

The following table has been prepared, shewing to what extent immigration has taken place into the several States of the Commonwealth from 1909 to 1918 :—

**IMMIGRATION INTO THE SEVERAL STATES OF THE COMMONWEALTH,
1909 TO 1918.**

Year.	N.S.W.	Vic.	Q'land.	S. Aust.	W. Aust.	Tas.	N.T.	C'wealth.
1909 ..	51,170	13,602	6,720	3,169	6,343	2,172	148	83,324
1910 ..	53,029	14,942	10,353	3,988	9,881	2,168	182	94,543
1911 ..	69,640	21,488	17,778	7,039	18,386	4,563	126	139,020
1912 ..	86,239	34,568	11,820	10,035	16,624	4,480	224	163,990
1913 ..	73,946	29,121	10,496	8,220	15,985	2,350	133	140,251
1914 ..	67,221	20,727	8,594	4,820	6,954	2,249	143	110,708
1915 ..	44,899	13,028	3,963	1,847	4,358	1,925	416	70,436
1916 ..	36,782	12,970	2,426	924	4,054	1,735	249	59,140
1917 ..	32,825	10,701	1,814	1,540	4,761	1,133	262	53,036
1918 ..	37,375	31,114	1,474	1,958	5,043	..	205	77,169

§ 2. Patents, Trade Marks, and Designs.

1. **Devolution of Jurisdiction upon the Commonwealth.**—Prior to the establishment of Federation, and for a few years thereafter, each Australian State possessed independent jurisdiction in respect of patents, copyrights, trade marks, and designs, and had, with the exception of Tasmania in regard to copyrights, enacted its own laws. Any person, therefore, who desired to obtain the grant of a patent, or the registration of any copyright, trade mark, or design had necessarily, with the exception aforesaid, to incur the trouble and expense of making separate applications in each State. The Commonwealth Constitution Act conferred upon the Federal Parliament power to legislate respecting these matters. (See page 22 hereinbefore.) The Patents Act of 1909 applied the laws relating to patents for inventions to the Territory of Papua.

The State Acts, though in general based upon the Imperial Statutes dealing with these subjects, were not wholly governed by them. The Commonwealth Acts, both in regard to principle and practice, have the same general foundation as the Imperial Statutes, but in some respects have been modified and brought into line in accordance with Australian experience.

2. **Patents.**—The first Commonwealth Patents Act was passed in 1903, and was amended in 1906, 1909, 1910, 1915 and 1916. (See page 41 *ante*.) Under these Acts, which are administered by a "Commissioner of Patents," the powers and functions vested under the States Acts became vested in the Commonwealth. A single Commonwealth patent now gives throughout the Commonwealth and the Territory of Papua that protection which formerly could only be obtained by procuring a patent in each State and the said Territory. The rights of State patentees or the patentees in the Territory of Papua are in all cases reserved to them. The holder of a State patent in force may obtain, for a period not exceeding the unexpired time thereof, a Commonwealth patent for the invention comprised in the State patent; provided, however, that any State other than the State in which the patent under the States Patent Act was granted may be excepted from the patent if the Commissioner of Patents is satisfied that the invention either (a) is not novel, (b) has been made the subject of a pending application, or (c) has been published in such State. Comparatively small fees, totalling £8, are now sufficient to obtain for an inventor protection throughout the Commonwealth and the Territory of Papua, and the only renewal fee (£5) is payable before the expiration of the seventh year of the patent, or within such extended time, not exceeding one year, and upon payment of further fees as may be allowed.

(i) *Applications for Patents.* Any of the following persons may make application for a patent :—(a) The actual inventor. (b) His assignee, agent, attorney, or nominee. (c) The actual inventor or his nominee jointly with the assignee of a part interest in the invention. (d) The legal representative of a deceased actual inventor or of his assignee. (e) Any person resident in the Commonwealth to whom the invention has been communicated by the actual inventor, his legal representative, or assignee (if the actual inventor, his legal representative, or assignee is not resident in the Commonwealth). An application for a patent must be for one invention only, and must be made in the form prescribed, and lodged by being left at or sent by post to the Patent Office at Melbourne. It must be accompanied either by a provisional or a complete specification. The application must contain a declaration in the prescribed form setting out the facts relied on to support the application, and must be signed by the applicant before a witness.

(ii) *Term for which Granted.* The term for the duration of every patent is limited to fourteen years from the date of application. A patent ceases if the patentee fails to pay the renewal fee within the prescribed time.

(iii) *Opposition to Grant of Patent.* Within three months of the advertisement of the acceptance of a complete specification, or within such further time, not exceeding one month, as the Commissioner on application made within the three months allows, any person may give notice at the Patent Office of opposition to the grant on any of the following grounds :—(a) That the applicant has obtained the invention from the opponent or from a person of whom he is the legal representative or assignee or nominee. (b) That the invention has not been communicated to the applicant by the actual inventor, his legal representative or assignee (if the actual inventor, his legal representative or assignee is not resident in the Commonwealth). (c) That the invention has been patented in the Commonwealth on an application of prior date or has been patented in a State. (d) That the complete specification describes or claims an invention other than that described in the provisional specification, and that the opponent has applied for a patent for such other invention in the interval between the leaving of the provisional and complete specifications. (e) Want of novelty. (f) Prior publication.

The case is heard and decided by the Commissioner, from whose decision an appeal lies to the High Court or to the Supreme Court of the State in which the Patent Office is situated.

(iv) *Single Patent for Cognate Inventions, etc.* The provisions of the Act relative to single patents for cognate inventions, patents of addition and revocation of patents, will be found in detail in previous issues of the Year Book. (See No. 6, p. 1163.)

(v) *Compulsory Working and Licenses.* At any time not less than four years after the date of a patent, and not less than two years after the 13th December, 1911, any person may apply to the High Court or the Supreme Court of the State in which the Patent Office is situated for an order declaring that the patent article or process is not manufactured or carried on to an adequate extent in the Commonwealth. From and after the time when any such order may take effect, the patent is not deemed to be infringed by the manufacture or carrying on in the Commonwealth of the patented article or process, or by the vending within the Commonwealth of the patented article made within the Commonwealth. By Act No. 13 of 1916, section 87 (a), which provides for compulsory working, has been suspended during the continuance of the present war and for a period of six months thereafter, and in reckoning the said period of four years, the period during which section 87 (a) is suspended shall not be taken into account. Any person interested may, after the expiration of two years from the granting of the patent, present a petition to the Commissioner alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied and praying for the grant of a compulsory license or, in the alternative, for the revocation of a patent. If the parties do not come to an arrangement between themselves, the Commissioner,

on being satisfied that a *prima facie* case has been made out, must refer the petition to the High Court or the Supreme Court of the State in which the Patent Office is situated. If the Commissioner is not satisfied that a *prima facie* case has been made out he may dismiss the petition.

(vi) *Restoration and Surrender of Patents, and Contracts and Proceedings.* The provisions of the Act with reference to restoration and surrender of patents, contracts, etc., are given in detail in previous issues of the Year Book. (See No. 6, p. 1164.)

(vii) *International Protection of Patents.* The Patents Act contains provisions under which the international arrangements for the protection of patents contained in the Imperial Acts can be made applicable to the Commonwealth by order of the King-in-Council. Applicants for patents, subject to the country in which first application is made being a party to the arrangement, are now, if they apply in Australia within twelve months of their first foreign application, entitled to make application for patents for their inventions in priority to other applicants, and such patents have the same date as the date of the first application abroad. Corresponding arrangements have also been made by the Commonwealth with New Zealand and the Union of South Africa.

(viii) *Patent Attorneys.* Any person on passing the prescribed examination, and on paying a fee of £5, may be registered by the Commissioner as a patent attorney. A solicitor may practise as a patent attorney without passing the prescribed examination and without being registered as a patent attorney. No person may describe himself as a patent attorney, or as a patent agent, or as an agent for obtaining patents unless he is registered or entitled to practise as a patent attorney.

(ix) *Patent Office Publications.* Complete specifications are printed shortly after they become open to public inspection by advertisement of acceptance, or under section 121 of the Act, provided the complete specification is not accepted and advertised. Each specification is open to public inspection. A number of publications, of which a list may be found in the *Australian Official Journal of Patents*, is on sale at the Government Printing Office, Melbourne.

The *Australian Official Journal of Patents* is issued weekly, and contains lists of applications and proceedings, with illustrated notes of accepted complete specifications. A supplementary annual volume contains statistics, indexes to names of persons concerned, classified indexes to subject matter of applications lodged, and a numerical index to proceedings on Commonwealth applications which have been advertised during the year; there are also names and number indexes to proceedings on State applications.

(x) *Applications Filed, Provisional Specifications Accepted, and Letters Patent Sealed.* The numbers of individual inventions in respect of which applications were filed in the States or Commonwealth during each year from 1910 to 1918 inclusive are shewn in the following table. The number of applications accompanied by provisional specifications and the number of patents sealed in respect of applications made in each year are also shewn.

PATENTS.—APPLICATIONS FILED AND LETTERS PATENT SEALED IN THE COMMONWEALTH, 1910 TO 1918.

Year	1910.	1911.	1912.	1913.	1914.	1915.	1916.	1917.	1918.
No. of applications	3,605	3,497	4,071	4,163	3,436	3,117	2,906	3,244	3,543
No. of applications accompanied by provisional specifications	2,294	2,290	2,273	2,626	2,232	2,133	1,980	2,186	2,405
Letters patent sealed during each year	1,552	2,027	1,502	1,495	2,098	1,279	1,162	1,218	1,130

(xi) *Revenue of Patent Office.* The revenue of the Commonwealth Patent Office for each year from 1910 to the end of the year 1918 is shewn in the subjoined table:—

REVENUE OF COMMONWEALTH PATENT OFFICE, 1910 TO 1918.

Particulars.	1910.	1911.	1912.	1913.	1914.	1915.	1916.	1917.	1918.
	£	£	£	£	£	£	£	£	£
Fees collected under—									
States Patents Acts ..	1,940	768	118	50	16	19	15	11	15
Patents Acts 1903-10 ..	17,042	19,640	18,542	18,800	21,575	15,463	14,055	15,629	16,223
Receipts from publications	208	237	305	283	274	298	294	281	317
Petty receipts	33	48	50	49	81	6	4
Total: ..	19,223	20,693	19,015	19,182	21,946	15,788	14,368	15,921	16,555

3. *Trade Marks.*—The remarks made concerning the unification of the patent system of the Commonwealth apply equally to trade marks. Under the Trade Marks Act 1905, which came into force on the 2nd July, 1906, the Commissioner of Patents is appointed to act also as “Registrar of Trade Marks.” The Trade Marks Act of 1905 was amended by the Patents, Trade Marks, and Designs Act 1910, assented to on the 14th November, 1910, and by the Trade Marks Act 1912, and is now cited as The Trade Marks Act 1905-1912. The principal objects of the amending Act were to enlarge the scope of marks capable of registration, and repeal the provisions of the Act of 1905 relating to the “Workers Trade Mark,” the provisions regarding which were held to be unconstitutional. Special provisions for the registration of a “Commonwealth Trade Mark” are contained in the Act of 1905 and are applicable to all goods included in or specified by a resolution passed by both Houses of Parliament that in their opinion the conditions as to remuneration of labour in connection with their manufacture are fair and reasonable.

(i) *Essential Particulars of Trade Marks.*—

Section 15. “A registrable trade mark shall consist of essential particulars with or without additional matter.”

Section 16. (1) “A registrable trade mark must contain or consist of at least one of the following essential particulars:—(a) The name of the company, individual, or firm represented in a special or particular manner; (b) the signature of the applicant for registration or some predecessor in his business; (c) an invented word or invented words; (d) a word or words having no direct reference to the character or quality of the goods, and not being according to its signification a geographical name or a surname; (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (a), (b), (c) and (d) shall not, except by order of the Registrar, Law Officer, or Court, be deemed a distinctive mark.”

(2) “For the purposes of this section ‘distinctive’ means adapted to distinguish goods of the proprietor of the trade mark from those of other persons.”

(3) “In determining whether a trade mark is so adapted, the Registrar, Law Officer, or Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.”

(ii) *State Registrations.* State registrations cease to be in force at the expiration of fourteen years from the date of the Commonwealth Act, or at the time when, under the State Trade Marks Act, the trade mark would, if after the commencement of the Commonwealth Act no fee for the continuance of its registration were paid, first become