

**THE
COMMONWEALTH AND STATES FINANCIAL
AGREEMENT ACTS 1927 to 1944**

**Commonwealth and States Financial Agreement Ratification Act of 1927,
18 Geo. 5 No. 22**

Amended by

**Commonwealth and States Soldier Settlement Agreement and Financial
Agreement Amendment Approval Act of 1934, 25 Geo. 5 No. 15**

**Commonwealth and States Financial Agreement Further Variation Act of
1944, 8 Geo. 6 No. 17**

An Act to Authorise the Execution by the State of Queensland of a Draft Agreement between the Commonwealth of Australia and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania concerning the Adjustment of the Financial Relations between the Commonwealth and the States of the Commonwealth; to Approve and Ratify the Agreement as finally made and executed between such Parties; and for other purposes

[Assented to 7 January 1928]

Preamble. Whereas, with a view to making provision for the adjustment of Commonwealth and State financial relations, the general principle of a draft scheme was affirmed by a Conference of Commonwealth and State Ministers of the Crown in Melbourne, which commenced on the sixteenth day of June, one thousand nine hundred and twenty-seven:

And whereas permanent effect cannot be given to the proposals contained in the said scheme unless the Constitution of the Commonwealth is altered so as to confer on the Parliament of the Commonwealth power to make laws for carrying out or giving permanent effect to such proposals:

And whereas, pending the submission to the electors of a proposed law for the alteration of the said Constitution as aforesaid, the Commonwealth and the States have agreed that for the period commencing on the first day of July, one thousand nine hundred and twenty-seven, and ending on the thirtieth day of June, one thousand nine hundred and twenty-nine, certain of the proposed provisions of the said scheme shall be temporarily adopted:

Schedule. And whereas, subject to the approval and ratification by the Parliaments of the Commonwealth and the States of the Commonwealth, a draft agreement has been prepared between the Commonwealth and the said States in relation to the matters above set forth, a copy of which draft agreement is set forth in the Schedule to this Act:

And whereas it is provided in such draft agreement that such agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the States:

And whereas it is desirable that the execution by the State of Queensland of the said draft agreement be authorised, and also that such

agreement should be approved and ratified, subject to any amendments, alterations, additions, or modifications made therein which may be adopted and agreed to by the parties thereto before such draft agreement is finally made and executed:

1. Short title. This Act may be cited as "The Commonwealth and States Financial Agreement Ratification Act of 1927."

The collective title is now the Commonwealth and States Financial Agreement Acts, 1927 to 1944; Commonwealth and States Financial Agreement Further Variation Act of 1944, 8 Geo. 6 No. 17, s. 2, p. 157, *post*.

2. Definitions. In this Act, unless the context otherwise indicates or requires, the following terms have the meanings set against them respectively, that is to say:—

"Party" or "Parties"—The Prime Minister of the Commonwealth of Australia, and the Premiers of the States of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania, or any Minister of the Crown representing the Prime Minister of the Commonwealth or any Minister or Ministers of the Crown representing the Premier or Premiers of a State or States, or each and every of them;

"This Act"—This Act, the draft agreement, the agreement as finally agreed upon and executed by the parties thereto, any subsequent amendment, alteration, addition, or modification which may be made in such executed agreement as herein provided, and all Proclamations, Orders in Council, and regulations made in pursuance of this Act.

3. (1) Authorisation of execution of draft agreement. Schedule. The execution by or on behalf of the State of Queensland of the draft agreement between the Prime Minister of the Commonwealth of Australia or any Minister of the Crown representing the Prime Minister of the Commonwealth (as representing the Commonwealth) and the Premiers or any Minister or Ministers of the Crown representing the Premier or Premiers of the States of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania (as representing such States), a copy of which draft agreement is set forth in the Schedule to this Act, is hereby authorised.

(2) Approval and ratification of executed agreement. On the signature by the parties thereto of the said draft agreement (including any amendments, alterations, additions, or modifications made in such draft agreement and adopted and agreed to by the parties thereto) the agreement as thus finally agreed upon and made and executed by the parties thereto is, subject to this Act, hereby declared to be approved and ratified.

(3) Executed agreement to be published in Gazette and to have force of law. The Agreement, as finally agreed upon and made and executed by the parties thereto, shall be published by the Governor in Council by Proclamation in the Gazette and shall, subject to this Act, upon such publication have the force of law and shall be valid and effectual for all purposes whatever, and shall be obeyed, and shall be judicially noticed.

(4) **No effect until approved by Parliaments of Commonwealth and the States.** Provided always that such executed agreement as so published shall have no force or effect and shall not be binding on the State of Queensland unless and until it is approved by the Parliaments of the Commonwealth and of the States.

Each State of the Commonwealth passed an Act in terms similar to this Act. The Commonwealth passed a similar Act, the Financial Agreement Act, 1928, on 2 April 1928. The Agreement as finally agreed upon was published by Proclamation 13 July 1928, Gazette 14 July 1928. Consequent on the Agreement and the ratifying legislation the Referendum (Constitution Alteration) Act, 1928, was passed by the necessary majority of both Houses of the Commonwealth Parliament, and the constitutional alteration proposed by the Agreement (Part IV, cl. 2) was submitted to the electors and carried. The Commonwealth Parliament, on 13 February 1929, passed the Constitution Alteration (State Debts), 1928, inserting a new s. 105A in the Constitution, for which see p. 230, *post*.

Section 105A provides, *inter alia*, that "The Parliament may make laws for validating any such agreement made before the commencement of this section" and "The Parliament may make laws for the carrying out by the parties thereto of any such agreement." In exercise of such authority the Commonwealth Parliament, on 18 March 1929, passed the Financial Agreement Validation Act, 1929, validating the Agreement of 12 December 1927, scheduled to this Act.

To enable recovery by the Commonwealth of money due by States the Commonwealth Parliament passed the Financial Agreements Enforcement Acts, 1932, Part II of which was held to be *intra vires* the Commonwealth in *New South Wales v. Commonwealth* (1932), 46 C.L.R. 155. Application for a certificate to appeal to the Privy Council from this decision was refused in *New South Wales v. Commonwealth* (No. 2) (1932), 46 C.L.R. 235. Section 15 of the Financial Agreements Enforcement Act, 1932, of the Commonwealth, was upheld as being constitutionally *intra vires* in *New South Wales v. Commonwealth* (No. 3) (1932), 46 C.L.R. 246.

On an application under s. 6 (3) of that Act for a declaration that an amount stated was "due and payable and unpaid" by a State, the State could not claim a set-off (*Re New South Wales* (1932), 47 C.L.R. 58). The Financial Agreements Enforcement Acts, 1932, were repealed by the Statute Law Revision Act, 1934.

On this subject generally, see "What Every Australian Ought to Know" by Sir Edward Mitchell.

4. Subsequent amendments to executed agreement. In any case where circumstances may from time to time arise whereby any amendment, alteration, addition, or modification of the said executed agreement as published as aforesaid in the Gazette may be deemed necessary and convenient by all parties thereto, the execution of such amendment, alteration, addition, or modification to such executed agreement is hereby authorised, approved, and ratified.

Such amendment, alteration, addition, or modification of such executed agreement shall be published by the Governor in Council by Proclamation in the Gazette and shall upon such publication have the force of law and shall be valid and effectual for all purposes whatever, and shall be obeyed, and shall be judicially noticed.

Supplementary agreements. The provisions of this section shall also extend to and include any supplementary agreement or supplementary agreements made between the parties in respect of the various matters contained in such supplementary agreement or agreements, and also to any supplementary agreement or supplementary agreements between the Prime Minister of the Commonwealth or any Minister of the Crown representing the Prime Minister of the Commonwealth (as representing the Commonwealth) and the Premier of Queensland or any Minister of the Crown representing the Premier of Queensland (as representing the State).

Further agreements were made on 21 July 1931 and 22 October 1931 (see schedules to the Debt Conversion Agreement Act of 1931, p. 238, *post*, and the Debt Conversion (Further Agreement) Act of 1931, p. 243, *post*), on 3 July 1934 (see

schedule to the Commonwealth and States Soldier Settlement Agreement and Financial Agreement Amendment Approval Act of 1934, p. 184, *post*), and on 15 November 1944 (see schedule to the Commonwealth and States Financial Agreement Further Variation Act of 1944, p. 158, *post*). These Agreements altered the Agreement scheduled to this Act in certain respects.

5. Application of Act to sinking funds. Subject to this Act, where in any law of the State of Queensland reference is made in respect of loans to the constitution of a sinking fund, the application and investment thereof, and such other provisions, conditions, matters or things concerning such sinking fund as may be enacted therein, such law shall be read and construed as being subject to the provisions of this Act, and such law shall be deemed to be affected or abrogated, whether by way of repeal, limitation, or otherwise, according as the provisions, conditions, stipulations, and matters or things in this Act provided and contained so affect or abrogate such law of the State.

6. (1) Orders in Council. The Governor in Council may from time to time, by Order in Council published in the Gazette, repeal or amend, suspend, or modify in any manner whatever any Act or section or part of a section of any Act or any Proclamation, Order in Council, regulation, rule, by-law, or other matter, whether passed, promulgated, or made before, on, or after the commencement of this Act, which it may be considered necessary or convenient to so repeal, amend, suspend, or modify in order to give full force and effect in carrying out the administration of this Act and in the carrying out of the objects and purposes of this Act.

(2) Regulations. The Governor in Council may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, as may be necessary or convenient for the administration of this Act or as may be necessary or expedient to carry out the objects and purposes of this Act, and where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency. Such regulations shall be published in the Gazette.

(3) Orders in Council and regulations to have the force of law. All such Orders in Council and regulations made under the authority of this Act shall, upon publication in the Gazette, have the force of law and shall be obeyed, and shall have the same force and effect as if they were enacted in and formed part of this Act, and shall be judicially noticed.

7. Proclamations, etc., to be laid before Parliament. All Proclamations, Orders in Council, and regulations made under the authority of this Act shall be laid before the Legislative Assembly within fourteen days after such publication, if Parliament is in session, and if not, then within fourteen days after the commencement of the next session.

8. (1) Ratification of payments, acts, matters, etc. All moneys paid by the Treasurer and all acts, matters, or things done or performed under or pursuant to the draft agreement prior to the making of and execution of the agreement as finally agreed upon by the parties thereto, or paid, done, or performed before the coming into operation of this Act, or to be paid, done, or performed under or pursuant to such agreement as finally agreed upon by the parties thereto or under or pursuant to this Act after the

passing thereof or after the coming into operation thereof, are approved, ratified, authorised, confirmed, and adopted, and are and shall be valid and effectual for all purposes whatever.

(2) **Appropriation.** All sums of money which are required to be expended by the Treasurer in connection with or pursuant to this Act shall be defrayed out of the Consolidated Revenue, which is hereby appropriated for the purpose.

(3) **Indemnity.** The State shall indemnify the Trustees of the sinking funds under any Loan Act or other Act of the State to which this Act applies from all responsibility in respect thereof arising from the provisions of this Act.

Schedule: The Financial Agreement is reprinted at p. 165, *post*, as amended to 15 November 1944. It is scheduled to the amending Agreement of 15 November 1944 pursuant to clause 7 (2) of that Agreement.

For the original agreement, see 1936 Reprint, Vol. 1, p. 780.
