REVIEW OF LEGISLATION.

I. Western Australia.

Introductory.

In the second session of the Twenty-second Parliament, which opened on the 4th July and closed on the 29th November[1] 1957, 81 public Acts[2] were passed. The surprisingly large number of 35 public Bills fell by the wayside during the session. These included yet another assault[3] on the franchise for the Legislative Council, this time with an extended objective: "to give members of the community the right to vote at Legislative Council elections on terms identical with those existing with respect to Legislative Assembly elections."[4] The measure was introduced as the Electoral Act Amendment Bill (No. 3), in order that the proposed new franchise provisions for the Council should appear in the Electoral Act, where those for the Assembly already appear. A companion Bill[5] was introduced to remove the franchise provisions from the Constitution Acts. The first Bill, as usual, was defeated in the Council. Oddly enough, the second Bill was defeated, for want of a constitutional majority, on the second reading in the Assembly, just after the first had passed the second reading and Committee stages.[6]

Another "hardy annual",[7] the State Government Insurance Office Act Amendment Bill, introduced for the fifth time by the Minister for Labour, the Hon. W. Hegney, was for the fifth time defeated by the Legislative Council, in spite of an apparent attempt to woo country votes by the insertion of a provision authorising the Office to

1 More precisely, on the 30th November; the Assembly rose at 4.42 a.m. and the Council at 4.55 a.m. on that date.

2 Including one which amended a Private Act—Church of England School Lands Act Amendment Act, No. 41 of 1957.

3 See 3 U. WESTERN AUST. ANN. L. REV. 501—"The annual assault on the franchise for the Legislative Council."

4 The Hon. E. Nulsen, Minister for Justice, (1957) 148 PARLIAMENTARY DEBATES (Western Australia) (hereafter referred to as PARL. DEB.) 2760.

5 Constitution Acts Amendment Bill (No. 2).

6 It would appear that the Government Whips had relaxed their vigilance; or was the fate of the first Bill in the Council such a foregone conclusion that the fate of the second in the Assembly did not matter? It is interesting to speculate on the position that would have obtained had the Council undergone an unexpected change of heart and passed the first Bill. In any case, why was the necessary repealing provision not contained in the Electoral Act Amendment Bill?

7 Mr. C. W. M. Court, (1957) 148 PARL. DEB. 3422; "a Bill that has qualified well and faithfully for the hardy annual class."

engage in probate assurance for farmers and pastoralists. A Bill to authorise the leasing of 20 acres of King's Park for the building of an aquatic centre, to include an Olympic-size pool,[8] provoked lengthy and heated argument[9] and was finally defeated in the Assembly on the second reading.[10] The Local Government Bill (which in the 1956 session had lapsed at the third reading stage[11]) was restored to the notice paper at the stage it had reached in the previous session, and passed the third reading in Council after a lengthy Committee stage which produced a great many amendments, not all of which were acceptable to the Assembly. A conference of managers failed to reach agreement on them and the Bill was dropped. A Swan River Conservation Bill, to make new provision for maintaining and improving the condition of the river and its foreshores, was rejected. A Bill to confer citizenship rights on aboriginal natives[12] failed to pass the Committee stage in the Assembly and lapsed. A Long Service Leave Bill received certain amendments in the Council to which the Assembly was not prepared to agree, and eventually lapsed. An attempt to amend the Legal Practitioners Act[13] in order that articled clerks might engage in other employment outside office hours while serving articles, and in order that any articled clerk who was a Member of Parliament might have time spent during his attendance in Parliament counted as actual service under articles,[14] was defeated in the Council (where the Bill was introduced) by a tied vote on the third reading. Attempts to close the trading banks on Saturday mornings,[15] to regulate hire-purchase[16] and credit-sales[17] and to extend the operation of the Workers' Compensation Act,[18] were also unsuccessful.

Of the 81 Acts which passed on to the Statute Book, 60 are amendments of existing legislation, a number of them quite trivial;

8 King's Park Aquatic Centre Bill.

9 Described by the Hon. D. Brand (Leader of the Opposition) (who supported the Bill) as "a lot of unnecessary and drawn-out debate" on "a very trivial Bill" (1957) 147 PARL. DEB. 1676.

10 By a non-party vote of 29-14.

11 *Supra,* at 91.

12 Natives Status as Citizens Bill.

13 Legal Practitioners Act Amendment Bill (No. 2).

14 A provision apparently designed to assist a certain Member of the current Parliament: this was denied by the mover of the Bill, the Hon. J. D. Teahan ((1957) 147 PARL. DEB. 1704), but he conceded that the measure would assist one person.

15 Bank Holidays Act Amendment Bill.

16 Hire-Purchase Agreements Bill.

17 Credit-Sale Agreements Bill. These last three Bills were all introduced by Mr. S. E. I. Johnson.

18 Workers' Compensation Act Amendment Bill, defeated in the Council on the second reading.

and only seven of the new Acts could fairly be described as breaking much new ground. The outstanding impression of a newcomer to Western Australia is of the clumsiness and verbosity of so much of the drafting.[19] Admittedly a good many drafting faults arise from the pressure at which draftsmen are often compelled to work, and some of the infelicities in the Statute Books can be ascribed to amendments introduced during the legislative process.[20] Verbosity, too, may be the product of caution (always a necessary virtue in a draftsman) which prefers to say too much rather than run the risk of being misinterpreted. But does the use of "or, as the case may be" instead of the simple "or" add anything to the Statute Book except a comma and five unnecessary words? What is the point of prescribing that a proclamation "shall have effect according to its tenor"[21] or that a magisterial decision "has, and shall be given, effect according to its tenor"?[22] It is submitted that the words are either meaningless and unnecessary, or else a clumsily-concealed attempt to exclude the doctrine of *ultra vires;* in either event they ought not to appear in the Statute Book.[23]

19 "Clumsy drafting" was commented upon in the Review of Legislation for 1956; *supra,* at 91.

20 The insistence of the draftsman in using the pronouns "him or her" "his or her" throughout the Juries Act, No. 50 of 1957, in spite of the provisions of section 26 (a) of the Interpretation Act, 1918-1957, is no doubt to be explained by the desire to emphasise the change in the law which for the first time provides for women jurors; though the same effect might have been achieved a little more economically by the insertion of a short provision in the definition section of the Juries Act. But it was left to an amendment brought down in the Council to perpetrate the solecism in section 14 (6): "The Sheriff shall cause a notice to be served on the person informing such person that *their* name has been recorded . . . " which offends against both the Interpretation Act and the laws of grammar.

21 Clause 6 (3) of the Juries Bill—deleted from the Bill in the Committee stage in the Council, thanks to the vigilance of the Hon. A. F. Griffith (1957) 147 PARL. DEB. 1857.

22 Sec. 6 of the Local Courts Act Amendment Act, No. 10 of 1957. See also sec. 3 of the Bush Fires Act Amendment Act, No. 35 of 1957.

23 The Hon. A. F. Griffith (*ubi. cit. supra* note 20) quoted advice from a member of "the legal fraternity" "regarded as a good draftsman": "Mere words; most unnecessary. It would be an extremely strange proclamation if it did not have effect according to its tenor." With this the writer is inclined to agree. It is significant that the Hon. E. M. Heenan, who was in charge of the Bill in Council, was unable to explain the meaning of the words to the Hon. A. F. Griffith's satisfaction, and was forced to fall back on the defence that "[t]he person who has drafted this Bill has had far more experience than either Mr. Griffith or I. It [the offending phrase] must have been put there for a reason." But *cf.* sec. 171 (3) of the Land and Income Tax Act 1954 (New Zealand): "Every Order in Council under this section shall have effect according to its tenor, *anything to the contrary in this Act notwithstanding.*" The italicised words appear to make the phrase meaningful in giving the delegated legislation effect in spite of inconsistency with the parent Act. *Cf.* with this sec. 172 (1) of the same

When section 58 (1) of the Supreme Court Act, 1935, as amended, provides that the Full Court "shall have and shall be deemed since the coming into operation of this Act always to have had jurisdiction to hear and determine" certain matters, why is it thought necessary to go on, in section 58 (2), to provide that such matters "shall lie or may be made to, or may be brought before, the Full Court"?[24] Were the 96 words added to section 4 of the Traffic Act 1919, by section 3(b) of the Traffic Act Amendment Act, (No. 4), (No. 76 of 1957) really necessary to provide that a trolley bus should be a "vehicle" within the meaning of the Act?[25] These are but a few of many matters for criticism noted in the course of reading the statutes for 1957; others are noted under the heads of particular Acts where some provision or provisions appear to offend against good draftsmanship.[26]

Act, in which the provision that Orders in Council shall have effect "notwithstanding anything to the contrary in this Act or any other enactment" is dissociated from the provision that every such Order shall have effect "according to its tenor." *Cf.* further sec. 145 (3) of the Justices Act 1902-1957, added by sec. 4 of the Justices Act Amendment Act, No. 9 of 1957: "an award . . . or an order . . . has, and shall be given, effect according to its tenor, and is not, and shall be deemed never to have been, affected by the Fines and Penalties Appropriation Act, 1909." In this last example the expression still appears to be unnecessary.

The only reference to the phrase in any judicial decision which the writer has been able to trace appears to suggest that it may import strict construction of the document or legislative act to which it refers: "A proviso in a statute must, no doubt, be read and have effect according to its tenor; but its nature is not to be overlooked in the task of interpretation . . . " *per* Lord MacDermott, Inland Revenue Commissioners v. John Dow Stuart Ltd., [1950] A.C. 149, at 177.

A possible explanation is that the draftsman does not think it sufficient to empower the Governor to issue a proclamation, or a court to make an order, but that it is necessary to say specifically that effect must be given to the proclamation or order. But in that case why does the phrase not appear at the end of every empowering section of this kind?

24 Supreme Court Act Amendment Act, No. 63 of 1957, sec. 3. Incidentally, is there any point in providing that the Supreme Court "shall hear and determine" the matter? How would such an obligation be enforced?

25 The draftsman appears to have overlooked (or doubted the effectiveness of) (*inter alia*) secs 22 and 39 of the Interpretation Act, 1918-1957 and the presence, in sec. 4, line 1, of the principal Act of the words "subject to the context" (themselves a rather loose substitute for "unless a contrary intention appears from the context") which he repeats among the 96 words. He also gives additional effect to sec. 71 of the principal Act, which does not permit of the exemption of anything defined as a vehicle from being a vehicle, but permits its exemption *as a vehicle* from the provisions of the Act.

26 As a final small general complaint, the abbreviation *"cf."* is used indiscriminately in the marginal notes as a direction to "see"—e.g., the sections of an Act amended or affected. It should strictly be used to mean "compare"—e.g., a similar or parallel provision in another Act of the same Parliament or in similar legislation elsewhere.

Three final comments might be made on the style of the Statute Book; first, that now that the Pilot has come into existence, and a yearly Index is published, the rather elaborate system of citation might well be dropped and replaced by a simpler one, with no loss to the users of the Statutes;[27] secondly, that if the method of "offsetting" certain portions of a complex section in the printing adds clarity to the exposition and makes the provision easier to read, it should be made universal and not adopted as "spottily" as it is in the present volume;[28] thirdly, that not only does it look odd to find, in the Table, e.g., the Electoral Act Amendment Act (No. 2), and the State Transport Co-ordination Act Amendment Act (No. 3), without No. 1 in the first case and Nos. 1 and 2 in the second,[29] but that it is even more eyebrow-raising to find that the Traffic Act Amendment Act (No. 4) appears as Act No. 76 on page 453, while the Traffic Act Amendment Act (No. 3) appears as Act No. 78 on page 489! although both completed their journey through the Houses on the same day and received the Governor's assent on the same day.

27 The reference is to the practice of describing "the principal Act" in an amending statute by referring to all its amendments (which by sec. 22 of the Interpretation Act, 1918-1957 are to be read together with the amended Act as one Act) and of permitting the citation of the principal Act as amended by its title and date followed by the date of the latest amendment. None of the other States adopts the first practice, nor does the Commonwealth, though the Victorian Statutes cite the numbers of the principal Act and of all amending Acts in a marginal note, and the Commonwealth Statutes provide in a footnote the same information as the Western Australian Statutes.

All Australian Statutes follow the second practice, which also characterises the Statutes of Great Britain; the reason is probably the absence from the various Interpretation Acts or their equivalents of anything corresponding to sec. 18 of the Acts Interpretation Act, 1924 (New Zealand): "A reference to or citation of any Act includes therein the citation of all subsequent enactments passed in amendment or substitution of the Act so referred to or cited, unless it is otherwise manifested by the context." It is suggested that where marginal notes are adequate the first practice is of little use and could well be dropped, and that with the insertion of a provision into the Interpretation Act similar to the New Zealand provision cited the second practice could also be dropped. In both cases there would possibly be some saving in printing costs. It is noted that the mode of citation permitted as a result of the second practice is not employed within the Statutes themselves—see e.g., sec. 5 of the Bee Industry Compensation Act, No. 23 of 1957. Does this suggest that in the opinion of the draftsman sec. 22 of the Interpretation Act, 1918-1957, already has the desired effect?

28 For example, sec. 2 of the Parliamentary Superannuation Act Amendment Act, No. 59 of 1957; sec. 42 (2) of the Metropolitan (Perth) Passenger Transport Trust Act, No. 71 of 1957.

29 This sort of thing was adversely commented upon in this Review at (1954) 3 U. WESTERN AUST. ANN. L. REV. 129, where the reviewer suggested the need for some revision of Standing Orders.

I. CONSTITUTIONAL.

The only legislation under this head was the Electoral Act Amendment Act (No. 2) (No. 53 of 1957) which replaced secs 90, 92, 93, 94 and 95 of the principal Act with new provisions for postal voting. Postal voting is no longer possible for an elector for the Legislative Council who is out of his Province; he must be more than seven miles from any polling place in the State (new sec. 90 (1)(a)—*cf.* former sec. 90 (1)(aa)). Women who are merely "ill" are no longer entitled to a postal vote; they must be seriously ill or infirm or approaching maternity (new sec. 90 (1)(c)—*cf.* former sec. 90 (1)(b)). Provision is made for persons who during the hours of polling will be travelling under conditions which will preclude them from voting at any polling place (new sec. 90 (1)(b)). Instead of attending before a Magistrate or postal vote officer to record his vote the postal voter is now to make application for a postal ballot paper which may be delivered to him (if his application is made after the close of nominations) or posted to him after that date (new sec. 90). The new sec. 92 provides for postal voting in the presence of an "authorised witness"—defined in the new sec. 94—instead of in the presence of a postal voting officer.[30] Certain classes of persons outside the State may record a postal vote. Persons in the North-West or other areas proclaimed as "remote areas" may be registered as general postal voters, so that they will receive postal ballot papers without the necessity for renewed applications (new sec. 93). The new sec. 95 contains a revised list of prohibitions in connexion with the process of postal voting, including a provision that no persons other than those authorised in writing by the Chief Electoral Officer shall assist postal voters who are inmates of institutions or patients in hospitals; a provision intended to prevent abuses alleged to have arisen from the indiscriminate attendance of postal vote officers at hospitals.[31] For the rest, certain consequential amendments are made, and two new offences are created: those of acquiring or seeking to acquire and disposing or seeking to dispose of any postal ballot paper (sec. 15, amending sec. 181 of principal Act).

30 It is difficult to see what purpose is served by sec. 92 (1); the following subsections give directions to electors and other persons concerned with postal voting, using the mandatory "shall." If it was intended that postal votes recorded in a manner not in compliance with the direction should be invalid, this could have been explicitly stated. Or was it intended that non-compliance with any of the directions should be an offence?

31 *Per* the Hon. G. Fraser, Chief Secretary, (1957) 148 PARL. DEB. 3306. The justification for the whole Bill was that it struck at alleged abuses of the existing postal vote system; see the debate in the Assembly, (1957) 147 PARL. DEB. 2140, 2348, 2359.

II. ADMINISTRATION OF JUSTICE.

Supreme Court.

The proposed removal of the bankruptcy registry from the Supreme Court building to quarters in Adelaide Terrace presented problems concerning the use of the Seal of the Supreme Court (which, of course, would remain at the Supreme Court Registry) and the custody of records. Sec. 2 of the Supreme Court Act Amendment Act (No. 63 of 1957) amends sec. 15 of the principal Act to provide for the use of other seals, as recommended by the Chief Justice and approved by the Attorney-General, and to empower the Judges to make rules for the custody of such seals. The Judges are also empowered to make rules of Court providing for the custody of records and proceedings (sec. 4).

The decision of the High Court in *Riebe v. Riebe*[32] that no appeal lay to the Full Court against a judgment refusing an order for dissolution of marriage necessitated amendments to both the Supreme Court Act and to the Matrimonial Causes and Personal Status Code. The High Court, in the course of its rejection of the argument that, despite the *lacuna* in the Code, sec. 58 (1)(b) of the Supreme Court Act operated to confer such a right of appeal, had said:[33] "In the enactment of sec. 58 (1)(b) it seems reasonably clear that no more was intended than to provide for the distribution of business, as the heading of the Part in which the section stands seems to show." Sec. 58 was accordingly amended to provide that the Full Court "shall have and shall be deemed since the coming into operation of this Act always to have had jurisdiction to hear and determine" the matters enumerated. The Matrimonial Causes and Personal Status Code Amendment Act (No. 73 of 1957) amended sec. 51 of the Code to provide for a right of appeal against all orders made by Judges. Secs 4, 5, 6 and 7 of the amendment validate all previous and pending appeals and proceedings except that in *Riebe v. Riebe* itself.

Stipendiary Magistrates.

Magisterial duties in Western Australia have heretofore been carried out by persons holding a variety of magisterial appointments. In the earliest Acts we find the Justices of the Peace indifferently described as "Magistrates."[34] The "Resident Magistrate of the district" makes his first appearance in the Ordinance 12 Vict. No. 18 (1848),

32 (1957) 31 AUST. L.J. 686.

33 *Ibid.*, at 688.

34 For example, An Act to Regulate the Licensing of Public Houses, 4 Gul. IV, No. 3, sec. 11 and Schedule (Form No. 1).

sec. 1; but there is no trace in earlier Acts or Ordinances of any statutory authority for such an appointment: he appears next in sec. 14 of the Ordinance 13 Vict. No. 1 (1849). A judicial officer described as a "Police Magistrate" appears for the first time in 1852 (sec. 2 of the Ordinance 16 Vict. No. 2); not until 1861 does there appear any sort of statutory authority for this appointment.[35] By sec. 1 of the Ordinance 27 Vict. No. 17 (1863) it was provided that Police and Resident Magistrates might act alone in cases where acts were required to be done by more than one Justice of the Peace;[36] and sec. 2 defined "Resident Magistrate" as "each Justice of the Peace nominated and appointed to be "Resident Magistrate" of any district within the colony." Sec. 11 of the Justices Act 1902, (the current authority) authorizes the Governor to appoint "any person" to be a Police Magistrate or a Resident Magistrate. Sec. 3 of The Small Debts Ordinance, 1863 empowered the Governor to appoint Justices to exercise powers under the Ordinance, each such Justice to be known as "The Magistrate"; now sec. 8 of the Local Courts Act 1904 enables the appointment of Magistrates of Local Courts. Sec. 30 of the Public Service Act 1904,[37] first laid down certain qualifications for the office of Magistrate, which included the three classes referred to above; and thereafter Magistrates were treated as members of the Public Service.[38]

The Stipendiary Magistrates Act 1930 provided for the appointment of Stipendiary Magistrates, whose salaries were to be fixed by the Governor within limits prescribed by the Act, who were to hold office during good behaviour, and who were not to be members of the Public Service. Stipendiary Magistrates were to have jurisdiction throughout the State, whereas the jurisdiction of other Magistrates was limited to the districts or courts for which they had been appointed. Sec. 9 of the Act contemplated that new appointments of Magistrates should be made pursuant to the Act (presumably as

35 Sec. 2 of the Ordinance 25 Vict. No. 15; the marginal note reads "Every Justice a Police Magistrate", but the section merely provides that every Justice of the Peace shall be a Justice for the purposes of the Ordinance, which consolidates the laws relating to police. Query, does the marginal note, as *contemporanea expositio,* reflect the general view of the nature of the office of Police Magistrate?

36 It is not clear how this interacted with the provision cited in the preceding footnote: unless the marginal note referred to in the preceding footnote is wrong.

37 Now sec. 25, Public Service Act, 1904-1956.

38 This was not expressly provided for: it might have been inferred from the insertion in the Act of secs 30 and 31: but it was probably assumed at the time that Magistrates were members of the Public Service. It is perhaps significant that it was thought necessary to exclude Judges specifically from the operation of the Act.

Stipendiary Magistrates, though the section is badly drafted and does not clearly say so) but this section was never declared to be universally applicable.[39] As a result there were at the date of passing of the Stipendiary Magistrates Act (No. 17 of 1957) six Stipendiary Magistrates and ten Resident Magistrates, as well as one Special Magistrate appointed under sec. 19 of the Child Welfare Act 1947. The Stipendiary Magistrates were apparently dissatisfied with the conditions under which they worked, including the manner in which their salaries were fixed and their leave was determined. In addition, the limited jurisdiction possessed by the Resident Magistrates was causing certain difficulties. The new Act aims therefore at bringing all magisterial appointments into conformity, giving all present Magistrates (including the present Special Magistrate) the designation of Stipendiary Magistrate (sec. 4 (3))[40] and providing that all future permanent appointments, except those of Special Magistrates under the Child Welfare Act, shall be made under the present Act by Governor's warrant (sec. 6 (1)).[41] Stipendiary Magistrates hold office during good behaviour, as under the preceding Act; removal from office is by the Governor upon the address of both Houses of Parliament (grounds need not be stated, as was required by the preceding Act); present Magistrates retire at seventy but future appointees at sixty-five (a provision which evoked some criticism during debates on the Bill, and an attempted amendment in the Council); new provisions are made for suspension of Magistrates and compulsory retirement on grounds of medical unfitness (sec. 5). Generally the provisions of the Public Service Act 1904 (including those as to remuneration, leave of absence and allowances) apply to Stipendiary Magistrates, who for these purposes are "deemed" to be officers of the Professional Division and within such department as the Governor may direct;[42] but no

39 By a Proclamation dated 8th November 1940 (Western Australian Gov't Gazette, 1940, 1986) the Act was declared to apply to Magisterial Districts; subsequent Proclamations dated 22nd November 1946 (Gov't Gazette, 1946, 1433-4) and 8th May 1953 (Gov't Gazette, 1953, 839) removed three Magisterial Districts from its purview.

40 Though this is achieved very obliquely, by "deeming" them to have been appointed under the Act, then adding (it is submitted, unnecessarily), that they "shall hold office as if their appointments had been made as stipendiary magistrates" under the Act.

41 Apparently as Stipendiary Magistrates: but the subsection reproduces the bad drafting of sec. 9 of the 1930 Act, and its effect is a matter for conjecture. It would have been better to have repealed expressly sec. 11 of the Justices Act 1902 and sec. 8 of the Local Courts Act 1904.

42 Thus removing any apparent reflection on the independence of the Magistracy which might arise from the tacit assumption that they are members of the Public Service.

appeal lies from within the Service against their appointment, (sec. 8). The jurisdiction and powers of Stipendiary Magistrates are substantially the same as before (sec. 9: *cf.* sec. 5 (1) of the 1930 Act) it is expressly provided that they may exercise the jurisdiction of an industrial or of a Special Magistrate (*ibid.*);[43] the Governor may as before assign particular courts or districts to them (including this time Children's Courts)[44] and may appoint any of them to be or act on any tribunal constituted by or including a Magistrate (sec. 9).[45]

Inferior Courts.

The Local Courts Act Amendment Act (No. 10 of 1957) was introduced as the result of the request of the Law Society for certain procedural reforms. Actions are not to be listed for hearing unless one or other of the parties requests it (sec. 3).[46] Judgment may be entered by default in claims for unliquidated damages for £25 or less without the necessity for an assessment of damages by the Court (*ibid.*). Plaintiffs may now apply for orders for particulars of defence in every case (sec. 4). Warrants for the arrest of a witness may now be executed by a foreign bailiff by the procedure laid down in sec. 135 (sec. 5). Magisterial powers in respect of judgment summonses may be delegated to clerks of courts, subject to magisterial review (sec. 6) and clerks may deal initially with applications to issue summonses for examination (sec. 7).

Sec. 3 of the Justices Act Amendment Act (No. 9 of 1957) follows a suggestion from the Full Court that Justices should have jurisdiction to set aside decisions given in default of the appearance of any party, and provides that this may be done if within 21 days of the decision the party in default serves a notice on the clerk of the court signifying his intention to apply to have the decision set aside. Sec. 4 settles what seems to have been a long-standing doubt whether the provision of sec. 145 of the principal Act, empowering the award of part of all of the fine imposed for assault to the person assaulted, was affected by the later enactment of the Fines and Penalties Appropriation Act 1909; the section negatives prospectively and retrospec-

43 This provision would seem to repeal by implication sec. 102 of the Industrial Arbitration Act 1912-1952: and it is not clear how it affects sec. 19 of the Child Welfare Act 1947 as amended by sec. 2 of the Child Welfare Act Amendment Act, No. 69 of 1957.

44 *Cf.* the Child Welfare Act Amendment Act, No. 69 of 1957, noted *infra*.

45 Surely it is a reflection on members of the Magistracy to add "and it shall be the duty of the person so appointed to act accordingly" (sec. 10 (3))?

46 Sec. 3 (b) fits very awkwardly with the subsection (46 (1)) it is intended to amend: "nor" should be "or" and "unless" is redundant.

tively any suggestion of implied repeal. In two recent cases there had been complaint of the inadequacy of the figure fixed by a single Justice for recognisance on appeal—sec. 5 takes the power away from a single Justice and vests it in the Court.

The decision of the High Court in *Behsman v. Ansell*[47] provoked two amendments to the Child Welfare Act[48] and also some criticism (in both Houses) of the reasoning of the High Court, couched in terms which to this writer seem hardly respectful to the Court itself, and which also indicate a failure to appreciate the basis of the reasoning.[49] Misunderstanding of the decision, indeed, is partly responsible for the provisions of the first of the two Acts. What the High Court said was that an attempt to appoint by an ambulatory class description was not justified by the language of a statute which contemplated the appointment of "a particular person to be a special magistrate for a particular Children's Court or for particular Children's Courts."[50] It did not say, as the Minister for Child Welfare was apparently advised,[51] that " there can only be one special magistrate, and consequently, it was legally impossible to appoint more than one special magistrate to deal with cases in the children's courts in the country." Accordingly, though there was need for those provisions of Act No. 69 which validate the exercise of jurisdiction by purported Special Magistrates,[52] future appointments of Special Magistrates and assignment of areas of jurisdiction could have validly been made by a series of particular Orders in Council under the old sec. 19(1). In any case, the new sec. 19(1) appears to have added nothing to the previous law except the power (in subsec. 1(b)) to revoke *or annul* any establishment of a Children's Court and to amend, *vary* or revoke any

47 (1957) 31 AUST. L.J. 901.

48 The Child Welfare Act Amendment Act, No. 69 of 1957 and the Child Welfare Act Amendment Act (No. 2), No. 74 of 1957. Admittedly there was a degree of urgency about the legislation, the High Court's decision having been handed down on the 22nd November: but as both Bills were introduced on the same day it is difficult to see why two pieces of legislation were introduced instead of one.

49 The critical remarks of the Hon. A. R. G. Hawke, the Minister for Child Welfare, in the Assembly ((1957) 148 PARL. DEB. 380-5) and of the late Hon. G. Fraser, the Chief Secretary, in the Council ((1957) 148 PARL. DEB. 3857-8) are couched in identical terms: one wonders from whose pen they came.

50 (1957) 148 PARL. DEB. 3804.

51 Apparently by the Chief Justice (see *ibid.*, 3804). With respect, the Minister's adviser would seem to have been misled by the passage in the High Court's judgment quoted in the text, *supra.*

52 Sec. 19, new subsecs (1a) and (1b).

appointment or determination under the section.[53] Secs 3 and 4 of the Act make two totally unnecessary amendments to sec. 19(2) and (3).[54]

Act No. 74 makes two changes in the substantive law. Secs 3(a) and 4 in effect repeal sec. 4 of the Child Welfare Act Amendment Act 1955, by which the words "or against" were added to sec. 20 of the principal Act so as to give the Children's Court exclusive jurisdiction in respect of all offences committed by or against children. This end is achieved in the most elaborate way, apparently intended to secure against the possibility of the amendment being held to have any retrospective effect, and with the most elaborate saving clauses, apparently intended to guard against the possibility of inadvertent implied repeal of other provisions relating to the jurisdiction of Children's Courts.[55] Sec. 4 also adds to the principal Act a new sec. 20B, conferring upon a Children's Court, if it is constituted by a Special Magistrate who is also a Stipendiary Magistrate, power to try summarily adults accused of committing certain sexual offences under the Criminal Code against or in respect of children under 18 (incest is not included in the list of offences), with power to impose a maximum of 18 months imprisonment with hard labour. The accused person must have his right to trial by jury explained to him and must not object to being dealt with summarily. If the maximum sentence

53 The words in italics are redundant. The new subsec. (1(a)) repeats word for word the old subsec. (1), which was apparently thought by the Government's advisers (following the High Court's decision) to authorize the appointment of only one Special Magistrate. The new subsec. (1(c)), which in subparas (i) and (ii) in terms attempts to lay down qualifications for appointment as a Special Magistrate, renders these completely meaningless by subpara. (iii): "any other magistrates *or persons*" (italics supplied). The paragraph in question was apparently intended to enable appointments to be made by ambulatory class description, in the manner struck down by the High Court: the words used do not appear apt to achieve this end, and it is doubtful whether they will be so construed by any court, except by an heroic effort of statutory construction after applying the rule in *Heydon's Case*. Similarly the express words of the first part of subsec. (1(d)) are rendered pointless by the insertion of the perfectly general phrase "or to any other districts or areas"; and if it was intended to achieve the same effect in relation to the delineation of areas of jurisdiction as subsec. (1(c)) was intended to achieve in relation to appointments, the wording is equally inapt.

54 They appear to be dictated by the belief that the words "the special magistrate" in the subsections amended invite or reinforce the construction of the section as authorizing the appointment of one Special Magistrate only.

55 All of this is, it is submitted, the product of excessive caution on the part of the draftsman: it is difficult to see how the simple removal of the words "or against" from sec. 20 could possibly have the effects against which the safeguards have been provided.

appears to be too low he may on conviction be committed to the Supreme Court for such sentence as might have been passed if he had been convicted on indictment.[56]

Juries.

The Juries Act (No. 50 of 1957) consolidates and amends the existing law relating to juries. The Bill provoked little debate in the Assembly, except (in the Committee stage) on the controversial Clause 58 (now sec. 57) seeking to restrict newspapers from publishing names or photographs of jurors or reports of committal proceedings, as recommended by the Select Committee appointed by the Legislative Council in 1956. Attempts to amend this in the Assembly were unsuccessful. When the Bill reached the Council, however, the debates were more extensive; and the Council passed a whole series of amendments (some of them drafting amendments introduced by the Hon. A. F. Griffith)[57] including, first, an amendment to Clause 57 (as Clause 58 had become) limiting its restraining effect to the taking or publishing of photographs of jurors,[58] and, second, an amendment restoring the limitation on publication of reports of committal proceedings to the extent that such publication might be prohibited by the committing Court in capital offences where it thought it undesirable in the interests of justice that any such report should appear.[59]

The new Act has abolished the property qualification in respect of jury service, eligibility being dependent only on enrolment on the

56 Sec. 5 makes a small amendment to sec. 54 of the principal Act to enable an apprentice's wages to be deposited in any savings bank, not (as heretofore) solely in the Commonwealth Savings Bank.

57 The Hon. A. F. Griffith was Chairman of the Select Committee. He observed in the course of the debate on the Committee stage that many members of the legal profession considered that some portions of the Bill had been poorly drafted (1957) 47 PARL. DEB. 1802.

58 The report of the Select Committee had recommended as highly desirable the prohibition of publication of jurors' *names* or photographs: unfortunately the amendment dropped the provision prohibiting publication of names of jurors, and the debate in the Council concentrated on the undesirability (or otherwise) of prohibiting publication of reports of committal proceedings, so that the omission was not debated, and probably not noticed. If it is desirable that jurors remain anonymous before and during the trial, it would seem much more important that their names be kept secret than that their likenesses be kept out of the papers.

59 The Bill originally provided that the publication of prohibited matter should either be a contempt of the Supreme Court or else be punishable by a penalty of not less than £20 nor more than £200 in proceedings laid on the information of any person, to whom the penalty might be paid. This provision was deleted in the Council: and when the limited restriction on publication of reports of committal proceedings (sec. 57 (2)) was introduced no penalty was provided for.

Legislative Assembly rolls (sec. 4(1)) and has made women liable automatically for jury service (*ibid.*); they are not, as elsewhere, given the option to have themselves included on the roll, but may from time to time cancel and reinstate their liability (sec. 5 (2) to (6)). The qualifying age is from 21[60] to 65.[61] Those not qualified are (a) persons not British subjects[62] (b) persons convicted of a crime or misdemeanour unless they have received a free pardon[63] (c) undischarged bankrupts (d) persons who cannot "read and understand" the English language.[64] (sec. 5 (1)). There is provision for an extensive list of exemptions from jury service, (the classes of persons exempt being set out in the Second Schedule) and the Governor has power to extend the exemptions to other persons in Crown service (sec. 6). If through some error the name of a disqualified or exempted person appears in the jury book he is liable to serve (sec. 4 (2)), and the fact that such persons have served as jurors is no ground for questioning and does not affect or invalidate the verdict. (sec. 8).

Part III of the Act (secs 9-12) contains new provisions for constituting jury districts for the Supreme Court and for each Circuit Court and Court of Session, defined by reference to Assembly districts. Part IV (secs 13-17), which provides for the preparation of jurors' books, tickets and boxes, was substantially modelled on the corresponding provisions of the Victorian Juries Act of 1956, though there are some modifications—thus sec. 14 (6) (happy in intention if not in wording[65]) prescribes that individual notices be served on persons whose names appear on the draft jury roll informing them of that fact and of the procedure by which exemption may be obtained, in contrast to the Victorian provision[66] that the fact of the preparation of

60 An unsuccessful attempt was made in Council to raise this to 25, on the grounds that persons of 21 to 25 were unlikely to be sufficiently responsible to serve on a jury.

61 Amended from 60 in the Council.

62 This provision seems unnecessary, since none but British subjects may be enrolled as voters—sec. 17 (1) (a) Electoral Act 1907-1957.

63 An unfortunate amendment in the Council removed words which were intended to make it clear that despite the Civil Rights of Convicts Act 1828 (Great Britain) a person convicted of a crime or misdemeanour who has endured his punishment is not deemed to have received a free pardon. The present position appears obscure: see 10 HALSBURY'S LAWS OF ENGLAND (3rd ed. 1955) 519.

64 This should be "read or understand." A person who can understand spoken English but not read written English is not disqualified. The Bill originally read "read and write." "Understand" was substituted by amendment in Council: (1957) 147 PARL. DEB. 1811-2.

65 See *supra*, at note 20.

66 The Juries Act, 1956, secs. 12 (2) and (3).

the rolls and the grounds for the procedure to gain exemption be advertised.

Part V (secs 18-34) deals with numbers of jury, precepts, panels and summonses. The jury for a criminal trial remains twleve (sec. 18); the jury for a civil trial is now fixed at six (sec. 19). The panel for both criminal and civil trials is to be made up by intermixing in one box the tickets for those whose names appear in the Jurors' Book for the Jury District (both men and women) and then drawing out so many tickets as are necessary to make up the number of men and women required to be summoned so that the number of men shall bear to the number of women the same proportion (as far as is practicable) as their respective numbers bear in the Jurors' Book. It would seem that as soon as the requisite number of the one sex has been reached any further tickets for jurors of that sex shall be put aside;[67] this does not appear from the relevant subsections (sec. 26 (2) and sec. 29 (2)(a)) (and indeed would seem to be contradicted by the express words of sec. 26 (3) and (4)) but is contemplated by sec. 28 (1). It would perhaps have been better to have provided for two boxes for Jurors in Use—one for men and the other for women.[68] Sec. 27 (2) provides for the mandatory exemption from jury service in any trial[69] of a woman who before being sworn applies to be exempt because of the anticipated nature of the evidence or the issues to be tried, or for certain personal reasons.

Part VI (secs 35-43) makes fuller provision than before for proceedings at criminal trials. In the empanelling of the jury the proportion (referred to above) between men and women need not be observed (sec. 36). The right for each accused to challenge peremptorily six jurors is retained except where two or more persons are charged with the same offence, in which case each may challenge three. The Bill, following suggestions which had been made both by the Chief Justice (Sir John Dwyer) and his predecessor in office, the late Sir John Northmore,[70] had provided that the right to challenge was to be exercised before the juror took his seat, the idea being apparently to avoid embarrassment and inconvenience to jurors; but this was deleted in the Council. Sec. 39 provides for the drawing of sufficient names to permit of the appropriate number of challenges

67 Thus negativing in part the "lottery" principle of selection, as was pointed out in the Council by the Hon. A. F. Griffith, (1957) 147 PARL. DEB. 1858.

68 It appears that the Hon. A. F. Griffith had this in mind and had prepared amendments to provide accordingly ((1957) PARL. DEB. 1859, 1860) but did not proceed with them.

69 Not, as originally provided in the Bill, any criminal trial.

70 See (1957) 147 PARL. DEB. 2121.

by each of a number of persons charged with the same offence who do not consent to join in their challenges, or by each combination of those persons who do consent to challenge jointly; but there is no provision as to the number of jurors who may be challenged on joint challenge. In any case other than that of a capital offence, after the jury has deliberated for at least three hours without arriving at a unanimous verdict the decision of not less than ten is to be taken as the verdict of the whole jury; and if there is no such decision the Judge or Chairman may discharge the jury unless he thinks it desirable that the jury should deliberate further (sec. 41).

Part VII (secs 44-50) contains the provisions for proceedings at a civil trial. Sec. 44, replacing sec. 37 of the Juries Act 1898 (as amended in 1928), makes more detailed provision for the daily deposit of jury expenses by the party applying for or requiring a jury. Challenges to the array must be before any juror is sworn (sec. 45) and peremptory challenges as the jurors come to be sworn (sec. 21 of the Juries Act 1898) are abolished; the only right of the parties in a civil trial is to object to six of the names on the jury list, as provided by sec. 29. The Court has, however, power to discharge a juror after he has been sworn if it appears that he is not indifferent between the parties or for any other good cause ought not to act as a juror, and the trial may then proceed with the remaining jurors (if not less than four); their verdict shall be taken as the verdict of the whole jury (sec. 47). Sec. 48 provides for a similar reduction of a jury in the event of death or illness of a juror during any civil trial or the absence of one or more of the jurors summoned; and sec. 49 provides that after three hours deliberation the verdict of five jurors out of a jury of six, or four out of five, shall be taken as the verdict of the jury; if such a verdict cannot be reached after four hours deliberation, the Judge may discharge the jury and the case may again be set down for trial.

Part VIII contains the provisions for a view (sec. 51) and for praying a tales (sec. 52). The provisions of sec. 51 are substantially the same as those of sec. 34 of the Juries Act 1898; it is still not made clear whether, if an order for a view is made before the trial, the viewers are to be nominated from, or may be nominated from outside, the jury panel (or even whether viewers nominated in such circumstances must be qualified and liable to be jurors); and sec. 55(d) read in conjunction with sec. 55(a), seems to reinforce the view that they need not be on the jury panel.[71] It would seem that as at common

[71] Otherwise there would be no need for the separate offence in sec. 55(d): the viewer would be liable under sec. 55(a).

law, so in the law of this State, there can be no tales without a quales,[72] though it seems clear that persons may be collected from without the precincts of the Court.[73]

Part IX, providing for Offences, Fines and Penalties (secs 53-57), contains an extended and somewhat more detailed version of secs 38 and 39 of the preceding Act.

Traffic Regulation.

Three different amendments were made to the Traffic Act during the course of the session, two of them introduced by private members. The first, Act No. 49 of 1957, reduced the licence[74] fees for certain classes of farm tractor with trailer or platform attached. Act No. 78 of 1957 substitutes for flat licence fees for licensing of motor-cycles a fee based on engine capacity. The Government measure, the Traffic Act Amendment Act (No. 4) (No. 76 of 1957) contains a miscellaneous set of provisions. A large number of the penalties under the principal Act are amended to provide increased penalties for second and subsequent offences. Trolley-buses are now within the definition of "vehicle" under the Act and may be subject to the same rules as motor-vehicles (sec. 3(b)). What appears to have been a mistake on the part of the legislators has been cured by sec. 11, repealing and re-enacting sec. 16 to impose upon the person ceasing to be the owner of a vehicle the obligation to notify the licensing authority of the name and address of the new owner, but imposing upon the new owner the obligation to pay the transfer fee.[75] The three-monthly licensing period is abolished (sec. 7), but local authorities are given a discretion to grant individual applications for the renewal of a licence for three months only (sec. 7A). It is now necessary for a used car dealer to take out an annual licence, so that some check may be imposed on those who have proved "a discredit to the trade";[76] applicants for a

72 See Solomon, [1958] Cr. App. R. 9.

73 A point argued but not decided in Solomon (*supra*).

74 Spelt throughout the legislation as "license." The Shorter Oxford English Dictionary says (s.v. "licence") "The sp[elling] "license" has no justification in the case of the [substantive]."

75 Sec. 9 of Act No. 54 of 1956 had amended sec. 16 (1) of the principal Act to provide that the transfer of a vehicle licence should be endorsed when the person who ceased to be owner had paid the prescribed fee, and then inserted a new subsec. 1 (a) (added after the first amendment had been rejected by the Council and a conference of managers had met), to impose upon the new owner the obligation to apply for the transfer and pay the prescribed fee.

76 The Hon. H. E. Graham, Minister for Transport, (1957) 148 PARL. DEB. 3258. Mr. J. M. Hearman said in the course of debate that he had been informed that one golf club in the city would not allow a man to join if it were known that he was a used-car dealer (*ibid.*, 3586).

licence or renewal are to furnish character testimonies and security not exceeding £3,000, and licensed dealers are required to keep a record of transactions (sec. 13, inserting new Part IIIA, secs 22AA to 22AF).

Employers may no longer consent to the issue of a motor-cycle driver's licence to a person under 21 unless it appears that the applicant has no parent or guardian in the State (sec. 14).[77] Power is given to the Commissioner of Police to apply to a Court of summary jurisdiction for an order that any applicant for a licence or renewal be not granted it, if he thinks that the applicant has had too many convictions; the Court may in making such order declare the applicant disqualified for a period (sec. 16); thus some measure of control may now be exercised over the driver who is heedless of the regulations or over the "accident-prone" driver who nevertheless manages somehow to escape the cancellation of his licence by the Court each time he is convicted.

In enacting sec. 21 (adding a new sec. 32A to the principal Act) Western Australia has joined Victoria, and accepted the recommendation of the Australian Transport Advisory Council, in providing for voluntary blood-alcohol tests, primarily of persons suspected of driving while under the influence of intoxicating liquor. A policeman or traffic inspector who reasonably suspects any person of committing the offence is to advise the suspect of his privilege to have a blood test (apparently without having to charge him).[78] In any subsequent proceedings evidence may be given (by certificate in the first instance, subject to the right of any party to require oral evidence) of the taking of a blood sample within eight hours after the commission of the alleged offence, and of the percentage by weight of alcohol in the blood at the time of analysis. If the percentage is 0.05 or less, it is *prima facie* evidence that the person charged is not under the influence;[79] if more than 0.05 and less than 0.15 per cent., that fact shall be considered in evidence

77 Apparently young men had been evading parental prohibitions on taking out motor-cycle drivers' licences by prevailing upon employers to give the necessary consent.

78 *Cf.* sec. 32 (2) of the principal Act. No doubt this will save the trouble of laying a charge if the blood alcohol level turns out to be less than 0.05 per cent.

79 The Minister for Transport stated that it would be *conclusive* evidence, (1957) 148 PARL. DEB. 3259. But in the light of scientific evidence that "there is not a sufficient constant and precise correlation between the blood alcohol content and intoxication to justify the substituting of a blood alcohol test alone" (E. J. Edwards, I. W. P. McCall and J. L. Toohey, *"The Blood Alcohol Test and Drunken Driving"*, (unpub. 1957)) this would have been a dangerous provision. The proposal of the Australian

together with other relevant and admissible[80] evidence, but shall not give rise to any presumption; if the percentage is 0.15 or more, it is *prima facie* evidence that the person was under the influence at the time.[79] Fees payable, and the mode of payment and recovery, and the *modus operandi* of sampling, analysing, certifying, etc. are to be prescribed by regulation. The foregoing provisions are to apply *mutatis mutandis* to all other offences in respect of which the question whether the person was or was not under the influence of alcohol at the time of commission is relevant. It is not clear what will be the effect in a prosecution under the Traffic Act (or in respect of any other offence) if the accused was not given the privilege (or advised that he had the privilege) of having a blood-alcohol test when he was first "reasonably suspected" of having committed the offence.

Miscellaneous.

Two amendments were made to the Interpretation Act, 1918, during the session. The first (Act No. 7 of 1957) amended sec. 31 of the principal Act to enable service of documents permitted to be served by registered post to be effected also by "certified mail." The second (Act No. 34 of 1957), by adding a new subsection 2A[81] to sec. 36 empowers Parliament by resolution of both Houses to amend any regulation or to substitute a regulation or part of a regulation for a disallowed regulation.[82] The amending or substituting resolution, like the disallowing resolution, is to be published in the Gazette, and shall take effect after the expiration of seven days from the date of publication. An ungrammatical proviso, annexed to the wrong subsection (subsec. (3)), limits the new power to regulations published after the 1st January 1949.

III. PUBLIC HEALTH.

Health Act.

A variety of amendments to the existing law is made by the Health Act Amendment Act (No. 21 of 1957). "Legal authorities in other States have ruled that chewing gum is not an article of confectionery"[83]—with what justification it is difficult to tell, since there appear

Road Safety Council had stressed that the blood alcohol level must be used only to supplement all other evidence, which obviously would include evidence concerning the behaviour of the accused.

80 "Admissable", which appears in the Act, is a misspelling.

81 Which should surely be 2a?

82 But there is no power in sec. 36 to disallow *part* of a regulation; it is difficult to see how part of a regulation can be substituted for a disallowed regulation.

83 The Hon. H. C. Strickland, Minister for Railways, (1957) 146 PARL. DEB. 747.

to be no reported decisions on the point back to 1950[84]—and in order to be able to control such undesirable activities as the use of prohibited dyes and saccharine in its manufacture, the definition in the principal Act of "food", which includes "confectionery", is amended to provide that confectionery "shall be deemed[85] to include any preparation which is known as chewing gum or bubble gum or which the Governor by regulation prescribes to be chewing gum"[86] (sec. 4).

Under the principal Act (secs 18 and 19) administrative divisions known as "health districts" are constituted. Each municipal district is automatically a health district; outside the areas of municipal districts health districts, which may or may not be co-terminous with road districts, though they usually are, may be constituted by Order in Council. If the boundaries of a local authority are altered, or a road district becomes a municipal district, "quite an amount of confusion can result . . . particularly in regard to the application of by-laws and the standing of health officers."[87] So far as the alteration of boundaries is concerned, the proviso to sec. 19 (2) contemplates the change of boundaries of a road district but not of a municipality:[88] so far as change of status is concerned, sec. 198 of the Municipal Corporations Act 1906 seems not to apply to by-laws made under the Health Act. The new sec. 19A (inserted by sec. 5) provides that notwithstanding alteration in boundaries or changes of status, delegated legislation under the Health Act in force in any part of the State before the alteration or change remains in force in that same part of the State after the alteration or change; thus so far as the alteration of boundaries of a road district is concerned there is now inconsistency be-

84 A careful search of the Australian Digest and of the Legal Monthly Digest yields this negative result. Admittedly there may be an unreported magisterial decision; but is there any reason to suppose that it will be followed in this State?

85 Why "deemed"? Surely it is unnecessary to resort to this "statutory fiction"? *Cf.* sec. 5 (7) of the Stipendiary Magistrates Act 1957: "Any magistrate shall be deemed to have vacated his office" if he resigns (and the Governor accepts his resignation) or if, being over the age of 60, he signifies his desire to retire, and the Governor agrees. Again, why "deemed"? "There is too much of this damned deeming." *per* Lord Mildew in Travers v. Travers (HERBERT, CODD'S LAST CASE, (1952) 80).

86 Why not simply empower the Governor to prescribe preparations to be confectionery? What would be the position if drinking straws flavoured with saccharine were to be sold in this State? Could the Governor proclaim them to be chewing gum?

87 The Hon. E. Nulsen, Minister for Health, (1957) 146 PARL. DEB. 747-8.

88 Though the effect of sec. 18 may be that a change in the boundaries of a municipal district automatically changes the boundary of the co-existent health district.

tween sec. 19 (2) and sec. 19A; while if the boundaries of a municipality are extended the by-laws, etc. under the Health Act will apparently apply only within the original area. One would have thought it better to extend the application of the by-laws, etc. with the extension of the boundaries.[89]

A loophole in sec. 144 of the principal Act, which forbids (except with the consent of the local authority) the conversion or adaptation or use as a dwelling of any building not originally constructed or erected as a dwelling-house, has been closed by the insertion (by sec. 7) of an express provision forbidding letting, leasing, subletting, subleasing, or otherwise permitting the use of the building as a dwelling. Sec. 174A (added by sec. 8) seeks to make both the building proprietor and the building contractor liable for commencing building alteration or extension without the authority of the Commissioner of Public Health, or for departing from plans and specifications already approved. The contractor's liability is excluded if the work is supervised by a qualified architect (subsec. 5).

At the present time all cases of infectious diseases are notifiable so that proper control measures can be taken. "There are, however, other diseases which, though not infectious, can be prevented or alleviated by investigation and planned action."[90] Blindness, cancer and eclampsia are among these. A new Part IXA of the Act (secs 289A, 289B and 289C) has been inserted by sec. 11, to empower the Governor to make regulations prescribing (non-infectious) conditions of health to which the new Part will apply and machinery for notification of such conditions. The object, it was explained, was not to require any person to submit to treatment against his will, but to facilitate the prevention and alleviation of the diseases in question. A more immediate type of prophylaxis is envisaged by the amendment to sec. 340 (by sec. 12), which confers extended powers upon local authorities, and the Commissioner, to immunise free of charge against poliomyelitis and such other diseases as the Governor may by regulation prescribe.

Nursing Profession.

Two amendments were made during the session to the Nurses Registration Act 1921. Act No. 19 of 1957 empowered the Nurses

89 And *vice versa*. Under the present legislation it would appear that if the boundary of a road district is altered so as to reduce the area of that district and increase the area of a neighbouring district the health by-laws of the former would operate within part of the latter's area until some amendment was made. This result hardly seems sensible.

90 The Hon. E. Nulsen, Minister for Health, (1957) 146 PARL. DEB. 748.

Registration Board to do what it has already been doing without the power,[91] that is, to register as midwifery nurses "children's nurses" who had had twelve months of midwifery training and mental nurses who had undergone eighteen months of such training. The regulation-making powers under sec. 16 of the principal Act were also extended. The second amendment (Act No. 64 of 1957) increased the number of the Board from nine to thirteen.

Licensing of Professions.

Provision was made during the session for the licensing of two professions auxiliary to the medical profession, the chiropodists and the occupational therapists. The rather ambiguous (and circular) definition of chiropody[92] in sec. 3 of the Chiropodists Act (No. 38 of 1957) owes something to the South Australian legislation,[93] though in that State a chiropodist's ministrations may travel as far as the knee, while in this State, thanks to an amendment inserted in the Council after the Bill had been recommitted,[94] he (or she) may rise no higher than the ankle. The Act follows the usual pattern in setting up a Chiropodists' Registration Board (sec. 6) which has power to make rules prescribing *inter alia* the course of training and the examinations to be passed by persons desiring to be registered as chiropodists. Qualifications for registration are laid down in sec. 10; persons *bona fide*[95] engaged in and competent in the practice of chiropody in the State for at least 24 months during the three years immediately pre-

91 Mr. Nulsen, *ibid.*, 920.

92 "the diagnosis and treatment by medical, surgical, electrical, mechanical or manual methods, or by any other methods as may be proclaimed, of ailments or abnormal conditions of the parts of the human body below the level of the ankle as come within the accepted province of the chiropodist and are included in the curriculum laid down in the Rules made under this Act." Is it the ailments and abnormal conditions, or the parts of the human body, which come within the accepted province of the chiropodist, etc.? In any case, except for the limitation to the human foot, it is perilously close to saying that chiropody is what a chiropodist does. Incidentally, it is difficult to imagine any other method of diagnosis or treatment except perhaps hypnotic.

93 The Chiropodists Act, 1950 (from which the idea that there may be other methods has come).

94 On the motion of the Hon. J. G. Hislop, who said in explanation: "I have taken the opportunity to find out exactly what chiropody means." (1957) 147 PARL. DEB. 2248.

95 It is unfortunate that some other expression than *bona fide* could not be discovered for this. How does a person engage in the practice of chiropody *mala fide*? The equally overworked "genuine" or "genuinely" would almost be better. *Cf.*, however, the advertisement which is seen from time to time: "Genuine young man" (or "Genuine woman") desires board (or employment).

ceding the commencement of the Act may be registered; otherwise examination qualifications are required. A curiously-worded sec. 12 exempts medical practitioners and registered physiotherapists from registration under the Act;[96] and sec. 13 seems to say the same thing over again. The Occupational Therapists Act (No. 20 of 1957) contains rather similar provisions in general; but sec. 9, in providing that it is not unlawful for teachers of handicrafts, persons engaged in their usual occupation as teachers, or persons giving instruction in the skills of their usual occupation, to give instruction to sick or convalescent persons, invites attention to the fact that it is not made unlawful for anyone else to do this so long as he does not describe himself as an occupational therapist; so that while registration is necessary for a chiropodist to practise chiropody, it is only necessary to enable an occupational therapist to call himself an occupational therapist.

An amendment to the Optometrists Act (the Optometrists Act Amendment Act (No. 45 of 1957)), which provoked far more debate than its intrinsic importance warranted, provides another unfortunate example of legislation designed to benefit one specific person.

IV. CONTROL OF PRICES AND COMMODITIES.

Marketing of Potatoes.

In 1956 a shortage of potatoes in the Eastern States created a demand for potatoes from Western Australia, and a number of landholders in this State made substantial gains by growing potatoes without licence for interstate sale. Those who hoped for a similar profitable interstate market in 1957 were disappointed by the turn of events in the Eastern States, where there was a good potato crop, and attempted to dispose of their potatoes through "black-market" channels in Western Australia. Purchasers from them were in many cases guilty of an offence under sec. 22 of the Marketing of Potatoes Act 1946, but unless evidence could be obtained to identify the grower from whom a person in possession of "black-market" potatoes had bought them, he (the purchaser) could not be convicted.[97] An amendment to sec. 22 therefore (sec. 3 of Act No. 29 of 1957) provides, first, that it is not necessary in any complaint against a purchaser under sec. 22 to state in the complaint the name of the grower from whom the potatoes

[96] To say that such persons are not required to register "by reason only" of being a medical practitioner or physiotherapist suggests that there may be some other reason for requiring them to register.

[97] The Hon. E. K. Hoar, Minister for Agriculture, stated that "this is how the present legislation reads." (1957) 147 PARL. DEB. 1887. The Act, in fact, says no such thing.

were bought: it is sufficient to refer to him as "a grower" (new subsec. 3);[98] and second, that possession or control of more than ten stone weight of potatoes should in certain circumstances be *prima facie* evidence[99] that they were bought or received in contravention of sec. 22 (new subsec. 4). The circumstances referred to are set out in paras (c) to (e) of subsec. 4; the final product, after amendments in its passage through Parliament, is somewhat confusing. If the "suspect" can on demand produce a sales docket or delivery note in fact issued by or on behalf of the Board, the presumption is negatived. It is likewise negatived if he can produce a delivery note which *purports* to have been issued by or on behalf of the Board; there is power in subsec. 7(b)(ii) for an inspector to impound any sales docket or delivery note, and in that event the burden is apparently on the prosecutor to prove that the note or docket was not issued by the Board before the presumption comes into operation. If the "suspect" can produce a sales docket or delivery note, but it was not issued by nor did it purport to be isued by the Board, the potatoes must be in bags or other containers branded or marked in accordance with the docket or note in order to negative the presumption.[100] Ancillary presumptions are contained in subsecs 5 and 6, and subsec. 7 confers powers of inspection and inquiry in relation to vehicles upon inspectors to be identified by brassards. Sec. 5 of the amending Act introduces to the principal Act (unnecessarily, it is submitted) the unfortunate conjunction "and/or", and amends sec. 41 so as to make it appear that secs 22 and 26 are both "offences against the Act."

Unfair Trading and Profit Control.

A defect in the operation of the Unfair Trading and Profit Control Act 1956 which appeared during the course of the first year of operation of the Act was that the Commissioner was charged with the double duty of investigation and inquiry. That defect was remedied by the passing of the Unfair Trading and Profit Control Act Amendment Act (No. 57 of 1957) which set up an office of Director of Investigation (sec. 4) and vested in the Director the powers of investigation under Part II of the Act.[101] If as a result of investigation the Director has reason to believe that a person has been guilty of unfair

98 Nothing in the principal Act appears to render this necessary.

99 The Act says "*deemed* to be *prima facie* evidence" (as also in subsec. 6). Why? See note 85, *supra*.

100 The Bill originally provided that the potatoes must be in marked bags even if the docket or note was issued by the Board; but this requirement was removed by amendment (1957) 147 PARL. DEB. 2092.

101 The heading to Part II should have been changed; it now refers solely to powers of investigation.

trading, he may charge the person before the Commissioner and the Commissioner shall then hold the inquiry (new sec. 29(1) inserted by sec. 19). The Amendment Act also introduces (by sec. 3(d)) a new method of unfair trading or competition—discrimination against competitors of a purchaser by allowing secret discounts not available to the competitors. The new provision is widely enough drafted to strike at retail discounts, if it could be held that the phrase "competitors of the purchaser" is apt to refer to other retail purchasers; but it is doubtful whether the Act is intended to go so far.

Retailing of Motor Spirits and Accessories.

Act No. 44 of 1957 makes amendments to sec. 100 of the Factories and Shops Act 1920 (as re-enacted in 1956 by Act No. 84 of 1956). A new penalty is prescribed for persistent after-hours trading; if more than three offences are committed within any period of twelve months there is a minimum penalty (irreducible in mitigation) for each offence after the third. A new subsec. 5a provides that the Governor may prescribe a shop in a zone as one which may open during extraordinary trading hours although the shopkeeper is not a member of the Western Australian Automobile Chamber of Commerce and is not included in any recommendation of that body, provided that shops in that zone are treated uniformly; and a new subsec. 5b allows any shopkeeper who is trading during extended trading hours to change his mind and to give notice to the Minister one month before the expiry of any period during which the proclamation is effective that he does not wish to keep open in future. The new subsec. 7a authorizes the Royal Automobile Club to continue its emergency service for its members.

V. FISCAL.

Borrowing.

The Loan Act (No. 80 of 1957) authorizes the raising of £16,073,000 for various works, including approximately £4,500,000 for Public Works and £1,120,000 for development in the North-West. £1,250,000 is earmarked to fund deficits in the Consolidated Revenue Fund. The University of Western Australia Act Amendment Act (No. 25 of 1957) enables the Government to guarantee any loans raised by the University, so that urgent works may proceed although there is not sufficient money available from the General Loan Fund: the legislation was brought down to enable the guaranteeing of the sum of £250,000 urgently required for the construction of the new Engineering School.

Stamp Duties.

It is expected that the revenue will benefit by some £80,000 a year by the raising of the stamp duty on cheques from 2d. to 3d. (the Stamp Act Amendment Act, No. 70 of 1957). To enable bankers to use, without the need for overprinting, stocks of cheque forms bearing a statement that the former amount of duty has been paid, sec. 3 is intended to provide that after any increase in stamp duty comes into operation cheques in the possession of a banker shall be deemed[102] to be printed or impressed with the amount of the duty; unfortunately, the inadvertent insertion of the words *"ad valorem"* to describe the duty has made the section nugatory and has provoked a great many unconscious breaches of sec. 58 of the principal Act.[103]

VI. BUILDING HOUSING AND DEVELOPMENT.

Town Planning.

Two amendments were made during the session to the Town Planning Act 1928. The first, Act No. 68 of 1957, amended sec. 7A of the principal Act so as to extend to 31st December 1958 the period for which an interim development order automatically has effect; it was thought important that the powers under such an order should not lapse when proposals for regional planning were put forth. It also amended sec. 13 by providing that when, under any Town Planning Scheme, land was taken compulsorily under the Public Works Act 1902, the provisions of that Act relating to notice of intention to take, objections, etc.[104] are not to apply, they being inconsistent with the procedure under the Town Planning Scheme, under which proposed resumptions are adequately advertised.

The second amendment (Act No. 79 of 1957) was brought down nine days later to stop up a loophole which the activities of land "vendors" in a seaside area had disclosed to exist in the Act. Having failed to secure approval to the subdivision of the land in question in less than half-acre blocks, the owners were offering quarter-acre blocks for lease for five years with the option to renew for another five years and an option to purchase, at a rental of £10 per annum, and a deposit of half the purchase price to be refunded if the option to purchase was not exercised. The fear was that tenants under these leases would

102 Correctly used in this instance.

103 As it happens, sec. 3 has added the subsection in question to the wrong section (sec. 52, which provides for *ad valorem* duty on bills and notes); but in this it perpetuates an error first made in 1950, when subsec. 3 was added to that section instead of to sec. 54, to which it properly belongs.

104 Secs 17 (2) to (7) and 17A.

put up seaside houses on the leased blocks and thus present the local authority with a quarter-acre subdivision as a *fait accompli* to which they must bow. The Bill as drafted plugged up the loophole very effectively by removing the provision from sec. 20 that leases for over ten years required consent, and inserting a new paragraph requiring consent to all leases except those of the whole of one or more lots or of part only of a house or building. Unfortunately a proviso was added to this in the Council[105] which appears to open another loophole; it exempts from the requirement of approval any instrument of lease containing a "proviso" (!) that no "option of purchase of the land" has been or will be granted and that no consideration other than the rent has passed between the parties to the lease. Since the insertion of such a clause in the lease would have no effect on the granting of a subsequent, or even a contemporaneous, option, nor on the payment of money over and above the rent, one may expect future transactions of the kind aimed at by the legislation to be carried out by means of separate documents and under-the-counter payments. A further weakness of the proviso is that long-term leases of part of a lot (say, for 99 years) do not require consent (though they will not be registerable under sec. 21, which is consequentially amended) and it appears within the bounds of possibility that less-than-minimum-area subdivisions may be disposed of in this way.[106]

Housing Loan Guarantee.

The Housing Loan Guarantee Act (No. 75 of 1957) enables the Treasurer to guarantee to any approved lending institution the payment of interest and principal on any loan on mortgage of a new house (or unpaid purchase money in respect of the purchase of such a house), up to a certain percentage of the valuation; the principal is to be repayable on a table basis with quarterly rests over not more than 45 years, and the borrower must use the house as a home for himself and his dependants and not own any dwelling-house already. Part only of a loan may be guaranteed. The guarantee is to be financed by payment into a Housing Loan Guarantee Fund Account, each quarter, of $\frac{1}{4}\%$ per annum of the outstanding balance at the last quarter day.[107] No doubt this will be passed on to the borrower, so that

105 Introduced by the Hon. R. C. Mattiske, (1957) 148 PARL. DEB. 3887.

106 Is it not possible that to grant an option to purchase is to "sell land" within the meaning of sec. 20 (1)? See Goldsbrough, Mort and Co. Ltd. v. Quinn, (1910) 10 Commonwealth L.R. 674, at 678 (*per* Griffith C.J.).

107 The Act speaks of "so much of that amount of the loan payment of which is guaranteed and interest" (sec. 9 (2) (b)). Surely the words "and interest" have been inserted *per incuriam*?

by paying a slightly higher interest rate on all or part of the loan he will be able to raise a much greater percentage of his purchase price on loan.

VII. GENERAL.

Primary Production.

Provision is made for an additional Government appointee to the Agriculture Protection Board (which now stands at 10 members) to represent "agronomic industries carried on in areas of intensive culture, including the fruit-growing industry and the dairying industry" (the Agriculture Protection Board Act Amendment Act, No. 2 of 1957). The requirement that all bulls be registered has been dispensed with by the repeal of the Dairy Cattle Improvement Act 1922 (No. 4 of 1957). An avenue for economy in the administration of the Pig Industry Compensation Act 1942 is provided by the amendments contained in secs 4 and 5 of Act No. 27 of 1957: agents who sell pigs or carcasses may be permitted by the Minister (provided that economy in the administration of the Act will result) to make periodic returns of sale in lieu of duly stamped statements in respect of each sale. It is a condition of any permit that the amount shown payable in respect of any one pig or carcass shall not exceed five shillings.

Under the Bees Act 1930, sec. 6, if any disease affecting bees breaks out in any part of the State the Governor may proclaim the area an infected area and impose a quarantine on it. The initial move in this procedure will, of course, come from one of the officers charged with the administration of the Act. It would appear that the processes of Government are likely to move more slowly than the disease is likely to spread, and accordingly sec. 2 of Act No. 6 of 1957 adds to the provisions of the principal Act a power in any officer who "has submitted or is about to submit" a proposal that such a proclamation be made to serve on any beekeeper in the affected area an interim prohibition order which will have the same effect in the meantime as a proclamation. The prohibition may be either unconditional or subject to conditions.[108] An aggrieved beekeeper may appeal to the Minister. In addition, an officer had the power to require a beekeeper, if he could not cure any disease, to destroy the affected stock and equip-

108 It is not perfectly clear that the Act will have this effect, however; the new subsec. (6) (b) refers to "such conditions as an officer imposes in writing *and is hereby authorised to impose*"; the words in italics, if not regarded as unnecessary, may be read as looking to an authority to be conferred by some other part of the section or Act, and there being no such express grant authority may be held to be lacking.

ment; sec. 4 now permits the officer to give the beekeeper the option of disinfecting the equipment in a specified manner.[109] The Bee Industry Compensation Act 1953 has been amended (by Act No. 23 of 1957) to permit of the payment of compensation when this course is taken.

The upward progress of the standard of living in rural areas is reflected in the provisions of the Shearers' Accommodation Act Amendment Act (No. 54 of 1957), which was the result of conferences between the Australian Workers' Union, the Pastoralists' Association, and the Farmers' Union, and which makes extensive changes in and additions to the definition in the principal Act of "proper adequate and sufficient" accommodation for shearers.[110]

Bills of Sale.

Two amendments to this legislation were passed during the session. The Bills of Sale Act Amendment Act (No. 52 of 1957) increased (in most cases by doubling) various fees prescribed in the principal Act. The Bills of Sale Act Amendment and Revision Act (No. 40 of 1957), was intended, among other things, to facilitate the reprinting of the Principal Act with amendments. It was drafted in consultation with the Law Society and with Government Departments concerned with the subject-matter, and as a result passed through the Assembly and the Council with very little debate. One wonders whether the increasing popularity of yachting and boating as sports for all classes is responsible for the inclusion in the definition of a "bill of sale" of transfers or assignments of ships or vessels which are not registered under the Merchant Shipping Act 1894 (Imp.) (sec. 3(b)). Harassed law clerks and others may welcome the extension of the period for registration of a bill of sale executed not more than 30 miles from Perth from 7 to 10 days (sec. 6). Sec. 2 of the Bills of Sale Amendment Act 1906 is amended so as specifically to exclude a debenture from the definition of a "bill of sale" in that section; this makes it clear that it is not necessary to give notice of intention to register a debenture and sets at rest any doubts as to the correctness of the decision in *re Copeland Mines No Liability*.[111] Sec. 14 of the same Act, which saves

109 Obviously the bees would not survive any process of disinfection or fumigation, and would still have to be destroyed.

110 The minimum length of the shearers' bedsteads is reduced from 6' 6" to 6' 3" (sec. 4(e)); does this reflect a tendency of present-day Australians to be shorter than their fathers?

111 (1940) 43 West. Aust. L.R. 15. The existence of two definitions of the expression "bill of sale" in the Act as it will be reprinted gives rise to misgivings that they may be found to be in conflict. Could a security over a merchant ship be a "bill of sale" under the new Part IV?

certain errors or misdescriptions in a bill of sale, is amended to provide that these shall not render the bill of sale "fraudulent, void or invalid"; it is not clear what is the difference between voidness and invalidity, unless by "void" is intended "void as against the persons mentioned in sec. 25." It is no longer necessary for an index of grantees to be kept, and more indexes than one of grantors may now be set up, so as to have separate indexes for debentures and for hire-purchase agreements (sec. 9). Under the existing legislation a bill of sale could be renewed for a further period of three years at any time during the currency of the preceding three years; renewals may henceforth be made only during the last 60 days of that period. Sec. 12 (which by a curious prolepsis refers to sec. 21 as amended by an Act not passed into law at the date of assent[112]) amends that section to enable the filing of a memorandum of satisfaction of a bill of sale other than a bill of sale by way of security; the effect of such a memorandum is obscure, since the section contemplates a memorandum "discharging the chattels comprised therein, or any specified part thereof, from the moneys secured thereby, . . . or from the performance of the obligation thereby secured." Sec. 22 is amended to make it clear that the effect of a memorandum of satisfaction of the whole debt or charge[113] is to re-transfer to the grantor the interest transferred by him to the grantee[114] (sec. 13). Sec. 51, which provides for the registration of debentures, is extended to compel all companies (whether registered or incorporated or carrying on business in Western Australia or not) to register its debentures if it wishes them to have effect in this State. A new mode of registration (filing of the debenture itself, or a copy) is prescribed by a new subsec. (1) (sec. 17). The consequential amendment made to sec. 52(3) appears totally unnecessary. In order to facilitate reprinting, substantial amendments are made to the earlier amending Acts by the Schedule; in particular, the amending Act of 1906 (No. 13 of 1906) is so amended as to enact the arrangement of the about-to-be reprinted Acts. One cannot help feeling that a straight-out consolidation would have been better.

112 Act No. 40 was assented to on 22nd November 1957; it was not until that date that the Assembly finally accepted the Council's amendments to the Bill which became Act No. 52, and it did not receive assent until 9th December.

113 Had this been differently worded it might have removed the obscurity concerning the effect of a memorandum of satisfaction of a bill of sale other than by way of security.

114 "shall be deemed to be and to have been" is verbose and unnecessary. Why not "shall from and after the filing of the said memorandum be as if the bill of sale had not been given by the grantor"?

Bush Fires.

Act No. 35 of 1957 introduces various amendments to the Bush Fires Act 1954 intended both to improve the machinery for control of bush fires and to introduce a certain amount of flexibility in the operation of the Act. Thus sec. 2 looks to the appointment of additional bush fire wardens in the whole or any part of a district (it was apparently inserted in order to authorize the appointment of senior officers of the Bush Fires Board as wardens in all districts[115]); sec. 6 inserts three new sections into the principal Act, respectively authorizing the making of regulations concerning the use of materials for blasting, providing penalties for the giving of false alarms, and providing penalties for vandalism affecting fire-fighting equipment; sec. 8 empowers officially-appointed fire-fighters to fight certain fires outside their own district. Sec. 3 (amending sec. 18) enables the Board to suspend or vary the conditions to be complied with in any area if bush is to be burnt during the restricted burning times—the effect is to give some flexibility in the fixing of these times in various districts so that they may begin up to two months later or finish two months earlier; and sec. 4 empowers the owner or occupier of land in an irrigation area to burn bush during the prohibited times in order to conduce to the early germination of subterranean clover.

Railways.

The Government Railways Act Amendment Act (No. 37 of 1957) ended nine years' control of the Railways by a triumvirate, which was introduced because the Railways Commission Report of 1948 had suggested that one man control was a failure and that managerial control should be further strengthened. The Hon. the Minister for Railways was prepared after those nine years to hazard a guess "that there is almost complete agreement . . . that the system of three-man control has been a failure. I think, too," he added, "that it is a failure because of its concept, . . . "[116] By sec. 3 of the Act the Commission of three is replaced by a single Commissioner, to hold office for seven years; the opportunity has been taken to make certain variations in the provisions (sec. 8(8)) concerning vacation of and suspension from office.

Sec. 42 of the principal Act makes it an offence to remove from railway premises "rolling stock, tarpaulins, tools, appliances or property

115 Or to validate appointments already made? See the Hon. E. K. Hoar, (Minister for Lands) (1957) 147 PARL. DEB. 1880.

116 The Hon. H. E. Graham (Minister for Transport) (1957) 147 PARL. DEB. 2361.

of any kind." Sec. 7 of the amending Act adds after the words quoted the phrase "vested in the Minister or in the possession, custody or control of the Commissioner." The intention was to extend the section to cover goods in transit, luggage, or any goods taken from railway property which belong to private persons.[117] If the *ejusden generis* rule is applied the amendment will be ineffective for its purpose.

Pensions and Superannuation.

The Acts Amendment (Superannuation and Pensions) Act (No. 55 of 1957) makes various amendments to pension provisions under three Acts; the Superannuation and Family Benefits Act 1938, the Superannuation Act 1871, and the Government Employees' Pensions Act 1948. The first named Act is amended by (1) introducing a new scale for persons commencing contribution to the Fund after 1st January 1958, or electing after that date to increase the number of units in respect of which they contribute (sec. 2(3)); (2) increasing the amount of each unit of pension to £39 if payment of the pension began before the commencing date of the Act, and to £45.10.0 if payment began after that date (sec. 2(9)); (3) increasing the State contribution (a) where payment is made at rate for age (sec. 2(4)) and (b) where the pension is paid on the basis of a contribution corresponding to a rate for age younger than that of the contributor when he began to contribute (sec. 2(5)); (4) increasing existing pensions to 15/- for each unit plus £52 per annum[118] (sec. 2(6)). New sections 62 and 63 (providing for widow's and children's pensions) are enacted (sec. 2(10) and (11)); the Board is given a discretion to continue a widow's pension in the event of her remarriage if it appears that termination of it will result in hardship; children's pensions are increased from £13 to £52 per annum.[119] A similar increase is made for the children of deceased "qualified contributors" (sec. 2(8)). The draftsman has engaged in some peculiar variations of phraseology

117 The Hon. H. C. Strickland (Minister for Railways) (1957) 147 PARL. DEB. 2569.

118 It is not stated whether the 15/- is per week, per month, or per annum. Sec. 46A(3) of the principal Act, which is amended by the subsection in question, speaks of "fortnightly" payments. In any case, in the light of the increase in the unit of pension in respect of existing pensions to £39 the amendment would appear to be unnecessary except as regards the supplement of £52 per annum.

119 It is not clear why it should have been necessary to replace sec. 62(1) and (2) with subsections almost twice as long, which say very little more than the original. Both the old sec. 62(1)(b) and the new sec. 62(2) refer to children of the widow, but exclude children of her remarriage; what of illegitimate children born during her widowhood?

in this part of the Act whose purpose is by no means clear.[120]

Sec. 3 amends the Act of 1871 in order to provide for increases in the majority of pensions payable under that Act by the application of a formula increasing the pension by reference to the estimated basic wage content of pensions under the 1938 Act and the increase in the basic wage since the date on which the individual pensioner retired;[121] no pension is to be increased above £1,000. Sec. 4 increases pensions payable under the 1948 Act in order to bring them to the maximum allowable income for the purposes of Commonwealth Pension Benefits.

Betting.

The Betting Control Act 1954 professed to be experimental;[122] and because of the doubts as to the desirability of off-the-course bookmaking and the consequences if it were legalised, the Act was given limited operation and was to expire on 31st December 1957 unless continued. In moving the second reading in the Legislative Assembly of the Betting Control Act Continuance Act (No. 36 of 1957) the Minister for Police (the Hon. J. J. Brady) asserted that the experiment could be said to have been successful; that betting under the Act had been carried on for two complete years with "excellent results" compared with the previous illegal betting, and that the system instituted

120 For example the words "pension . . . shall be paid" in the original sec. 62 (1) have been replaced by the words "pension . . . shall be payable"; but if the Board thinks that hardship will be caused to a remarried widow by termination of her pension it "may direct" that her pension shall be paid. Whom does it direct, and to whom is the injunction "and effect shall be given to the direction" addressed, and what is the point of the variation? (There seems to be some want of clarity in this respect in the principal Act. Sec. 24 (1) charges the Board with the administration of the Fund, and sec. 64 (2) says "the Board shall pay." But sec. 71 (1) says "the Board may cause . . . to be paid." Otherwise the provisions seem to oscillate between the passive forms "shall" (or "may") "be paid" and "shall be payable.") The commencing date of the amendments effected varies in expression; sometimes it is "as from and including the first day of January, one thousand nine hundred and fifty-eight" (subsec. 9; *cf.* subsecs 4, 6 and 13); sometimes "as from but excluding the thirty-first day of December, one thousand nine hundred and fifty-seven" (subsecs 8 and 10; *cf.* subsec. 12). In the light of the general provision in subsec. 13 the repetition in other subsections appears to be unnecessary; and the cautious verbiage takes no account of sec. 27 (1) of the Interpretation Act 1918.

121 This appears to be the point of the explanation offered by the Hon. G. Fraser (Chief Secretary) (1957) 148 PARL. DEB. 3025—though the examples he gave suggest that he was in doubt as to the precise import of the provision. The explanation of the formula contained in subsec. 3b (a) of the Act as amended, however, fails to define the time at which the factor "b" (the basic wage) is fixed in respect of each individual pensioner, and the formula therefore becomes meaningless.

122 See (1955) 3 U. WESTERN AUST. ANN. L. REV. 353.

thereby "had proved to be an unqualified success."[123] The Minister for Railways was equally lyrical in his speech in the Legislative Council.[124] Other members were not so enthusiastic; it was alleged by one that "quite a number" of minors had been found in betting shops; that large sums of money had been paid for the change of hands of certain betting shops; and that the present practice of allowing betting shops to be located alongside hotels was a standing abuse.[125] For these and other reasons he moved in the Committee stage that the Bill (which as brought down provided that the Act should be made permanent) be amended to provide that it be continued for a further three years only. Those who supported the amendment argued that gambling constituted a major social problem in the State and that Parliament should be given a "right" of review;[126] it was argued that the fact that the legislation had to be reviewed by Parliament would have a moral effect on those operating in the "industry."[127] Notwithstanding these arguments the amendment was rejected by the Assembly; but, introduced in the Committee stage in the Legislative Council, it passed that body and was finally accepted by the Assembly.

Education.

Various amendments to the Education Act are made by the Education Act Amendment Act (No. 72 of 1957). Preparation is made for a further reprint by the enactment of the arrangement of the principal Act and the alteration of certain headings. The previous power to alter the school leaving age from 14 years to 15 years (sec. 13(2) of the principal Act, now repealed) is replaced by a power (most inelegantly contained in a new subsec. 2 added to the definition section (sec. 3 of the principal Act) and far too wordy)[128] to increase

123 (1957) 146 PARL. DEB. 1133.

124 The Hon. H. C. Strickland (1957) 147 PARL. DEB. 2190-2.

125 Mr. G. P. Wild, *ibid.*, at 1872. But when the Hon. J. Murray attacked the operation of the Act in the Legislative Council on similar grounds his attack was refuted by the Hon. H. C. Strickland (Minister for Railways), *ibid.*, at 2321-5, 2385-9.

126 Mr. I. W. Manning, *ibid.*, at 1874.

127 Mr. C. W. M. Court, *ibid.*, at 1876.

128 The whole subsection is a good example of the kind of pointless verbosity that creeps into statutes not only in Western Australia but elsewhere. Paragraph (a) reads "The Minister may, from time to time *whenever he thinks fit* (why assume that Ministers may make recommendations without thinking it fit?), recommend to the Governor that the leaving age be increased *on and after a day specified in the recommendation* (why not "from a specified day"?—sec. 27(1) of the Interpretation Act 1918 will apply, and could a "specified day" be specified other than in the recommendation?), *from fourteen years, or, as the case may be, from the age declared by proclamation, if any, made under paragraph (b) of this sub-*

the age to any age between 14 and 15 years. The purpose of this is to enable the Government to increase the leaving age in two stages—14 to $14\frac{1}{2}$ and $14\frac{1}{2}$ to 15.[129] A number of consequential amendments are made to accommodate this. The oddly-named Compulsory Officers[130] are now to be Welfare Officers (sec. 3(b)), and their powers of enforcement (sec. 15 of the principal Act) have undergone some amendment. It is perhaps unfortunate that the opportunity was not taken to replace the undefined phrase "children of school age" with something more precise.[131] Welfare Officers may now not only accost the truant child but may escort him to the parents or a parent[132] (sec. 10). Not only is the parent liable to a penalty under sec. 16 of the principal Act (which he may now escape if he gives security in a form approved by the Court to secure the regular attendance of the child at school (sec. 11) but the child may be brought before the Children's Court and charged with the new offence of truancy (sec. 13, inserting new sec. 17A). If the child is convicted he may be released on probation, subject to the supervision of the Child Welfare Department, unless the parent gives the security already referred to. Sec. 20 of the principal Act (which provides for the sending to an institution of handicapped children if the parents are unable to provide for their

section next previously to the recommendation (all so carefully elaborated, but if the Minister recommends an increase it must be from the age obtaining when the increase is recommended, so the words are unnecessary; and in any case "leaving age" is already defined in similar terms by a preceding subsection) to *such greater* age, not exceeding fifteen years, *as the Minister specifies in the recommendation.*" (If the Minister recommends an increase, it is difficult in the extreme to see how it could be to a *lesser* age; and it is almost equally difficult to see how it could avoid being specified in the recommendation). Cut away the dead wood, and you have "The Minister may from time to time recommend to the Governor that the leaving age be increased, from a specified day, to a specified age not exceeding fifteen years"; twenty-nine words instead of seventy-five! Paragraph (b) could similarly be reduced to read "The Governor may by proclamation increase the leaving age in accordance with the recommendation"—fourteen words as against the present forty. It is also to be remarked that while the Minister may recommend to the Governor that the leaving age be increased "on and after" a specified day, the Governor may declare that the age is increased "on and from" that day. Why the variation?

129 The Hon. W. Hegney (Minister for Education) (1957) 148 PARL. DEB. 2796.

130 *Cf.* "Temporary Officer."

131 Is a child of 15 in school uniform a "child of school age" who may be accosted?

132 There is an odd explanation of this in the Hon. W. Hegney's speech (1957) 148 PARL. DEB. 2796: "Children, obviously absent from school without reasonable cause, have given false names and addresses to the welfare officer, who then has no further authority over them. The Bill will give the welfare officer the power to escort the child home to the parents. . . ." Query, to the "parents" at the false address? and what follows then?

education) is amended (a) by increasing from 12/- to £2.10.0 per week the maximum contribution to be made by the parent towards the cost of maintenance and education and (b) providing extra machinery in respect of the committal of the child, including machinery for the conditional release of the child and for the cancellation thereof (sec. 16). The fines for various offences under the principal Act are increased to bring them into line with present-day conditions and the depreciation of the currency.

Third-Party Insurance.

The Motor-Vehicle (Third Party Insurance) Act Amendment Act (No. 77 of 1957) abolishes any period of limitation in respect of any claim by the Trust against a participating insurer under sec. 3P(b) (sec. 3);[133] enables an owner to obtain from a local authority a policy under the Act in respect of (a) a motor-vehicle which does not require to be licensed under the Traffic Act, or (b) a motor-vehicle not included in the interpretation "motor-vehicle" in sec. 3 of the principal Act (a provision intended to allow cover over such vehicles as tractors) (sec. 4); requires that the "due search and inquiry to ascertain the identity of the vehicle" involved in a hit-and-run accident be made as soon as practicable after the happening of the accident (sec. 5); provides that when a vehicle which has remained unlicensed for more than 15 days is re-registered and a new policy is issued it takes effect only from the date of issue and expires on the anniversary of the first licensing of the vehicle, though a full year's premium is charged (sec. 6); and introduces new rules concerning the times and procedure to be observed by claimants against the Trust (sec. 7). Briefly, notice of intention to claim is to be given as soon as practicable after the happening of the accident; if proceedings are not begun within six months the Trust may by notice require that they be begun within 42 days after service of that notice; if the proceedings are not then begun the Trust may apply to a Judge for an order that the claimant begin legal proceedings;[134] if the Judge is of opinion that there is no good reason why the claimant should not do so, he may make such order; or he may adjourn the application, or make other order as he thinks proper;

133 The new provision is added to subsec. 6 of sec. 3P as paragraph (b); but the new paragraph (b) recites that the claims in question are those arising "under the above subsection." This should, of course, read "under the above paragraph."

134 The Bill originally provided for the claim to be barred at the expiry of the 42 days notice; the provision requiring application to a Judge was inserted by an amendment brought down in the Committee stage in the Legislative Assembly: (1957) 148 PARL. DEB. 3696-7.

the time for beginning proceedings may be extended. If proceedings are not begun within the time ordered or extended the claim against the insured person and the Trust is "forever barred and extinguished."

Metropolitan Passenger Transport.

Perth has now joined the other capital cities of Australia in making provision for unified control of the metropolitan transport system. Over recent years the difficulties experienced by private operators of transport in the metropolitan area had increased steadily, to a point where the Hon. the Minister for Transport was able to say that in one or two cases it was "almost a wonder that they have been able to continue up to the present time. So far as one of the larger operators is concerned, I understand it is conducted more or less on a week-to-week basis."[135] Moreover, the need for co-ordinating the various passenger transport services was growing more and more urgent. The Government accordingly brought down a Bill for the setting up of an authority, to be known as the Metropolitan Passenger Transport Trust, to be charged with the duty of providing passenger transport by vehicular service along streets and, if necessary, by ferry service in the metropolitan area and to be empowered to acquire existing passenger transport undertakings. The desirability of such a plan was referred to a Joint Select Committee of both Houses. The Committee having reported that the setting up of such a statutory authority was both desirable and necessary, the Bill became law as the Metropolitan (Perth) Passenger Transport Trust Act (No. 71 of 1957). The Trust is to be composed of a Chairman and two other members (sec. 7) appointed for five-yearly terms after the first term, which is seven years for the Chairman, six years for one member and five for the other (sec. 8(5)(a) and (b)).[136] Members must be persons having wide experience and demonstrated capacity in transport, industrial, commercial, or financial matters, or in the conduct of public affairs (sec. 8(3)).[137] The duties and powers of acquisition of the Trust are as outlined above; acquisition may be of the undertakings themselves or of shares in limited liability companies carrying them out (sec. 25(2)) and may be by agreement (sec. 25(3)(a)) or compulsorily (secs 26-33). In addition the proprietor of any such under-

135 The Hon. H. E. Graham (1957) 147 PARL. DEB. 2159.

136 It seems odd that in the same year that it was decided that the principle of three-man control of the railway transport undertaking was unsound (*supra,* at 291) a new transport undertaking should be set up under three-man control.

137 This positive qualification appears, rather oddly, at the end of a subsection enumerating disqualifications, and is provided for by making the absence of these qualities a disqualification for membership.

taking may serve a notice on the Trust requiring it to acquire the undertaking from him within 3 years, which it must then do (sec. 25(4) and (5)). Provision is made (sec. 42) for the appointment of the staff of the Trust and for the taking over of staff from an acquired undertaking. Financial provisions are contained in Part IV (secs 43-63) and Part V contains the miscellaneous provisions, including a curious sec. 73 of which subsec. 1 purports to give the Trust and its employees and agents very wide powers of entry upon property between certain times, and subsec. 2 immediately limits those powers so as to be exercisable only with consent or on notice. Sec. 75 is also a little unusual in that it imposes a duty on members of the Police Force who find a person committing or attempting to commit an offence against the Act to demand his name and address and to report the offence, instead of (as in the Police Act 1892) merely empowering them so to do.

VIII. MISCELLANEOUS.

Among other legislation passed during 1957:

(1) The Associations Incorporation Act Amendment Act (No. 28 of 1957) allows the two notices that a memorial for incorporation has been filed to be published at an interval of not less than seven nor more than fourteen days, instead of the previous insistence on a seven days interval.

(2) The Cattle Trespass, Fencing, and Impounding Act Amendment Act (No. 46 of 1957) empowers a municipal council or road board to make bylaws (with the approval of the Governor) prescribing what shall be a "sufficient fence" in its whole district or in different parts thereof—a course thought preferable to having one definition of "sufficient fence" for the whole State.

(3) The Coal Miners Welfare Act Amendment Act (No. 13 of 1957) employs in a piecemeal process of amendment seven paragraphs and one hundred and one words to provide that payments by mining companies to the Welfare Fund may be made quarterly instead of half-yearly (a practice which the companies had been following for some time); three paragraphs and sixty-seven words would have achieved that end more elegantly and economically.

(4) The Country Areas Water Supply Act Amendment Act (No. 14 of 1957) corrects the definition of "holding" in sec. 5 of the principal Act, so that it may embrace all land owned and occupied as one property, and corrects an anomaly in sec. 24 whereby if the road level were altered, the Minister was empowered

only to lower the pipes, but to raise or lower the fittings; both pipes and fittings may now be raised or lowered.

(5) The Inspection of Machinery Act Amendment Act (No. 39 of 1957) enables a Board of Examiners to approve as an applicant for a certificate under sec. 54(4) of the principal Act a migrant not being a British subject or ex-serviceman who has a sufficient knowledge of English to enable him to perform the duties but who has not been in Australia long enough to apply for naturalization, or registration as an Australian citizen;[138] the certificate is to be (in effect) conditional on his applying for naturalization as soon as possible, being granted citizenship, and remaining an Australian citizen. This illiberal-seeming legislative attempt to reserve certain types of work to British subjects, Australian citizens or ex-servicemen came in for criticism in both Houses.

(6) The Legal Practitioners Act Amendment Act (No. 11 of 1957) enables a person to be articled in the Deputy Commonwealth Crown Solicitor's office so long as that Solicitor is of two years' standing at the Bar of the High Court of Australia or of the Supreme Court of a State, notwithstanding that he may not be of two years' standing at the Western Australian Bar.

(7) The Mining Act Amendment Act (No. 60 of 1957) enables royalties to be prescribed by the Governor in respect of stratified ironstone (which was hitherto dealt with on the same basis as coal); amends the first alternative method of payment prescribed for tribute agreements so as to cover the contingency of a change in the price of gold (the royalty or tribute is to be based on the price fixed by the Commonwealth Bank at the time of sale; and removes all limitation of areas in respect of rights of occupancy to prospect for alkali and alkaline earth minerals (except surface gypsum) and deep alluvial gold.

(8) The Newspaper Libel and Registration Act Amendment Act (No. 24 of 1957) (the Bill for which was introduced in the Legislative Council by the Hon. Sir Charles Latham) limits the amount of security for costs to be given by a plaintiff to a maximum of £100; repeals the requirement that a plaintiff give evidence on his own behalf or be non-suited; and extends the period of limitation from four months to twelve months after the date of the publication of the libel in the newspaper.

138 This provision was apparently inserted to cater for the special case of Irish citizens not British subjects—see sec. 12(1) Nationality and Citizenship Act 1948 (C'wth).

(9) The Parliamentary Superannuation Act Amendment Act (No. 59 of 1957) *provides* for suspension instead of cancellation of pension or benefit under the principal Act while a pensioner is holding a paid office under the Crown in right of the State.

(10) The Trustees Act Amendment Act (No. 15 of 1957) empowers trustees to authorize withdrawal of funds from a Savings Bank account "on presentation of withdrawal forms signed in the manner specified in the written notice" (*scil.* of authority). It was said to have been introduced to obviate the necessity for all trustees to sign withdrawals where the deed of trust gives no power to delegate this.[139] It seems odd, however, that delegation under this provision could be to anyone, whether a trustee or not, when under sec. 54 of the principal Act the trustees are empowered to authorize a Bank to honour cheques, bills and drafts drawn by any one or more trustees.

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139 The Hon. E. Nulsen (Minister for Justice) (1957) 146 PARL. DEB. 1047.

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