

Conversions of Securities Adjustment Act 1931 No 63

[1931-63]



New South Wales

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Conversions of Securities Adjustment Act 1931 No 63



New South Wales

An Act to provide for adjustment in certain cases as between capital and income in connection with the conversions of securities under the Act of the Commonwealth known as the *Commonwealth Debt Conversion Act 1931*; and for purposes connected therewith; and for other purposes.

1 Name of Act

This Act may be cited as the *Conversions of Securities Adjustment Act 1931*.

2 Commencement

This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

3 Construction of Act

This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

4 Definitions

In this Act, unless the context requires another meaning:

Existing security means an existing security as defined by the *Commonwealth Debt Conversion Act 1931*, which has been converted into a new security as defined by the said Act.

New security means a new security as defined by the said Act which has been issued by way of conversion of an existing security as defined by the said Act.

Court means the Supreme Court in its equitable jurisdiction.

Person includes the executors, administrators, and assigns of an individual and the assigns of a corporation.

Trustee means trustee as defined by the *Trustee Act 1925*.

5 Operation of Act

References in this Act to conversions and to existing securities and to new securities shall include conversions under the *Commonwealth Debt Conversion Act 1931*, by reason of the Agreement between the Commonwealth and the States contained in the Schedule to the *Debt Conversion Agreement (No 2) Act 1931*, and by reason of that Act, and shall include existing securities so converted and new securities issued on such conversion.

6 Adjustments necessary

Where immediately prior to the first day of August, one thousand nine hundred and thirty-one, the beneficial interest in the income of an existing security was not vested in the same person and to the same extent as the beneficial interest in the capital thereof, then as between such of the persons as are for the time being interested in the income of the new security into which such existing security has been converted and such of the persons as are for the time being interested in the capital of the new security respectively the following provisions shall apply:

- (1) Where a conversion is for a new security without any cash in addition thereto, if the face value of the new security is equal to the face value of the existing security no adjustment as between income and capital shall be made by reason of the conversion.
- (2) Where a conversion is for a new security and in addition thereto cash is receivable on the conversion, if the face value of the new security is equal to the face value of the existing security the amount of the cash so receivable shall be deemed to be income and be applicable accordingly to augment from day to day the interest on the new security for the period commencing on the first day of August, one thousand nine hundred and thirty-one, so as to make it (so far as such cash will extend) as nearly as may be equal to an amount that is twenty-two and one-half per centum less than the interest that was payable on the existing security on the thirty-first day of July, one thousand nine hundred and thirty-one.
- (3) Where the face value of the new security is greater than the face value of the existing security a sum equal to the amount of such excess together with the amount of any cash receivable in addition to the new security on the conversion of the existing security shall be deemed to be income and be applicable out of the capital of the new security accordingly to augment from day to day the interest on the new security for the period commencing on the first day of August, one thousand nine hundred and thirty-one, so as to make it (so far as such excess will extend) as nearly as may be equal to an amount that is twenty-two and one-half per centum less than the interest that was payable on the existing security on the thirty-first day of July, one thousand nine hundred and thirty-one.
- (4) Where the face value of the new security is less than the face value of the existing

security, and if no cash is receivable in addition to the new security on the conversion of the existing security, or if the cash so receivable is an amount which when added to the face value of the new security amounts to less than the face value of the existing security, then, as nearly as may be, so much of the interest on the new security in the period commencing on the first day of August, one thousand nine hundred and thirty-one, as exceeds an amount that is twenty-two and one-half per centum less than the interest that was payable on the existing security on the thirty-first day of July, one thousand nine hundred and thirty-one, shall be deductible from day to day from the income and shall together with any cash receivable as aforesaid on the conversion be deemed to be capital and applicable accordingly until the sum so deducted, together with any cash receivable as aforesaid on the conversion equals the difference between the face values of the existing security and the new security.

- (5) Where the face value of the new security is less than the face value of the existing security if there is receivable in addition to the new security on the conversion of the existing security cash of an amount which when added to the face value of the new security equals the face value of the existing security, the amount of the cash shall be deemed to be capital and applicable accordingly.
- (6) Where the face value of the new security is less than the face value of the existing security, if there is receivable in addition to the new security on the conversion of the existing security cash of an amount, which when added to the face value of the new security, is greater than the face value of the existing security, the part of the cash which is equal to such excess shall be deemed to be income and be applicable accordingly to augment from day to day (so far as the same will extend) the interest on the new security for the period commencing on the first day of August, one thousand nine hundred and thirty-one, so as to make it as nearly as may be equal to an amount that is twenty-two and one-half per centum less than the interest that was payable on the existing security on the thirty-first day of July, one thousand nine hundred and thirty-one, and the remainder of the cash receivable as aforesaid shall be deemed to be capital.

7 Certain small adjustments need not be made

- (1) Where:
 - (a) the cash receivable on conversion deemed to be income by paragraph two of section six, or
 - (b) the excess of the face value of the new security over the face value of the existing security together with the amount of the cash (if any) receivable on conversion deemed to be income by paragraph three of section six, or
 - (c) the excess of the cash receivable on conversion together with the face value of the new security over the face value of the existing security deemed to be income by paragraph six of section six,

amounts in the case of any one trust, in all, to a sum that is less than ten pounds, the whole of such sum, notwithstanding the provisions of the said respective paragraphs, may, without adjustment or apportionment, be at once treated as income and paid to the person entitled to the income or applied by such person as income accordingly.

- (2) Where the face value of the new security together with the cash (if any) receivable on conversion is less than the face value of the existing security by an amount that in the case of any one trust does not in all exceed ten pounds, notwithstanding paragraph four of section six, no deductions need be made from the interest on the new securities, but the whole of such interest may, without deduction or apportionment, be paid to the person entitled to the income or applied by such person as income accordingly.

8 Raising of money out of capital in certain cases

When in pursuance of paragraph three of section six any person is in respect to his interest in the income of a new security entitled to receive or to cause to be applied any money which is deemed to be income by virtue of that paragraph such money may be raised out of the capital of the new security, and such capital may be applied for that purpose to any necessary extent.

9 Trustees powers in certain cases

Where a new security referred to in paragraph three of section six is vested in a trustee such trustee shall have power:

- (1) at any time and from time to time to raise out of the capital of the new security, by selling, mortgaging, or charging the same or any part thereof, such sum as may be required to provide any money by the said paragraph deemed to be income which has not been paid or applied,
- (2) to raise in manner aforesaid a sum of money equal to the amount of the excess of the face value of the new security over the face value of the existing security or to so much of the amount of such excess as shall not have been already raised, and to appropriate the sum so raised for the purpose of future payments or applications, and
- (3) at any time and from time to time to provide any money which is so deemed to be income out of any capital moneys forming part of any property held subject to the same beneficial trusts as the new security.

10 Application to court by certain persons

Any person who is for the time being entitled to receive or cause to be applied money which is by paragraph three of section six deemed to be income or any person who is for the time being interested in the capital of the new security from the income of which deductions of money are to be made under paragraph four of the same section may apply to the court by summons according to the procedure provided by section ninety-one of the

Trustee Act 1925, for an order that such money may be raised, set aside, paid, or applied as the court may direct, and the court may make such order as in the circumstances it thinks fit including an order for the payment by any party of the costs of the other parties where justified by the circumstances.

11 Application to new securities of trusts, powers etc affecting former securities

- (1) Where any existing securities are converted into new securities, the new securities and the interest thereon shall, subject to the provisions of this Act, be subject to the same trusts, powers, rights, testamentary and other dispositions, provisions, and incumbrances as affect the securities so converted and the interest thereon respectively.
- (2) In any Act passed or instrument executed before the first day of August, one thousand nine hundred and thirty-one, references to any existing security may be construed as references to new securities, and in the case of a testamentary instrument executed before the conversion of an existing security into a new security, any disposition which but for such conversion would have operated as a specific bequest of an existing security or of any interest therein, shall be operative with respect to the new security issued on the conversion as if it were the existing security.