minister may, by order, authorize that person to enter on the land and cut down and remove from the land any standing dead timber thereon, or remove from the land any fallen timber thereon and the person so authorized may thereupon enter the land for the purpose specified in the order.

Authority to enter land and cut down and remove dead timber.
inserted by 1942, No. 49.
Sub-reg. (1.) amended by 1942, No. 547.

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(2.) A person shall not obstruct any other person acting in pursuance of an authorization by the Minister under this regulation.

(3.) The price to be paid to the owner of the timber by the person cutting down and removing, or removing, from any land in pursuance of this regulation, any dead timber, shall be—

Substituted by 1942, No. 547.

- (a) in the case of timber for the production of charcoal—such price as is fixed by the Commonwealth Prices Commissioner in pursuance of the National Security (Prices) Regulations; or

(b) in the case of timber for the production of firewood—the prices fixed by the competent State Forest authority of the State in which the land is situated, on the same basis as if the land and timber were Crown land and Crown property;

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Provided that if the owner is not satisfied with the price so fixed under paragraph (b) and appeals to the Commonwealth Prices Commissioner, or if the land is not situated in a State, the price shall be a price to be fixed by the Commonwealth Prices Commissioner.

(4.) A person entering any land and cutting down or removing any dead timber pursuant to this regulation shall in doing so use all reasonable care not to damage the land or cause other damage or loss and shall pay to any person injured such compensation for any such damage or loss caused by him as is fair and reasonable having regard to all the circumstances.

(5.) For the purposes of this regulation, "the Minister" means the Minister of State for Munitions.

Public utility undertakings

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60.—(1.) With respect to any public utility undertaking, a Minister, and any person thereto authorized by him, may give directions for securing that the powers and duties of the undertakers are exercised and performed in such manner as that Minister thinks proper in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community; and a Minister may by order relax any obligation or limitation imposed on the undertakers by, or in pursuance of, any law or instrument determining their functions, and in particular may authorize the undertakers to make, in connexion with the carrying on of the undertaking, charges in excess of, or in addition to, those which they would otherwise be authorized to make.

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(2.) With a view to ascertaining whether any directions given under this regulation with respect to a public utility undertaking are complied with, any person authorized in that behalf by a Minister may at any time enter and inspect any premises used or appropriated for the purposes of the undertaking.

(3.) Any person concerned in the management, or employed in connexion with the carrying on, of a public utility undertaking shall, if required by a Minister or a person thereto authorized by him so to do, produce or furnish to that Minister or the person specified in the request such books or other documents, or, as the case may be, such estimates, returns, accounts or other information, being documents or information in his possession relating to the undertaking, as are so specified.

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Reg. 60A repealed by 1942, No. 31.*

* Sub-regulation (b.) of regulation 6 of the National Security (Man Power) Regulations (Statutory Rules 1942, No. 24) was as follows:—

"(b.) Regulation 60A of the National Security (General) Regulations is repealed but every order made and exemption granted thereunder and in force immediately prior to the commencement of these Regulations shall continue in force but may—

(a) in the case of an order, be amended or repealed by order made by the Minister or the Director-General; and

(b) in the case of an exemption be varied or revoked by the Minister or the Director-General."

This sub-regulation was repealed by regulation 1 of Statutory Rules 1942, No. 315, sub-regulation (3.) of which reads as follows:—

"(3.) All exemptions granted under regulation 60A of the National Security (General) Regulations and in force immediately prior to the commencement of this regulation shall, notwithstanding the repeal effected by sub-regulation (1.) of this regulation, continue in force but may be varied or revoked by the Minister of State for Labour and National Service or the Director-General of Man Power."

Compensation.¹

30b.—(1.) In regulations 60c to 60g (both inclusive), 60h, and paragraph (d) of regulation 60m of these Regulations, "the Minister" means—

Headline inserted by 1941, No. 291. Definition inserted by 1941, No. 291;† substituted by 1942, No. 402.

- 10
- (a) in relation to claims for compensation by reason of anything done in pursuance of regulations 53, 54 or 55 of these Regulations, or of any order made thereunder, the Minister of State for the Army; and
 - (b) in relation to claims for compensation by reason of anything done in pursuance of any other of the provisions mentioned in regulation 60n, the Minister by whom or by whose authority or direction the thing in respect of which the claim arose was done,

and, in regulations 60c to 60g (both inclusive), regulation 60h and paragraph (d) of regulation 60m includes the person who, being authorized in writing by the Minister so to do, did the act which is the subject matter of the claim for compensation, or made the order in pursuance of which the act was done.

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60c. Notwithstanding anything contained in regulations 60d and 60e of these Regulations, where, by any order[‡] relating to the requisition or impoundment of animals or things (whether made before or after the commencement of this regulation), provision is made for the assessment of compensation, and for the reference of claims for compensation to a Compensation Board in the absence of agreement, the procedure prescribed in that order shall be followed, and claims referred to a Compensation Board in pursuance of that order shall be deemed to have been referred by the Minister in pursuance of regulation 60c of these Regulations and shall be dealt with accordingly.

Orders relating to impoundment. Inserted by 1941, No. 291.†

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60d. §—(1.) Any person who has suffered or suffers loss or damage by reason of anything done in pursuance of any of the following regulations and sub-regulations, namely, regulations 53, 54, 55, 56, sub-regulations (1.) and (2.) of regulation 57, regulation 58 and sub-regulation (4.) of regulation 59 of these Regulations, or in pursuance of any order made under any of those regulations or sub-regulations in relation to—

Claims for compensation. Inserted by 1941, No. 291;† amended by 1942, No. 402.

- (a) any property in which he has, or has had, any legal interest, or in respect of which he has, or has had, any legal right;
- (b) any undertaking in which he has or has had any legal interest; or
- (c) any contract to which he is or has been a party.

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^{*} As to the respective rights of a mortgagor and a mortgagee (not in possession) of land in relation to compensation under these regulations arising out of the taking of possession of the land by the Commonwealth, see *Syme v. Commonwealth and another* (68 C.L.R. 413).

[†] *Held*.—(1.) That regulations 60d to 60m provide just terms for the acquisition of property within the meaning of section 51 (xxxix) of the Constitution.

(2.) That the regulations are not invalid as conferring judicial power on compensation boards.

(3.) That the conferring by the regulations of federal jurisdiction on State Courts was validated by the *National Security Act 1943*. (*Noble and Pear v. Commonwealth* (High Court—Stark J., 77 A.L.J. 154).

See also *Datzel v. Commonwealth* (noted under regulation 60h).

[‡] Regulation 6 of Statutory Rules 1941, No. 291, is as follows:—

"6. The amendments made by these Regulations shall not apply to or affect the assessment of compensation in respect of any animal or thing requisitioned or impounded prior to the date of the commencement of these Regulations, and compensation in respect of any such animal or thing shall be determined in accordance with the law in force immediately prior to that date".

¹ See Defence Impoundment Order (published in Vol. 2).

[‡] See regulations 20 and 21 of the National Security (Hireings Administration) Regulations, *infra*.

shall, if the compensation, or the method of fixing the compensation, in respect of the loss or damage is not prescribed by any regulations other than these Regulations, be paid such compensation as is determined by agreement or, in the absence of agreement, may, within one month after the commencement of this regulation, or, if the thing is done after the commencement of this regulation, within two months after the doing of the thing on which the claim is based, or, in either case, within such further time as the Minister allows, make a claim in writing to the Minister for compensation:

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Provided that, where the claim is in respect of an interference with rights which is of a continuing nature, the claimant may claim as compensation a periodical payment during the continuance of the interference, and may, within two months after the date upon which the interference ceases, submit a further claim in respect of any loss or damage suffered by reason of anything done during the period of the interference (except damage resulting from war operations) which has not been made good and is not covered by the periodical payment.

(2.) A claim for compensation under this regulation shall state--

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- (a) the amount of compensation claimed;
- (b) the nature of the interest on which the claim is founded;
- (c) whether the claimant is aware of any, and if so what, interests in the property, undertaking or contract vested in any other person; and
- (d) the claimant's address for service of notices.

(3.) Where a person has received notice that it is proposed or intended to do something which, if done, would give that person a right to claim compensation under sub-regulation (1.) of this regulation, he may, at any time before the thing is done, unless the compensation is determined by agreement, make a claim for compensation as if the thing had already been done.

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(4.) Where a claim is made in pursuance of sub-regulation (3.) of this regulation, it shall be treated in all respects as if it were a claim under sub-regulation (1.) of this regulation:

Provided that no compensation shall be payable before the thing in respect of which it is claimed has been done:

Provided further that no application for review by a court under regulation 60G may be made before the thing in respect of which the compensation is claimed has been done.

(5.) Where the compensation is determined by agreement, the Minister may execute on behalf of the Commonwealth an instrument setting out the terms and conditions agreed upon.

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(6.) For the purposes of this regulation, "war operations" means operations of the armed forces of an enemy, or operations of any of the forces of the King or the Commonwealth or of any country allied or associated with His Majesty in the present war while in action against an enemy or while acting in the course of their duty upon any warning of the imminence of an attack by an enemy.

60e.—(1.)[†] Where a claim for compensation is made in pursuance of regulation 60d of these Regulations, the Minister shall, as soon as practicable, serve on the claimant personally, or by post at the address given in the claim, a notice stating—

Determination of compensation. Inserted by 1941, No. 291; amended by 1942, No. 402.

- (a) the amount of compensation in the form of a lump sum or in the form of a periodical payment, or both, which he considers just and reasonable; or
- (b) that, in his opinion, the claimant is not entitled to any compensation,

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as the case may be.

(2.) Where a notice in pursuance of paragraph (a) of sub-regulation (1.) of this regulation is served on the claimant, it shall, subject to any right of the claimant to make a further claim by virtue of the proviso to sub-regulation (1.) of regulation 60d of these Regulations, be deemed to be an offer accepted by the claimant in full satisfaction of all claims for loss or damage suffered by reason of the doing of the thing out of which his claim arose, and the amount, periodical payment, or both, as the case may be, shall be payable to him by the Commonwealth according to the tenor of the notification, unless, within one month after receipt of the notice, he requests the Minister, by notice served personally or by post at the address given in the notice served on the claimant, to refer the claim to a Compensation Board.

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(3.) Where a notice in pursuance of paragraph (b) of sub-regulation (1.) of this regulation is served on the claimant, he shall be deemed to have abandoned his claim for compensation and shall have no right of action in respect of the subject-matter of the claim, unless, within one month after the receipt of the notice, he requests the Minister, by notice served personally or by post at the address given in the notice served on the claimant, to refer the claim to a Compensation Board.

(4.) If a notice in pursuance of sub-regulation (1.) of this regulation is not served on the claimant within two months after he makes a claim under regulation 60d of these Regulations, the claimant may by notice served personally or by post request the Minister to refer the claim to a Compensation Board.

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(5.) Where the Minister has been requested to refer a claim to a Compensation Board, the Minister shall as soon as practicable forward the claim to a Compensation Board, together with a notice stating the address at which notices may be served by the Board on the Minister.

Substituted by 1942, No. 402.

Added by 1942, No. 402.

60f.—(1.) Where the Minister refers a claim to a Compensation Board, the Board shall assess the compensation, if any, which it thinks just, and shall, as soon as practicable, serve—

Assessment by Compensation Board.

Inserted by 1941, No. 291.^a

- (a) on the Minister, by post at his address for service; and
- (b) on the claimant, either personally, or by post at the address given in the claim, or at his last-known place of abode or business,

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a notice stating the compensation so assessed.

(2.) Subject to regulation 60g of these Regulations and to any right of the claimant to make a further claim by virtue of the proviso

^a See footnote † *supra*, p. 421.

† See regulation 27 of the National Security (Hiring Administration) Regulations, *infra*.

to sub-regulation (1.) of regulation 60n of these Regulations, the compensation so notified shall be deemed to be accepted by the claimant in full satisfaction of all claims for loss or damage suffered by reason of the doing of the thing out of which the claim arose, and shall become payable to him by the Commonwealth according to the tenor of the notification.

10 Applications for
review.
inserted by
1931, No. 231.^a

50c. (1.) If either the Minister or the claimant is dissatisfied with the assessment of a Compensation Board, he may, within fourteen days after receipt of the notice of the assessment of the Board, or, where the assessment was made pursuant to sub-regulation (3.) of regulation 60n of these Regulations, within fourteen days after the doing of the thing in respect of which the claim was made, apply to a court of competent jurisdiction for a review of the assessment.

(2.) An application under sub-regulation (1.) of this regulation shall be made in writing to the Registrar or other proper officer of the court, and shall be accompanied by a true copy of the application for endorsement and service.

20 (3.) Upon receipt of the application, the Registrar or other proper officer shall appoint a time for the hearing thereof, and shall endorse on the true copy of the application the place and time of hearing and return it to the applicant.

(4.) The applicant shall, not less than fourteen days before the day fixed for the hearing, serve on the other party (in this regulation referred to as "the respondent") in accordance with the practice of the court relating to service of writs or summonses, the endorsed copy of the application.

30 (5.) Upon the day fixed, the court may, on proof of due service of the copy of the application, or if the respondent appears to contest the application, proceed to hear the application, and to determine whether any compensation is payable and, if so, the compensation which it thinks just, and may make an order for payment of the compensation so determined.

(6.) The court may, in any review under this regulation, award such costs as it thinks fit.

(7.) In any matter not provided for in these Regulations the powers, practice and procedure of the court shall be as nearly as may be in accordance with the powers, practice and procedure of the court in civil actions or appeals.

40 Amended by
1942, No. 492.

(8.) For the purposes of this regulation, "court of competent jurisdiction" means a court of the Commonwealth, or of a State or Territory of the Commonwealth (other than a court presided over by a Justice of the Peace, Magistrate or District Officer), which would have jurisdiction to hear and determine the application if it were an action between subject and subject for the recovery of a debt equal to the compensation claimed in the original claim to the Minister, or when the compensation claimed is wholly or partly in the form of a periodical payment, of a debt equal to the sum which the periodical payment claimed would amount to for the period of one year (or if the claim is in respect of a period of less than one year, for such lesser period), together with the amount of any other items in the claim.

^a See footnote 7 *supra*, p. 423

60c. (1) The Minister may, by order, make provision regarding the basis on which compensation is to be awarded in any class of case.

Order relating to basis of compensation inserted by 1941, No. 291.*

(2.) Any such order relating to the requisition of property shall provide just terms to the person from whom the property is requisitioned.

10 (3.) Notwithstanding anything contained in these Regulations where a Minister has, whether before or after the commencement of this regulation, by order made any provisions regarding the basis on which compensation is to be awarded in any class of case, every Compensation Board and court shall be bound, in the assessment of compensation in any case of that class, to observe those provisions.

60d. In any case where compensation, or part thereof, has not been paid within three months after the loss or damage in respect of which the compensation is payable was suffered, the Minister may, if in his discretion he thinks fit, authorize the payment of interest at such rate (not exceeding five per centum per annum) as he determines on the compensation or part thereof for the period commencing three months after that loss or damage was suffered and ending on the date of payment.

Interest on compensation inserted by 1941, No. 291.*

20 60e. No action, other than an action for the recovery of compensation determined by agreement, or in pursuance of these Regulations, or of any other regulations, or of any order relating to the requisition or impoundment of animals or things, shall be maintained against any person in respect of anything purporting to be or to have been done in pursuance of any of the regulations and sub-regulations mentioned in regulation 60d of these Regulations, or in pursuance of any order made in pursuance of any of these regulations or sub-regulations.

Other rights of action barred. inserted by 1941, No. 291.*

60f.--(1.) For the purposes of these Regulations there shall be one or more Compensation Boards, each consisting of a Chairman and two other persons, appointed by the Minister.

Compensation Boards. inserted by 1941, No. 291.*

30 (2.) Except where the Minister considers that a Compensation Board cannot conveniently be so constituted, each Board shall include--

- (a) a Police, Stipendiary or Special Magistrate, who shall be the Chairman; and
- (b) a qualified practising accountant.

(3.) The Minister may appoint one or more persons having specialized knowledge of the subject-matter of the claim to act as assessors to assist a Compensation Board.

(4.) At least one of the assessors appointed to assist a Board or, where only one assessor is appointed, that assessor, shall be a person who is not otherwise in the employ of the Commonwealth.

40 (5.) There may be paid to any member of a Compensation Board and to any assessor such remuneration (if any) for his services and such travelling allowances (if any) as the Minister directs.

Substituted by 1942, No. 402.

* Held that this regulation, insofar as it is intended to give the Minister power to make orders as to the basis of compensation where possession of land is taken, which orders need not provide just terms, is invalid in view of section 51 (xxii) of the Constitution (*Dalziel v. Commonwealth*, Supreme Court of New South Wales, Roper J., September, 1943). The High Court has granted special leave to appeal against this decision.

† See Basis of Compensation Order (published in Vol 2). As to the validity of this Order, see *Dalziel v. Commonwealth*, footnote * *supra*.

‡ See footnote * *supra*, p. 421.

Rules.
Inserted by
1944, No. 204.^c

60. The Minister may make rules as to the conduct of the proceedings of Compensation Boards and, in particular, as to--

- (a) the summoning and examination of witnesses and the production of books, documents and papers;
- (b) the administration of oaths and affirmations;
- (c) the protection of members of the Boards and of witnesses summoned to attend or appearing before them;
- (d) the appearance or representation before any such Board of the claimant and of the Minister; and
- (e) the fees payable to witnesses.

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Transport.

Control of
lines of
communication
for defence
purpose.

61. A Minister or any person therein authorized by him may, with a view to facilitating any operations of the forces of the King or the Commonwealth or the movement of persons and supplies in connexion with any such operations, by order give directions for prohibiting or restricting, within the area, and for the period, specified in the directions, the use of any dock or harbour or any highway, railway or inland waterway.

Traffic on
roads.

62. Without prejudice to any other of these Regulations, a Minister may by order provide for the regulation of traffic on roads, and, without prejudice to the generality of the power, any such order may in particular provide--

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Amended by
1945, No. 26,
regulation 17.

- (a) for determining the routes to be followed by any particular class of vehicles proceeding on roads, either generally or in such circumstances as are determined by or in accordance with the order; or
- (b) for prohibiting or regulating the use of vehicles or any class of vehicles on roads or the use by vehicles of specified roads or classes of roads, either generally or in such circumstances as are so specified,

and may be made so as to apply either generally or to any specified area, and may make different provision for different parts of the area to which the order applies.

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Maintenance
of roads.

63.—(1.) Where any person is under a duty to improve or maintain a road, a Minister may by order give such directions with respect to the manner in which that duty is to be performed as he thinks necessary in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war.

(2.) Sub-regulation (1.) of this regulation shall apply in relation to any bridge over or under a road, and to any tunnel in the course of a road, as it applies in relation to a road.

(3.) If any directions given under this regulation are not complied with by the person to whom they are given, then (without prejudice to any proceedings which may be taken in respect of the offence) a Minister may cause to be done all such work as is necessary for securing compliance with the directions.

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^a See footnote † *supra*, p. 421.

[†] See National Security (Compensation Boards) Rules (*Gazette*, 1943, December, 1941, p. 2677), as amended and National Security (Representation before Compensation Boards) Rules (*Gazette*, 1944, June, 1943, p. 1244) (published in Vol. 2).

(1.) a local road authority, if authorized in that behalf by a Minister, may do on his behalf any work which he is authorized to cause to be done under sub-regulation (3.) of this regulation

10 64.—(1.) Without prejudice to any navigation order, if it appears to a Minister to be necessary or expedient so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, he may make provision by order—

Control of traffic at ports

- (a) for prohibiting or restricting the shipping or unshipping of articles or persons, or any specified class of articles or persons, at any port in Australia, and
- (b) generally, for regulating, facilitating or expediting the traffic at any such port,

and an order under this regulation may contain such incidental and supplementary provisions as appear to that Minister to be necessary or expedient for the purposes of the order.

20 (2.) The reference in this regulation to shipping or unshipping shall be construed as including a reference to embarking or putting on board seaplanes or disembarking or unloading from seaplanes, as the case may be.

65. Any person thereto authorized by a Minister may, if it appears to him to be necessary for the purpose of preventing or avoiding any undue congestion of traffic at any port or railway premises, cause to be removed from the port or premises, and to be kept at such place as he thinks proper, any goods at the port or on the premises which are not removed therefrom with reasonable dispatch by or on behalf of the consignee.

Congestion of traffic at ports and on railways.

30 66.—(1.) A Minister may, in relation to any area, by order make such provision as appears to him to be required in the interests of public safety for regulating—

Handling and conveyance of ammunition, &c., in ports.

- (a) the shipping, unshipping, handling, storage or conveyance of ammunition, explosives or inflammable substances in the service of the King or the Commonwealth or under instructions given on behalf of the King or the Commonwealth; or
- (b) the conveyance of ammunition, explosives or inflammable substances in any vessel for purposes of defence.

(2.) The reference in this regulation to shipping or to unshipping shall be construed as including a reference to putting on board seaplanes or to unloading from seaplanes, as the case may be.

40 (3.) If it appears to a Minister to be necessary or expedient so to do in the interests of the public safety, the defence of the Commonwealth or the efficient prosecution of the war, he may by order make provision for the shipping, unshipping, handling, storage or conveyance of any such ammunition, explosives or inflammable substances at any place specified in the order.

Added by 1941, No. 8.

* See order relating to vessels conveying inflammable liquid in bulk, for discharge at Fremantle, Albany and Geraldton, and vessels conveying inflammable liquid in bulk and culling at Fremantle, Albany and Geraldton for bunkering (Gazette, 25th September, 1943, p. 2174).

Supplementary Provisions.

Inquiries.
Amended by
1941, No. 231.

67. (1.) If a Minister considers it desirable for the exercise of any of his powers under this Part of these Regulations that an inquiry should be held into any particular matter, he may direct the holding of an inquiry into that matter by a person or committee appointed by him.

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(2.) For the purpose of any inquiry held in pursuance of this regulation, the person, or the chairman of the committee, appointed to hold the inquiry may by summons require any person to attend, at the time and place specified in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined, to make and subscribe a declaration of the truth of the matter respecting which he is examined:

Provided that a person shall not be required, in obedience to any such summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him.

Amended by
1941, No. 231.

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(3.) Every person who refuses or wilfully neglects to attend in obedience to a summons issued under this regulation, or to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which he is required to produce for the purpose of such an inquiry, shall be guilty of an offence against the Act.

*Institution
of proceedings
under Part V.*

68. Notwithstanding any restriction imposed by any of the following regulations, a prosecution in respect of an offence under any regulation contained in this Part of these Regulations may be instituted by or on behalf of a Minister or by any authority or person specified by an order of a Minister for the purposes of that regulation.

PART VI.—MISCELLANEOUS.

General Provisions.

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*Derelict
articles.*
Substituted by
1942, No. 304.

69.—(1.) If any person finds any article which he has reasonable cause to believe—

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- (a) to have dropped from any aircraft, or to have formed part of any aircraft, or of the equipment of any aircraft; or
- (b) to be the property of a member of any of the armed forces of the enemy or to have formed part of the arms, clothing or equipment of such a member, or to have been or formed part of any missile discharged by a member of any armed force; or
- (c) to have been used or intended for use by any armed force or upon any vessel of war, or vessel defensively armed or equipped, or by a member of any such force, or of the crew of any such vessel, and to have been lost, abandoned or intentionally released or relinquished by any such member or force or from any such vessel,

or receives any such article from any other person whom he does not have reasonable cause to believe to be entitled to transfer it to him, or from a member of any of the armed forces of the enemy, he shall forthwith cause the article to be delivered to a member of the Armed

Supplementary Provisions.

86. Where any work is done in the exercise of powers conferred by any of these Regulations, then, if and so far as the work was work which, apart from the provisions of these Regulations, some person was under a duty to do or might have been required to do, but which he had failed without reasonable excuse to do, the amount of any expenses reasonably incurred in connexion with the doing of the work shall be a debt due from that person to the Commonwealth and shall be recoverable in any court of competent jurisdiction.
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87. A provision made in, or a direction or determination made or given in pursuance of, any of these Regulations or any order under these Regulations, and purporting to entrust to any person or class of persons any functions for the purposes of the regulation or of the order, shall not be taken to be invalid or of no effect by reason only that that person or class of persons is, or consists of or comprises, a body or bodies corporate incorporated by or under a law; and any body corporate to whom any functions are entrusted under or in pursuance of these Regulations shall have power to discharge those functions, notwithstanding any limitation or restriction which, apart from these Regulations, is imposed by any law or instrument determining the functions of that body.
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88. Where in any regulation under the Act the exercise of any power or function by a Minister or the operation of any provision of that regulation is dependent upon the opinion, belief or state of mind of a Minister in relation to any matter, that power or function may be exercised by the person to whom that power or function has been delegated by the Minister in pursuance of section seventeen of the Act or that provision may operate (as the case may be) upon the opinion, belief or state of mind of that person in relation to that matter.
89. Without prejudice to any special provisions contained in these Regulations, a notice to be served on any person for the purposes of any of these Regulations may be served by sending it by post in a letter addressed to that person at his last or usual place of abode or place of business.
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90. A person shall comply with every direction and requirement given to or made of or applicable to him under or in pursuance of any provision of these Regulations or any order made under any such provision.
- 91.—(1.) In any prosecution for an offence against the Act, a certificate under the hand of any person that a document annexed to the certificate is a true copy of a letter or notice sent by that person to the defendant shall be *prima facie* evidence of the matters certified to and that the original letter or notice of which the document purports to be a copy was received by the defendant on or about the time at which it would be delivered in the ordinary course of post if it had been sent on the date borne by the document, and that the signature on the certificate is the signature of the person by whom it purports to have been signed.
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Recovery of expenses.

Entrusting of functions to statutory corporations.

Exercise of certain powers and functions by a delegate of a Minister.

Service of notices.

Compliance with directions and requirements. Added by 1940, No. 34.

Evidentiary provisions. Added by 1940, No. 120.

STATUTORY RULES 1944, No. 55.^(d)

Power to
arrest and
hold in
custody
certain
seamen

Regulation 51A of the National Security (General) Regulations is amended—

(a) by omitting paragraphs (c) and (d) of sub-regulation (1.) and inserting in their stead the following paragraphs:—

“(c) refuses to perform his regular duties on board the ship on which he is under an obligation to serve or is insubordinate, wilfully disobeys a lawful command or otherwise neglects his duties; or

(d) induces or attempts to induce any other seaman to interfere in any way with the proper operation of the ship on which that other seaman is employed or has been offered or has accepted employment;” and

(b) by adding at the end thereof the following sub-regulations:—

“(7.) Where any seaman is arrested in pursuance of any order under this regulation, the person effecting the arrest shall, within one hour after effecting the arrest (or, if the nearest telegraph office is not then open for business, within one hour after that telegraph office becomes open for business), telegraph to the Attorney-General or to the Solicitor-General, Canberra, a report setting out—

(a) the fact of the arrest, including the name and address of the person arrested;

(b) the name of the ship on which the seaman is or was under an obligation to serve;

(c) the name and address of the agent of the ship;

(d) the person by whom the order was issued; and

(e) the place where the seaman is held in custody.

“(6.) The agent of the ship on which a seaman so arrested last served shall, immediately on the expiration of seven days after the date of the arrest and, thereafter, immediately on the expiration of each subsequent period of seven days during which the seaman is held in custody, furnish a report in writing, to the Attorney-General or the Solicitor-General, Canberra, setting out the efforts made by the agent during the preceding period of seven days to enable the seaman to be released from custody.”

STATUTORY RULES 1944, No. 131.^(e)

Determination
of
compensation.

1. Regulation 60E of the National Security (General) Regulations is amended—

(a) by inserting in sub-regulation (2.) after the word “month” the words “or such further time as the Minister allows”; and

(d) Made under the National Security Act 1939-1943 on 23rd March, 1944; notified in the Gazette on 25th March, 1944.
(e) Made under the National Security Act 1939-1943 on 31st August, 1944; notified in the Gazette on 4th September, 1944.

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(b) by inserting in sub-regulation (3.) after the word "month" the words "or such further time as the Minister allows".

2. Regulation 60o of the National Security (General) Regulations is amended by omitting from sub-regulation (1.) the words "fourteen days" (wherever occurring) and inserting in their stead the words "one month".

Applications for review.

NATIONAL SECURITY (HIRINGS ADMINISTRATION) REGULATIONS.(1)

STATUTORY RULES 1944, No. 125.(2)

Regulation 21 of the National Security (Hirings Administration) Regulations is amended by omitting sub-regulation (1B) of that regulation and inserting in its stead the following sub-regulation:—

Determinations by Central Hirings Committee.

"(1B) The Central Hirings Committee, or its delegate acting under sub-regulation (3.) of this regulation, may, notwithstanding anything contained in regulation 60p of the National Security (General) Regulations, or regulation 60r of those Regulations as modified by sub-regulation (4.) of this regulation—

- (a) enlarge the time prescribed by regulation 60D of those Regulations within which a claim for compensation in respect of a hiring may be made; or
- (b) enlarge the time prescribed by regulation 60E of those Regulations (as so modified) within which a request by a claimant to refer a claim in respect of a hiring to a Compensation Board may be made."

NATIONAL SECURITY (HOUSING AND ACCOMMODATION) REGULATIONS.(3)

STATUTORY RULES 1944, No. 32.(4)

1. The National Security (Housing of War Workers) Regulations are amended by omitting the heading "PART I.—PRELIMINARY." appearing before regulation 1.

2. Regulation 1 of the National Security (Housing of War Workers) Regulations is amended by omitting the words "of War Workers" and inserting in their stead the words "and Accommodation".

3. Regulation 3A of the National Security (Housing of War Workers) Regulations is repealed.

(1) For previous Regulations, see Commonwealth Statutory Rules 1942, p. 736.

(2) Made under the National Security Act 1939-1943 on 22nd August, 1944; notified in the Gazette on 24th August, 1944.

(3) For previous Regulations, see Commonwealth Statutory Rules 1941, p. 692; Commonwealth Statutory Rules 1942, p. 736; Commonwealth Statutory Rules 1943, p. 597.

(4) Made under the National Security Act 1939-1943 on 11th February, 1944; notified in the Gazette on 12th February, 1944.

STATUTORY RULES 1945, No. 49.^(a)

Regulation 13B of the National Security (General) Regulations is repealed and the following regulation inserted in its stead:—

- 10 "13B. Notwithstanding the provisions of section 64 of the *Post and Telegraph Act 1901-1934* and Article 98 of the Telegraph Regulations annexed to the International Telecommunication Convention, any person having the custody or control of any records in relation to telegrams which have been transmitted (including the originals of the telegrams) shall destroy them as follows:—
- (a) In the case of Commonwealth telegrams—the originals and any copies thereof (including received telegraph tape records of the telegrams)—upon the expiration of twelve months after the date of lodgment;
- (b) In the case of international telegrams—
- (i) the originals thereof—upon the expiration of twelve months after the date of lodgment;
- (ii) where a telegraph tape record and a corresponding message record exists in any telegraph office, the telegraph tape record—upon the expiration of three months after the date of lodgment; and
- (iii) other copies—upon the expiration of twelve months after the date of lodgment or as soon as the relative accounts are settled and any statistical work in connexion therewith is completed in accordance with the requirements of the International Telecommunication Convention and the Regulations thereunder, whichever is the earlier; and
- (c) In any case in which the Postmaster-General by order requires that all such records be destroyed as are in existence at the date the order is made—forthwith on the making of any such order."
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STATUTORY RULES 1945, No. 50.^(a)

1. Regulation 60L of the National Security (General) Regulations is amended—

- (a) by omitting paragraph (a) of sub-regulation (2.) and inserting in its stead the following paragraph:—
- "(a) a person who holds, or has held, office as a Police, Stipendiary or Special Magistrate, who shall be the Chairman; and"; and
- (b) by adding at the end thereof the following sub-regulations:—
- "(6.) Where, during or after the hearing of any claim, the Chairman, or either of the other members of a Compensation Board, is unable on account of death, illness or
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^(a) Made under the National Security Act 1939-1943 on 21st March, 1945; notified in the *Gazette* on 22nd March, 1945.

^(b) Made under the National Security Act 1939-1943 on 18th April, 1945; notified in the *Gazette* on 19th April, 1945.

otherwise to proceed with the hearing or determination, the remaining members may continue with the hearing and determination, or the determination, as the case may be.

"(7.) A member who has been absent during any part of the hearing of a claim shall not be eligible to take any further part in the hearing and determination of that claim.

"(8.) If the Minister and the claimant consent, the Chairman of a Compensation Board may sit alone for the hearing of any claim, and in any such case the determination of the Chairman shall be of the same force and effect as if it were the determination of the Board."

2. After regulation 60x of the National Security (General) Regulations the following regulation is inserted:—

Deputies.

"60xA.—(1.) The Minister may appoint a person (including a member of the Board) to be the Deputy Chairman of a Compensation Board during any absence of the Chairman.

"(2.) The Minister may appoint a person to be the Deputy of any member (other than the Chairman) of a Compensation Board during any absence of the member, or at any time when the member is acting as Deputy of the Chairman of the Board.

"(3.) A person appointed under this regulation shall, while acting as Deputy, have all the powers and perform all the functions of the member of the Board for whom he is the Deputy, and any reference in these Regulations to a member of a Board shall be read as including a reference to the Deputy of a member so acting.

"(4.) It shall not be necessary for a person appointed under this regulation to have any qualification possessed by the member of whom he is appointed to be the Deputy."

STATUTORY RULES 1945, No. 57.^(a)

After regulation 71 of the National Security (General) Regulations the following regulation is inserted:—

Power to take
occupation
surveys.

"71A.—(1.) The Treasurer may, by order published in the *Gazette*, make provision for or in relation to requiring the furnishing to him or to any authority specified in the order, by or on behalf of any person, or persons generally or persons included in any class of persons, of information—

(a) concerning the occupation, employment or source of livelihood of that person or those persons; or

(b) which, in the opinion of the Treasurer, is necessary in order to enable the systematic recording and use of the information specified in the last preceding paragraph.

"(2.) An order under this regulation may contain such incidental and supplementary provisions as the Treasurer thinks fit.

"(3.) Documents, cards and papers for the purposes of any order made under this regulation may be transmitted through the post free of charge by any person performing official duties in connexion with the order."

^(a) Made under the National Security Act 1939-1963 on 26th April, 1945; notified in the *Gazette* on 27th April, 1945.