REVIEW OF LEGISLATION.

I. Western Australia.

Introductory.

As a result of the labours of the first session of the twenty-fourth Parliament, which opened on the 26th July 1962 with a Liberal-Country Party coalition government still in office, with the slender majority of two (inclusive of the occupant of the Speaker's Chair), and closed in the not-so-early hours of the morning of the 16th November,[1] 90 new Acts were placed on the Statute Book. Only 13 Public Bills were introduced but not passed. The annual assault on the franchise for the Legislative Council, by way of a Constitution Acts Amendment Bill introduced by the Hon. E. M. Heenan, was on a more limited front this year; the proposal was only to allow the spouses of persons already enrolled under the existing qualifications to enrol as voters. But it met the same fate as have previous attempts to extend the franchise—defeat at the hands of the Liberal-Country Party majority.[2] It seems that the Hon. Mr. Graham has adopted a similar hopeless cause in his advocacy of the abolition of the death penalty; for the second time he introduced a Bill to this effect, although this time the Bill sought merely a trial period of five years during which no sentence of punishment of death should be pronounced, recorded or inflicted,[3] but the Legislative Assembly proved to be in no mood for social experiment.

A Bill making quite substantial amendments to the Bush Fires Act 1954 failed to pass through the legislative process because the Legislative Council insisted on two particular amendments to the Bill

1 The Assembly rose at 5.55 a.m. on that morning; the Council at 6.15 a.m.

2 The reviewer cannot help commenting that this group are making themselves look rather silly by their obstinate refusal to agree to even the most limited, and apparently well-founded, proposals to extend the franchise for this House, although no doubt they are acutely conscious, every time the matter is raised, of what Cornford calls the Principle of the Wedge. This is "that you should not act justly now for fear of raising expectations that you may act still more justly in the future—expectations which you are afraid you will not have the courage to satisfy. A little reflection makes it evident" (he adds) "that the Wedge argument implies the admission that the persons who use it cannot prove that the action is not just": MICROCOSMOGRAPHIA ACADEMICA (Cambridge, 1949) 15.

3 This idea of an "experimental period" was suggested to the Hon. Mr. Graham by a former member of the staff of this University: (1962) 162 PARLIAMENTARY DEBATES (Western Australia) (hereinafter referred to as PARL. DEB.) 1807.

as proposed. One was an amendment which sought to deprive Forests Department officers of the power under section 45 (a) of the principal Act to go out and take charge of a fire burning near forest land, and to confine the power to a fire burning on forest land; the other sought to delete a proposed new section 68 providing for the imposition of a penalty upon a local authority which neglected "to carry out any duty, exercise any power, or perform any function that under the provisions of this Act it is required to carry out, exercise, or perform."[4] A conference of managers, requested by the Assembly, failed to reach agreement and the Bill was dropped. A similar fate, but in reverse order, met the Licensing Act Amendment Bill (No. 3), a 69-clause piece of proposed legislation, introduced for the Government in the Legislative Council by the Hon. the Minister of Justice, to meet the expressed requests of a great many parties interested in amendments to the present law. The bill passed the Council without difficulty, but came to grief as a result of three amendments made in the Legislative Assembly but rejected by the Council. In the early hours of the morning of the last session the Assembly resolved to "stick to its guns" in relation to the first of its three amendments, one giving a licensed club complete discretion to determine its own subscription and precluding the Licensing Court from requiring as a condition of registration that the subscription be more than £1 per annum.

A Bill to establish, incorporate, and confer powers on a proposed National Trust of Australia for Western Australia (The National Trust of Australia (W.A.) Bill) was read a second time on the 11th October but went no further, as the debate disclosed that the machinery provisions of the Bill did not meet with the approval of members, and no doubt a long wrangle at the committee stage could be foreseen. A sudden realization that the existing prohibitions against the picking of wildflowers were not achieving their object of preserving for the future one of the State's greatest tourist attractions led to the appointment of a Special Committee, whose principal recommendation was that the picking of all native flora within the State should be prohibited. This recommendation could have been carried out by a proclamation under the existing legislation (the Native Flora Protection Act 1935), and the issue of such a proclamation was proposed. A Bill to amend the Act was introduced, however, to make it an

[4] Perhaps it is as well that a provision so clumsily worded should have failed (though that was not the reason for the objection taken to it); if a local authority is *required* to exercise a power or perform any function then the provision in question must impose a duty on it, and the other words are just padding.

offence to pick wildflowers on private land without the written consent of the owner, lessee or licensee. The Bill also contained provisions greatly extending the classes of persons authorized to enforce the provisions of the Act by stopping and inspecting vehicles, entering upon premises, and opening and inspecting packages and receptacles; among others, all school teachers, all public servants, and all officers of local authorities were to be so authorized. This evoked sufficient opposition in the Legislative Council to secure, by a majority of 1, an adjournment of the second reading debate to a date after the close of the session.

A proposed amendment to the Noxious Weeds Act to enable the striking of a noxious weed rate, on lines similar to those on which the vermin rate is struck under the Vermin Act 1918, was defeated in the Legislative Assembly on the third reading on the ground that the Bill was improperly before the House. Section 46 (7) of the Constitution Acts Amendment Act 1899 provides that "Bills imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect." The point was raised by Mr. W. Hegney; the Speaker ruled that the Bill was properly before the House, as it was not a taxing Bill, but imposed a rate, but his ruling was dissented from.[5]

An attempt was made by the Hon. J. T. Tonkin to secure legislation providing that unclaimed money in the hands of the Totalisator Agency Board (estimated to exceed £20,000 per annum) should be transferred to the Old People's Welfare Council instead of remaining in the hands of the Board and ultimately going to the racing clubs; the Bill he introduced was lost on the second reading by an equality of votes. The Factories and Shops Act Amendment Bill, introduced by the relatively new member for Victoria Park, Mr. R. Davies, sought to secure the closing of service stations on Sunday mornings; it secured

5 (1962) 163 PARL. DEB. 2382, 2447 *et seq*. In the light of the words of sec. 46 (7) there appears to be much force in the contention of the Hon. Mr. Tonkin (*ibid.*, at 2449) that the Bill was not out of order but that the provisions in it dealing with matters other than the imposition of taxation were null and void. But if the Bill had passed both Houses, and secured assent, would the Courts accede to this view? Section 14 of the Vermin Act Amendment Act 1962, which increased the maximum vermin rate from 2d. to 3d., survived a similar challenge in the Legislative Council (*ibid.*, 2437); but was the President's ruling correct? In any case, the Vermin Act 1919 itself contains in addition to 132 other sections a section (59) in terms not dissimilar from that which was challenged by the Hon. Mr. Hegney; can it be that all the other provisions of that enactment are null and void? Would it be too much to hope that some reader of these pages might care to undertake a test case?

sufficient support to pass the Legislative Assembly by a majority of 1 but was defeated on the second reading in the Legislative Council.

I. CONSTITUTIONAL.

The Constitution Acts Amendment Act (No. 2) (No. 48 of 1962) amends the qualification of members of the Legislative Council, in section 7 of the principal Act, and that of members of the Legislative Assembly in section 20 of that Act. It is no longer necessary for a naturalized subject of the Queen to have been naturalized for five years; all that is now required of either a natural-born or a naturalized subject (if, in respect of eligibility for election to the Legislative Council, he is of the age of thirty years) is that he should be either an elector entitled to vote at an election of a member of the Legislative Assembly, or a person qualified to be such an elector. Section 15 of the principal Act is amended so as to allow any native (within the meaning of section 2 of the Native Welfare Act 1905) to be registered as an elector, whether or not he holds a certificate of citizenship.[6]

The Electoral Act Amendment Act (No. 51 of 1962) makes certain amendments to the principal Act consequential on the extension of the franchise to natives, and also amends the provisions of the principal Act relative to postal voting. Of the consequential amendments the most significant are the additions to sections 181 to 184 (which create and specify the offences of bribery and undue influence) making it an offence to bribe a native in order to induce him to enrol, or refrain from enrolling, as an elector, or to exert undue influence on a native for the same purpose.

Section 90 (1) of the Act (the whole section was repealed and re-enacted with amendments by section 5 of Act No. 59 of 1959) is again repealed and re-enacted with amendments. The principal difference (apart from some tidying-up of wording) are that no provision is now made for the appointment of justices of the peace to issue postal ballot papers, and express provision is made for the issue of postal ballot papers to persons outside the State at the time the application for a postal ballot paper is made. Section 92 (2) of the principal Act (prescribing the manner in which a postal vote is to be exercised) is

[6] Section 15 has been amended twice previously; by section 2 of Act No. 40 of 1934 and by section 2 of Act No. 34 of 1955. For the person who does not have ready access to a current copy of the Standing Rules and Orders of the Legislative Assembly a time-consuming search through the amendments to the principal Act is required before the effect of the amendment to section 15 becomes clear, as the draftsman has omitted the references from his marginal notes.

also repealed and re-enacted with amendments providing for the completion of the postal vote declaration, before an authorized witness, before the postal vote itself is exercised.

Acts Nos. 73 and 74 of 1962 (the Parliamentary Allowances Act Amendment Act 1962 and the Members of Parliament, Reimbursement of Expenses, Act Amendment Act 1962) increased the allowance of each member of Parliament from £2,100 to £2,380 per annum, the allowances of the President of the Legislative Council and the Speaker of the Legislative Assembly from £2,550 to £2,830 per annum, and those of the Chairmen of Committees from £2,350 to £2,630 per annum. The allowance of £50 per annum to members all or part of whose electorates lay beyond a radius of fifty miles from Parliament House has been abolished. "Expenses", last increased in 1959,[7] are to be reimbursed up to an additional amount of £150 for suburban members, £200 for most country members, and £250 for those representing the northern areas; in addition, the maximum "expenses" of various Ministers and other office-holders are increased by amounts varying from £300 for the Premier to £10 for the Deputy-Leader of the Opposition in the Legislative Assembly and the Leader of the Opposition in the Legislative Council.[8]

II. ADMINISTRATION OF JUSTICE.

Judges' Salaries and Pensions.

Further increases in judicial salaries are provided in the Judges' Salaries and Pensions Act Amendment Act (No. 32 of 1962). The annual salary of the Chief Justice is now £6,400, that of the senior puisne judge £5,750, and that of a puisne judge £5,600.

Law Reform.

The Law Reform (Statute of Frauds) Act (No. 16 of 1962) abolishes the requirement of writing for three of the classes of contract formerly governed by the Statute of Frauds: Contracts by which an executor or administrator promises to pay damages out of his own estate, contracts made upon consideration of marriage, and contracts not to be performed within the space of one year from the date on which they were made. Thus Western Australia has followed the reforms made in England and in New Zealand,[9] and is in this matter at least in advance of all other Australian States.

7 By Act No. 73 of 1959, noted in (1960) 5 U. WEST. AUST. L. REV. 109.

8 Some office-holders receive no increase at all.

9 The Law Reform (Enforcement of Contracts) Act 1954 (England); the Contracts Enforcement Act 1956 (New Zealand).

A far more substantial piece of law reform is that embodied in Acts Nos. 78 to 85 of 1962. An advance note of these reforms was appended to the Review of Legislation for 1961.[10] Since that was published, the 1963 Law Summer School at the University of Western Australia devoted the major part of its time to a discussion of the perpetuities part of the Law Reform (Property, Perpetuities and Succession) Act (No. 83 of 1962), and of the effect of the Trustees Act (No. 78 of 1962) and the Charitable Trusts Act (No. 82 of 1962) on conveyancing, will drafting, and the administration of trust estates in Western Australia. The papers delivered on that occasion have been published,[11] and it is not now proposed to add any further comments to the matters dealt with therein. Comment on other parts of the legislation follows.

The Married Women's Property Act Amendment Act (No. 79 of 1962) effects only two small amendments to the law as it has stood since 1892, and one of these is consequential on the abolition of restraints on anticipation in section 25 of the Law Reform (Property, Perpetuities and Succession) Act 1962.[12] The other is a belated adoption of the provision in section 1 of the (English) Married Women's Property Act 1907 authorizing a married woman who holds property as trustee or personal representative to dispose of it as if she were a *feme sole,* without the concurrence of her husband, and validating any such dispositions made since the coming into operation of the principal Act, unless they conflict with a disposition made through or with the concurrence of the husband before the coming into operation of the 1962 amendment. Section 21 of the Trustee Act 1900 had enabled a married woman to act in this way only if she were a bare trustee.

The amendments contained in the Administration Act Amendment Act (No. 80 of 1962) are also, in the main, consequential. A new subsection is added to section 17[13] (which empowers the Court

10 (1962) 5 U. WEST. AUST. L. REV. 665-668.

11 See (1963) 6 U. WEST. AUST. L. REV. 11, 21, 27, 81, 103, 113.

12 Sec. 25 of the Law Reform Act referred to is limited in its effect to the wills of testators dying after the commencement of that Act and to other instruments executed after that date; the amendment to section 19 of the Married Women's Property Act 1892 is not so limited. But presumably sections 15 and 16 of the Interpretation Act 1918 will apply to prevent the amendment having any possible effect on existing restraints upon anticipation.

13 Oddly, subsec. (3), added after subsec. (1). Subsec. (2) was deleted from section 17 by Act No. 62 of 1955, sec. 5. No doubt it avoids the slightest possibility of confusion to number the new subsection 3, at the risk of appearing foolish; but one wonders whether it would not on the whole be more sensible to have numbered it 2. Could not the amending section begin:

to authorize the expenditure of the whole or part of an infant's share in the estate of a deceased person on the maintenance, advancement, and education of the infant, if that share does not exceed £5,000) indicating that this authority if conferred on an executor or administrator is in addition to the power conferred on him as a trustee under Part V of the Trustees Act 1962. A new section 17A empowers the personal representatives of a deceased person, when an infant is absolutely entitled to a devise or legacy, or to all of or a share in the residue of an estate (whether by will or intestacy), to appoint (subject to any direction or restriction in the will) a trustee corporation or two, three or four trustees of the property in question for the infant, so that, upon transfer of the property to those trustees, the personal representatives are discharged from further liability. Hitherto it has been possible for the executor or administrator to obtain such a discharge only by paying into Court. Trustees appointed under this section may either retain the property in question in its existing condition or state of investment, or convert it and invest the proceeds in trustee securities.

Sections 106 and 107 of the principal Act are amended in order to enable persons, other than trustees, executors or administrators,[14] who become liable to pay death duties, to appeal against the assessment either to the Commissioner or to the Court. In the light of the new provisions of the Trustees Act 1962 concerning sale, leasing, and mortgaging of real property, section 18 of the Administration Act 1903 has been repealed; and sections 48-52 are also repealed, the ground covered by them being now occupied by Part VI of the Trustees Act.

Although under the Testator's Family Maintenance Act 1939 (as it stood before 1962) a period of six months was allowed for the making of claims under the Act, an executor was by section 10 entitled to distribute the estate at any time after giving notice, under section 47 of the Administration Act 1903, setting a time for the sending in of claims against the estate. The Testator's Family Maintenance Act Amendment Act (No. 81 of 1962) repeals section 10. A new section 9A protects the executor (a) if he has waited six months before distributing the estate, has received no notice of intention to claim,

"Subsection (2) of section 17 having been deleted from the section by Act No. 62 of 1955, section 5, the following subsection is inserted in its place as subsection (2) :"?

14 *I.e.*, under sec. 63, a surviving wife or husband, or one of the next-of-kin, who has not taken out letters of administration, or the donee or other person in possession of any property conveyed, assigned or given by the deceased.

and the distribution is "properly made"; (b) if any distribution was "properly made" for providing for the maintenance, support, or education of any person totally or partially dependent on the testator immediately before his death; or (c) if the person challenging the distribution had advised the executor in writing that he consented to the distribution, or did not intend to make any application that might affect it, and the distribution was "properly made." "Properly made" means made in accordance with any trust, power, or authority subsisting when the distribution was made that would justify the distribution if any application made under the Testator's Family Maintenance Act were disallowed by the Court. A new section 8A empowers the Court on an application under the principal Act to make a "following-of-assets" order under section 65 of the Trustees Act 1962 if the estate or part thereof has been distributed; such an order may be on the same terms as the Court is empowered, by sections 5 (4), 7, and 8 of the Testator's Family Maintenance Act 1939, to impose.

Parts III and IV of the Law Reform (Property, Perpetuities and Succession) Act (No. 83 of 1962) make respectively two particular reforms in the law of succession, and four other changes in the law. Section 20 (1) adopts the provision of section 177 of the (English) Law of Property Act 1925 to the effect that a will expressed to be in contemplation of marriage is not revoked by the solemnization of the contemplated marriage. Unfortunately, the industry of one hon. Member[15] secured the insertion into the Bill of what became subsection (2), which provides that such a will is invalidated in the event of the contemplated marriage not taking place. His justification for this was that a layman, having made a will leaving all his real and personal estate to his fiancée in contemplation of marriage, might be jilted by her, and die[16] before he could alter the will, so that his estate would be left away from his family for the benefit of the girl who had jilted him. There would appear to be at least as equal a chance of the testator's dying before the marriage could be solemnized in circumstances in which just as much injustice would be done by preferring the family (or the heirs on intestacy) to the fiancée; moreover, while certain members of the family might have been able to secure redress under the provisions of the Testator's Family Maintenance Act 1939, the fiancée would have no such avenue of redress. It would have been better to have left the Bill in the form in which it was originally drafted.

15 Mr. H. N. Guthrie.
16 By his own hand, or of a broken heart?

Section 21 makes provision for what is described in the marginal note as a "statutory substitutional gift", in lieu of the provisions of section 33 of the Wills Act 1837, in wills made after the coming into force of the new Act. Where a child or other issue of a testator is a devisee, legatee or appointee of property (other than by a specific legacy or specific appointment of any chattels, or a devise, bequest or appointment to any person as one of two or more joint tenants) for an estate for life or some greater estate, and dies in the lifetime of the testator leaving a child or children living, the property devised, bequeathed or appointed is to go to any child or children living at the testator's death, as if the will itself has contained a substitutional gift. This avoids the disadvantage inherent in the operation of section 33, that the property passed through two estates. The original Bill provided that the substitutional gift was to be contingent on the child or children attaining the age of 21, as the Law Reform Committee felt that a valid criticism of section 33 was that the property did not necessarily enure for the benefit of the child or issue whose existence kept the gift alive, but might pass under his will[17] or on intestacy. This provision was deleted in the Committee stage of the Bill, again at the instance of Mr. Guthrie, who observed that the grandchild who receives the substitutionary gift "could have married and left children of his own (*scil.*, before attaining the age of 21) and they would have no benefit at all."[18] One feels that if this were a matter of real concern, an amendment should have been framed to deal with this specific situation; otherwise the criticism which the Law Reform Committee made of the previous state of the law was left untouched. This substitutional gift is to operate only in the absence of a contrary intention in the will, and the section will not apply if (a) the devise, bequest or appointment is in any way conditional on the person's being alive at or after the testator's death, or (b) it is conditional on the fulfilment by the first devisee of some condition and he dies without having fulfilled it or having done all that he can towards fulfilling it.[19]

17 Since the Committee recommended that the gift should not vest until the child attained the age of 21, the members must have contemplated the property passing to others before he attained the age of 21; but in that case the reference to the child's will is difficult to understand.

18 (1962) 163 PARL. DEB. 2789.

19 Subsec. (2) (b) says "that contingency has not been fulfilled before the time of the testator's death." At first sight one would think that it would have been better to have said "before the death of that person"; but no doubt the Law Reform Committee were thinking of a contingency that could be said to require fulfilment by a person yet might not be fulfilled

Section 22 adopts a reform, already in force in England, New Zealand, and New South Wales,[20] by which the intermediate income of property the subject of an executory or contingent gift goes with the gift. Section 23 introduces a major reform in enabling relief to be obtained in respect of money paid by mistake even though the mistake is one of law, if relief could have been granted if the mistake had been wholly one of fact. The section is subject to the qualification that relief is not to be given in respect of a payment made at the time when the law allows it or is commonly understood to require or allow it, if the law is subsequently changed or shown not to be as it was understood at the time of payment. By section 24 the relief is to be denied if the recipient received the payment in good faith and had so altered his position in reliance on the validity of the payment that, having regard to the implications in respect of his position and that of persons claiming under him, the Court thinks it inequitable to grant relief.[21] Section 25 of the Act abolishes for the future all restraints upon anticipation or alienation except such as could have been validly attached to the enjoyment of property by a man.

A small consequential amendment is made to section 7 of the Adoption of Children Act 1896 by Act No. 84 of 1962; the provision

until after that person's death. An example might be the passing of some examination; the candidate would sit, say, in November, he might die in December, but it would not be known until February whether he had passed or not. *Quaere,* would the posthumous birth of a child amount to the fulfilment of a contingency by the father?

20 The Law of Property Act 1925, s. 175 (England); the Property Law Act 1952, s. 35 (New Zealand); the Conveyancing Act 1919, s. 36B (New South Wales).

21 It will be noted that the court may not take into consideration the position of the person who paid the money by mistake, or those who acquire rights or interests through him. This is the result of an unfortunate amendment sponsored in the Legislative Assembly by Mr. H. N. Guthrie [(1962) 163 PARL. DEB. 2791] after consultation with senior counsel. Mr. Guthrie said that "when we referred to a similar section in the trustee legislation we found similar words there." The reference is no doubt to sec. 65 (8) of the Trustees Act 1962; the words in question (referring to claims to follow assets already distributed) are that relief is to be denied if the person to whom the assets have been distributed received them in good faith and "has so altered his position in reliance on his having an indefeasible interest in the assets or interest that, in the opinion of the Court, having regard to all possible implications *in respect of the trustee and other persons,* it is inequitable to grant relief." But here surely the words "and other persons" include the claimant; the expression obviously means persons other than him from whom relief is sought. If this is the section referred to it is difficult to see how Mr. Guthrie and his adviser could have read into it an implication that the position of the plaintiff or claimant was not to be taken into account. It is even more difficult to see how the Court is to achieve equity if it is obliged to disregard the plaintiff's position entirely.

that an adopted child is not to rank as a legitimate child for purposes of succession is extended to provide that the issue of an adopted child shall not acquire any right to property which would devolve on the issue of any child of the adopting parent. Finally, section 4 of the Simultaneous Deaths Act 1960 is amended to provide that where any property is devised, bequeathed or appointed to the survivor of two or more of the testator's children or their issue, and all or the last survivors die simultaneously in the lifetime of the testator, the statutory substitutional gift under section 21 of the Law Reform (Property, Perpetuities and Succession) Act 1962 takes effect as if the devise, &c., were in equal shares to those of them who so die and leave a child or children living at the date of the testator's death.

Enforcement of maintenance orders.

The Justices Act Amendment Act (No. 24 of 1962) inserts into the principal Act new sections 155A to 155D, which incorporate as part of the enforcement machinery of that Act the provisions of Part IV of the Married Persons (Summary Relief) Act 1960.[22] As a result maintenance orders made under the provisions of the Child Welfare Act 1947 and the Guardianship of Infants Act 1926 may be enforced by the process hitherto available only in respect of orders made by the Married Persons' Relief Court. In addition to this, the Interstate Maintenance Recovery Act Amendment Act (No. 25 of 1962) makes provision for using the machinery of the Married Persons' Relief Court in respect of maintenance orders made interstate. Section 14 (1) of the principal Act is amended so as to make it mandatory upon the collector to register an order, made by a court in another State, with the Married Persons' Relief Court, as provided in a new section 14A; that section also empowers the Court to direct how the order is to be enforced in default of payment, and authorizes the collector to apply for a direction on this subject. The necessary jurisdiction to deal with interstate maintenance orders is conferred upon the Court (which for the purpose is to be constituted by a stipendiary magistrate) by the insertion of new paragraphs (b) and (c) in section 18 (1).

Reprinted Acts.

Both the Reprinting Act Amendment Act (No. 4 of 1962) and the Amendments Incorporation Act Amendment Act (No. 3 of 1962) contain amendments to the sections (6 and 4 respectively) providing that Acts reprinted pursuant to the respective Act shall be judicially noticed and "deemed for all purposes to be an Act of the Parliament

22 Noted in (1961) 5 U. WEST. AUST. L. REV. 359-360.

of Western Australia"; it is now open to counsel and others arguing before the Courts to show that the reprinted Act is not a correct copy of the original Act,[23] and the reprinted Act is in any case deemed to be no more than a correct copy of the original statute (as amended) of which judicial notice may be taken. The second Act is also amended by enabling the incorporation in any reprint of amendments made, directly or indirectly under the authority of any Act, by a piece of delegated legislation.

Actions against public officials.

What Fullagar J. referred to, in *Trobridge v. Hardy,*[24] as "the iniquitous provisions for treble costs" in paragraph H of the Second Schedule to the Interpretation Act 1918 has been robbed of some of its force by the Interpretation Act Amendment Act (No. 13 of 1962); the award of treble costs against the unsuccessful plaintiff is no longer mandatory, but in the discretion of the Court, and a lesser multiple of the costs in the action than three may be awarded.[25]

Criminal Law.

A new offence is created by the Firearms and Guns Act Amendment Act (No. 7 of 1962), that of knowingly discharging, without lawful excuse, any shot, bullet or other missile from a firearm on to, from or across any road; the maximum penalty provided is £10.

Two more new offences are created by the Police Act Amendment Act (No. 29 of 1962). Section 66 (4) of the principal Act is amended to make it an offence to be in possession without lawful excuse of any explosive substance, and a new paragraph 13 is added to make it an offence punishable under that section to be or to have been without lawful excuse in or upon any premises or the curtilage thereof, whether or not it is enclosed or fenced. In addition, section 90A is repealed and re-enacted with amendments which make it an offence not only to represent, orally or in writing, to a member of the Police Force that a circumstance reasonably calling for police investigation or inquiry exists, but also to do any act with the intention of creating a

23 *E.g.,* the expression "lawful games" in line 6 of sec. 84 of the Police Act 1892, in volume 6 of the Reprinted Acts, is a misprint for "unlawful games." Hitherto it was at least open for counsel to argue that the Court could not go behind the words of the reprint.

24 (1955) 94 Commonwealth L.R. 147, at 155.

25 If the language of the amending Act proves apt to achieve this result; it reads, "may award treble costs to the defendant or such portion of those costs as the Court thinks fit." *Quaere,* will "those costs" be construed as referring to "treble costs", or only as referring to "costs"? The latter construction is certainly open.

belief or suspicion, which he knows is not founded on fact, that an offence has been committed, that a human life has or may have been lost, or that a person's safety is or may be endangered. The maximum fine for any of these offences is now £100. Finally, an amendment to section 89A[26] widens the definition of "slot machine" so that a coin or other slot is no longer a necessary part of the machine; any machine designed for entertainment or amusement and made available for use, in the place where it then is, on the payment or prospect of payment of any valuable consideration, is a "slot machine" for the purposes of the section.

Declarations and attestations.

A small amendment (Act No. 11 of 1962) to the Declarations and Attestations Act 1913 enables declarations to be made before and documents to be attested by a justice of the peace for any other State or Territory of the Commonwealth.[27]

Evidence.

A new section 79A inserted into the Evidence Act 1906 by Act No. 12 of 1962 dispenses with the need to call the attesting witness to prove the execution of any document, other than a will or other testamentary document, which requires attestation in order to be valid. Such a document may now be proved in the same way as that in which it might be proved if no attesting witness were alive.

III. STATUS.

The extension of the franchise to all natives (within the meaning of the Native Welfare Act 1905) has been noted under the head CONSTITUTIONAL above.

IV. PUBLIC HEALTH.

Health.

Two Acts amending the Health Act 1911 were passed during the 1962 Session. The most important provision of the first, the Health Act Amendment Act (No. 33 of 1962), was section 6, which inserted into the principal Act a new section 338A setting out the circumstances in which a medical practitioner may perform a blood transfusion

26 Inserted into the principal Act by Act No. 71 of 1961; noted in (1962) 5 U. WEST. AUST. L. REV. 610.

27 Apparently this may be done even though the declaration or attestation is made in this State; one would have thought that the provision would properly have been limited to refer to a justice of the peace appointed for the State or Territory in which the declaration or attestation was made.

(including a blood exchange) upon a child (*i.e.*, a person under twenty-one) without the authority of any person legally entitled to authorize it,[28] if that person either fails or refuses to authorize the transfusion or cannot be found. The medical practitioner (and another medical practitioner, if one can be found after such search or enquiry as the first-named medical practitioner considers reasonable, having regard to the possible effect of delay on the child's condition) must be satisfied as to the condition from which the child is suffering, that a blood transfusion is a reasonable and proper treatment for that condition, and that without a blood transfusion the child is likely to die; the practitioner must also have had previous experience in performing blood transfusions and must have assured himself that the blood to be transfused is suitable for the child.

Less important provisions include (1) the addition to section 134 of the principal Act of a power in local authorities to make by-laws respecting swimming pools (other than those in private homes), (2) an addition to section 232A making the vendor of defective food, other than manufactured food, liable for selling it, and extending to the wholesaler who sells such food to the vendor the liability attaching to the manufacturer of defective food or drugs, (3) an extended power under section 251 (5), in the Commissioner of Public Health or his delegate, not only to require a person to submit himself to medical examination but also to provide or permit the taking of samples or specimens, and (4) a power in local authorities to contribute money towards providing nursing aid or domestic help in the home of a sick person, and towards any scheme, institution or centre for providing recreation, comfort or convenience (as well as care) for aged persons.

The Health Act Amendment Act No. 3[29] (No. 49 of 1962) repeals section 99 (2) of the principal Act under which an inspector ap-

28 Who that person is is a nice question. *Qua* a child so young as to be unable to give consent it is no doubt the parent or guardian, although the writer has always found it difficult to see why the refusal of the parent's consent to an operation on (or even an examination of) the child for the child's own benefit should be regarded as laying the doctor open to an action for battery or a charge of assault. But what of an intelligent University student of eighteen or nineteen? If he refuses to have his teeth pulled, or declines a prophylactic injection of some sort, can the parent's consent relieve the doctor of such liability for an action or a charge? In any case, that student, whatever his personal views, will now have to submit to a blood transfusion if it is necessary to save his life, with no redress. But if he is over 21 he may still refuse with impunity. Might it not have been perfectly justifiable to extend the provisions of section 338A to adults who refuse to have life-saving blood transfusions?

29 A Health Act Amendment Bill (No. 2) was introduced by the Hon. R. H. C.

pointed by a local authority was obliged, with the consent of the medical officer of health, to require the owner of any house, private place or public place in the district to provide sanitary conveniences or bathroom or laundry or cooking facilities in accordance with the bylaws. The subsection was regarded as otiose, as subsection (1) forbade and forbids the use of any house, or private or public place if it was deficient in the above respects.[30]

Mental health.

The most important measure under this heading is the new Mental Health Act (No. 46 of 1962) with its complementary legislation, the Public Trustee Act Amendment Act (No. 34 of 1962), the Criminal Code Amendment Act (No. 35 of 1962), and the Prisons Act Amendment Act (No. 36 of 1962). The Bill which became the Mental Health Act, replacing the Lunacy Act 1903-1950, the Inebriates Act 1912-1919, and the Mental Treatment Act 1917-1919, was a re-draft of the Bill which was introduced into Parliament during the 1961 session and allowed to lapse so that the full import of its provisions might be as widely examined as possible and any imperfections overcome.[31] The Act makes provision for both State hospitals and private hospitals to become "approved hospitals", *i.e.*, hospitals approved by the Minister for the treatment under the Act of patients suffering from "mental disorder" or "nervous disorder"; the two terms are declared to be synonymous[32] and are widely defined so as to include any mental illness, any arrested or incomplete development of

Stubbs on 10th October 1962. It sought to delete certain words from section 99 (2) of the principal Act; but after the Government's introduction of the Bill which became Act No. 49 of 1962, the Hon. Mr. Stubbs's Bill was discharged from the notice paper on 31st October.

30 The subsection in question was inserted in the principal Act by sec. 2 of Act No. 45 of 1954, with a view to speeding up action if sub-standard sanitary conditions were discovered by local authority inspectors; instead of waiting for a meeting of the local authority to which to report, machinery was provided to enable an inspector to issue forthwith a notice requiring the deficiencies to be remedied (the Hon. E. Nulsen: (1954) 138 PARL. DEB. 1009). Eight years later the subsection which "virtually duplicates the provision in subsection (1)", had become "a complication and hindrance" (the Hon. R. Hutchinson: (1962) 162 PARL. DEB. 1842-1843). One suspects that it is just another example of the known tendency of legislatures to cause confusion by the (often almost panic-stricken) duplication of penal machinery.

31 See (1962) 5 U. WEST. AUST. L. REV. 605.

32 Why the draftsman thought fit to define "nervous disorder" in sec. 5 when the expression is not thereafter used in the Act is a mystery; perhaps it was a precaution against the "unsteadiness of expression" (to use Bentham's phrase) so common in statutes.

mind, any psychopathic disorder, or any other disorder or disability of mind however acquired, as well as alcohol and drug addiction and mental infirmity due to old age or physical disease. No person is to be detained under the Act in any hospital other than an "approved hospital." Each approved State hospital, declared under Division 1 of Part III to be such, is to have a five-member Board of Visitors, comprising a legal practitioner, two medical practitioners, and one man and one woman who belong to neither profession. One such Board may be appointed for two or more hospitals, and a person may be a member of two or more boards (section 11). The duties of the Board, laid down in section 18, are to visit the hospital at least once a month, and at other times as directed by the Minister, and to be present at the hospital at least once a month for the purpose of interviewing any patient who may wish to see the Board, and of receiving complaints or recommendations affecting the welfare of patients.[33] In addition, the Board is to inspect every part of the hospital where patients are accommodated, or which appertains to the welfare of patients, at least once in every three months. The same section also confers certain discretionary powers on a Board; it may itself interview any patient, may make such inquiries, examinations, and inspections as it thinks fit in the interests of patients (especially in order to ascertain whether a patient ought to continue to be a patient) and may, without previous notice, enter and examine the hospital at any time of the day or night so long as it does not thereby "unduly interfere with the administration thereof." It may also order that any patient be examined by a psychiatrist selected by it, who is to report to the Board; a copy of this report is to be sent by it to the Minister and to the Director of Mental Health. In short, the Board of Visitors is intended to be the watchdog of the new legislation.

No provision is made for Boards of Visitors for approved private hospitals; but no such hospital is to be approved unless the Minister, upon receiving a report from the Director, is satisfied that the premises are suitable, that the applicant is a fit and proper person to conduct an approved hospital, and that satisfactory arrangements have been made for the management, equipment, and staffing of the hospital. When so satisfied the Minister may approve the hospital and grant a permit to the applicant to conduct it (section 21). Both the approval and the permit are, by section 22, subject to revocation by the Minister

[33] Presumably it is open to the Board either to elect to interview patients (and others) on its monthly visiting day, or to establish a separate interviewing day.

if he is satisfied, on a report from the Director, that the hospital has become unsuitable as an approved hospital or that the permit-holder has ceased to be a fit person, or ceased to be able to conduct the hospital; such action may not be taken until one month after a copy of the Director's report, together with a notice of the Minister's intention to consider the revocation, have been delivered to the permit-holder.[34] If a permit is revoked or surrendered, or the permit-holder dies, the hospital in regard to which the permit was issued shall cease to be an approved hospital unless a permit is issued to some other person within a month (section 21 (4)). Every patient in an approved private hospital is to be treated under the superintendence of a psychiatrist, who is to be regarded, for the purposes of the Act, as the superintendent of the hospital, as far as that patient is concerned, whether or not he (the psychiatrist) is the permit-holder; if, however, the psychiatrist is not the permit-holder, the permit-holder remains responsible for the proper conduct of the hospital.

The admission, detention, and discharge of patients is governed by Part IV of the Act, and for these purposes patients fall into four classes, according to the division under which they are admitted. A "Division 1 patient" is one informally admitted, under section 27, on his own written request, if he is over eighteen, and the superintendent of the hospital, or some other psychiatrist, is of opinion that he is able to understand the nature and effect of the request, or on the written request of one parent or of his guardian if he is under eighteen.[35] A "Division 2 patient" is one admitted by "referral"[36] by a medical practitioner who has examined the person in question within the fourteen days preceding his presentation at the hospital and has formed the opinion that he appears to be suffering from mental disorder and should

[34] No doubt the permit-holder is expected to utilize that month in making representations to the Minister showing cause why the approval or permit should not be revoked; the legislation lays down no procedure to be followed if such representations are received, and it does not require very great prophetic ability to forecast some interesting litigation if any approval or permit is revoked.

[35] It will be noted that no provision is made for the informal admission, on the request of a parent or guardian, of a person over the age of 18 whose condition is such that he could not effectively request his own admission.

[36] This unpleasant neologism is apparently a currently accepted piece of medical jargon; why the well-established word "reference" is not equally suitable is a mystery. But one grows tired of protesting against those who persistently invent ugly new words when useful old ones already exist; *cf.* the persistent use, in the Public Service and elsewhere, of "annexure" to describe something annexed to a letter or document, which overlooks the older and neater word "annex."

be admitted for treatment to an approved hospital. Such a person is to be received for an observation period not exceeding 72 hours, during which he is to be examined by the superintendent or another psychiatrist; if the examiner is of opinion that the person referred is in need of treatment he is to admit him; otherwise the person in question must leave the hospital.

It will be noted that justices of the peace, traditionally the bearers of duties relative to the admission of persons to mental hospitals, play no part in the admission of either of the first two classes of patients under the new Act. Their duties are now confined to the admission of patients under Division 3, and they arise in four circumstances:—

(1) If some person makes in the prescribed form an application to a justice of the peace showing that some other person is suffering from mental disorder and ought, in his own interest or in that of the public, to be admitted to an approved hospital for treatment. The application must be accompanied by a "referral", in a prescribed form, signed by a medical practitioner, showing that he has, not more than fourteen days before the application,[37] examined the person the subject of the application, and has formed the opinion that he is suffering from mental disorder. If the justice of the peace is then satisfied that the person is suffering from mental disorder he may order him to be taken, conveyed to, and received into an approved hospital (section 29). Such an order must be executed within 28 days, but may be extended for one further period of 28 days (section 37).

(2) If some person makes a complaint on oath before a justice of the peace that a person who appears to be suffering from mental disorder is without sufficient means of support, or is wandering at large, or has been discovered under circumstances that denote a purpose of committing an offence against the law, the justice of the peace may then under section 30 (1) order a police officer (or some other person authorized by the Minister in that behalf) to apprehend the person in respect of whom the complaint is made and cause him forthwith to be examined by a medical practitioner. If that practitioner if of opinion that the person in question appears to be suffering from mental disorder he is to complete a "referral", and the police officer or other person is then to make, within 24 hours, an application under section 29 (section 30 (1)).

[37] Does this mean the date on which the application is signed, or the date on which it is laid before the justice of the peace? The latter would appear to be the better construction.

(3) If a police officer in fact apprehends a person, who is apparently suffering from mental disorder, in any of the circumstances outlined in the previous paragraph, he may make a complaint on oath before a justice of the peace as to the condition of that person and the circumstances in which he was found. The justice may then, by section 30 (2), order that the person be forthwith examined by a medical practitioner, and the procedure outlined in (2) above follows (section 30 (2)).

(4) The Director of Mental Health Services, or any officer of his department, may make a complaint on oath before a justice of the peace that some person, who appears to be suffering from mental disorder, is not under proper care or control, or is cruelly treated or neglected by any person having or assuming the charge of him[88] or is detained in contravention of any of the provisions of the Act. The justice may then issue a special warrant requiring any police officer to enter, by force if necessary, into the place where the person in respect of whom the complaint is made lives or is detained. The police officer is to be accompanied by a medical practitioner and such other assistance as may be found necessary; the practitioner is to examine the person in question, and if he is of opinion that the person appears to be suffering from mental disorder, is to complete a "referral." The police officer involved, or the Director or other officer of the department, is then to make within 24 hours an application under section 29 (section 31).

A justice receiving an application under section 29 which has been made in the circumstances outlined in paragraphs (2), (3), and (4) above is to satisfy himself (a) that the person was in fact found under the circumstances outlined, (b) that the medical practitioner's "referral" in fact shows that he (the practitioner) is of opinion that the person appears to be suffering from mental disorder, and (c) that it is in the interest of the person concerned, or of the public, that he be admitted to an approved hospital. If so satisfied he may order his admission under section 29. A justice before whom a complaint is made may (by section 33 (1)) himself examine the person apparently suffering from mental disorder, and any witness, at any convenient place, but in camera. He may also suspend, for any period not exceeding seven days, the execution of any order, and may give any necessary

88 This is an excellent illustration of the Legislature's failing to appreciate the scope of the general expressions it uses. If any person suffering from mental disorder is "cruelly treated or neglected", surely he is "not under proper care and control"? Why, then, particularize?

directions for the proper care and control of the person to whom the order relates (*scil.*, for the period of suspension) (section 33 (2)); moreover, if any relative or friend of a person who is the subject of an application under Division 3 satisfies the justice before whom the application is made that that person will be under proper care and control, that justice may suspend the proceedings for such period as he thinks fit and may permit the relative or friend to take the person under his own care (section 33 (3)).

A person may also be admitted under Division 3 if he has been charged with an offence before a court of summary jurisdiction and it appears to the court that he is or may be suffering from mental disorder; he may (under section 36) either be remanded on bail for twenty-eight days for examination by a medical practitioner or remanded in custody for reception into and observation in an approved hospital. The medical practitioner examining him may refer him to an approved hospital, and the Court may then order his admission. If he is discharged, or found on observation after admission not to be suffering from mental disorder, he is to be returned to his former custody.

A "Division 6 patient" is a person who, having been committed for trial, is found by two medical practitioners to be suffering from mental disorder to the extent that he ought not to stand trial, or after trial is found under section 652 of the Criminal Code to be of unsound mind; he may be detained as a patient in an approved hospital, under an order from the Chief Secretary, until the superintendent or another psychiatrist certifies that he is fit to be discharged, when he is to be taken back to the place from which he came prior to admission (section 47). A person kept in custody until Her Majesty's pleasure is known, or during the Governor's pleasure, may also be admitted to an approved hospital as a "Division 6 patient" by order of the Governor (section 48).

The status of a patient, determined according to the Division under which he was admitted, has a bearing on the period of his detention, his eligibility to leave of absence, and his discharge. A patient under Division 1, 2 or 3 is dischargeable at any time on the order of the superintendent or of the Director of Mental Health. A "Division 1 patient" is entitled to be discharged within seventy-two hours after the superintendent has received a written application for discharge from him, or from the parent or guardian who applied for his admission (section 51). If such an application is made by a parent or guardian other than the one who applied for admission, the appli-

cation must be referred to the Director to decide whether or not it is in the patient's interest that the application be granted. A "Division 2 patient" or a "Division 3 patient" may be discharged upon written application by any person over the age of 21 years, but the superintendent may refuse the discharge, stating reasons, if he thinks that it would be to the serious detriment of the patient or of the public, or that adequate and satisfactory[39] arrangements have not been made for the care of the patient after discharge, or that the applicant is not a suitable person to care for the patient, or (if the patient is under 18) that the applicant is not the parent, guardian or other person having legal custody of him.[40] If the applicant notwithstanding the reasons stated by the superintendent insists on the discharge of the patient the question is to be referred to the Director for a hearing (section 52 (1) (2) and (3)). If a patient who is discharged on application has relations and friends outside the State who are willing to take charge of him the Supreme Court may authorize his removal from the State after he is discharged.[41]

By section 54, a Board of Visitors may of its own motion require the discharge of any Division 2 or Division 3 patient, provided that the majority in favour of the decision to do so includes at least one of the medical practitioners on the Board. If neither of the practioners votes in favour of the discharge the question is to be resolved in the negative. The Board may also countermand an order made by a superintendent, or the refusal by him of an application; it is not clear whether the countermanding of a refusal requires the vote of a medical practitioner with the majority.[42] The last resort of a person seeking

39 Why "adequate and satisfactory"? To be satisfactory they must surely be adequate, even though the converse may not hold good.

40 Sec. 52 (1) says that, subject to the provision of subsec. (2) (conferring upon the superintendent power to refuse a discharge) the patient "shall be discharged within seventy-two hours" after the receipt of the application; presumably therefore the superintendent's refusal must be announced within the 72-hour period.

41 This would appear to imply that a person who while suffering from mental disorder is discharged into the care and custody of a relative or friend may not be taken outside the State, or that the superintendent or Director may not authorize the discharge of a patient into the care or custody of a relative or friend outside the State; but this is not stated. *Quaere,* was this provision inserted to provide a further avenue of appeal if the reason for the superintendent's or Director's refusal to discharge is that the patient is to be taken outside the State?

42 Sec. 54 (which is inserted in Division 7 of Part IV, a division headed "Discharge of Patients") is rather a mess. Subsec. (1) empowers the Board to require the discharge of a patient. Subsec. (2) says that the Board may on its own motion exercise any of the powers conferred under the Act, a

the discharge of a patient (other than a Division 6 patient) is by an application to the Supreme Court by originating summons under section 55 that a person detained as a patient in any approved hospital, or discharged to after-care, be discharged from status as a patient on the ground that he is not suffering from mental disorder or that it is in all the circumstances proper that he should be discharged.

A Division 2 or Division 3 patient is by the operation of section 39 (1)[43] automatically discharged from status as a patient six months after the day of admission, unless the superintendent, on the advice in writing of another psychiatrist, orders[44] that that period be extended for a further period not exceeding twelve months, on the ground that it is in the interest of the patient that the period of his status as a patient be extended. Further extensions, each of not more than twelve months, may be made on the same conditions. A Division 2 or Division 3 patient (other than one admitted under section 36, after having been charged with an offence before a court of summary jurisdiction) may be granted leave of absence from hospital, upon such conditions as to treament, custody, conduct or behaviour as the superintendent thinks fit (section 42); and he may also be discharged to after-care, under section 43, for the balance of the period (or extended period) during which he has status as a patient (section 43). Section 45 makes

perfectly general proposition which properly belongs in the sections dealing with the powers of Boards of Visitors. Subsec. (3) empowers the Board to decide the question of the exercise of any power conferred on it by a majority, subject to the qualification referred to in the text, which refers only to the exercise of any power conferred by subsec. (1); the power to countermand a superintendent's application is given by subsec. (5). Subsec. (4) says that subject to subsec. (3), where the Board is equally divided on any question relating to a patient, it shall report thereon to the Minister, who shall decide the question; this again is a general provision which does not belong in Part IV, let alone Division 7. To cap this sorry tale of ineptitude, sec. 53 states that "Where, by this Act, power is given to the Minister to decide any question, the Minister may make such order as may be necessary to give effect to the decision." This bears all the earmarks of a sudden idea put down just as it occurred to the draftsman without any concern for congruity; yet one would have thought that the draft Bill was being considered for long enough to enable such palpable defects to be ironed out.

[43] This and secs. 39 to 41 form Division 4 of Part IV, headed "Detention of Patients"; Division 5 (secs. 42 to 46) is headed "Leave of Absence and After-Care"; then follows Division 6, relative to the status of "security patients"; finally Division 7 provides for discharge of patients. Would it not have provided a more logical order if Division 6 had been Division 4?

[44] The power to make such an order is described as being "subject to section forty-five". Sec. 45 deals with the extension of the period of *after-care* of a patient already discharged to after-care. *Quaere,* was it intended to refer to sec. 43?

provision for the extension of the period of after-care, subject to an application, by a patient aggrieved by that extension, to a stipendiary magistrate for an inquiry into the extension; the magistrate (who for the purposes of the inquiry has all the powers of a Board) is to report his findings to the Minister, who shall decide whether the after-care period is to be extended or not (section 46).

Part V makes provision for the protection of patients who are detained. Section 58 makes it mandatory on a medical officer of a hopital to interview a patient requesting it within three days of the request; a Board requested by a patient for an interview must interview that patient the next time it visits the hospital, and if requested by the relative of a patient, or the guardian of a patient under 18,[45] shall interview that person as soon as it can reasonably arrange it (section 58). Letters written by a patient to certain persons—the Governor, the Minister, a Member of Parliament, a judge, or the Supreme Court itself, the Board of Visitors or a member thereof, the Director, or a legal practitioner—must be sent forward by the superintendent unopened (section 59 (1)). Other letters may be opened but must be sent forward, unless the superintendent is of opinion that the letter should not be sent forward; in that case he is to endorse the letter to that effect and lay it before the Director. Inward letters must be delivered to the patient unless the superintendent is of opinion that a particular letter should not be delivered, in which case he is to treat it as above (section 59 (2)).[46]

45 The subsection in question (sec. 58 (2)) begins, "A person, being a relative or (in the case of a patient under the age of eighteen years) the guardian of a patient . . ." This is open to the construction that any relative of a patient over 18 may request an interview, but that only the guardian of a patient under 18 may request an interview. Was this intended? If so, does "guardian" include "parent"?—In secs. 27 and 51 "parent" and "guardian" are exclusive of one another. Incidentally, although in the text it is said that it is mandatory to interview the person in question, the section is cast in the passive imperative, so that the person seeking the interview is made the legislative subject—"A patient (or a person) . . . shall . . . be afforded . . . that interview." The draftsman should read Coode on the legislative sentence.

46 But the section has failed to confer a power on the superintendent to open inward letters; is this to be implied, or is he only empowered to decide that an unopened letter ought not to be delivered? In that case it will not be the contents of the letter but the condition of the patient that will govern his decision. The section imposes a severe burden upon the superintendent or his clerical staff—every outgoing letter whose addressee is not known to be one of the persons mentioned in subsec. (1) will have to be checked against the list of Members of Parliament and the roll of legal practitioners, to keep the superintendent from committing an offence. An amendment to the clause in question, intended to give the superintendent some protection

Patients (other than Division 6 patients) may receive as visitors any relative or friend or any legal or medical practitioner required by a relative or friend to be permitted to visit a patient, unless the superintendent is of the opinion that a visit would not be in the interest of the patient (section 60).[47] Finally section 61 makes it an offence (punishable by imprisonment with hard labour for three years) for any person employed by the Department to strike, wound, ill-treat or wilfully neglect a patient or any person received into an approved hospital.

Part VI of the Act (sections 62 to 78) makes provision for the care and management of the estates of incapable persons. A patient is not *ipso facto* deemed to be incapable of managing his affairs; he must first be examined by a psychiatrist within a month from his admission as a patient to determine whether he is or is not incapable. If he is found incapable the superintendent is to report that fact to the Public Trustee, or to any "prescribed person."[48] The Public Trustee, or a corporate trustee, or a natural person, may apply to the Court, by originating summons supported by affidavits, for an order appointing a manager of the estate of an incapable person; the Court may appoint the applicant, or some other person, as manager (section 64). A similar procedure is laid down for releasing the estate from control, and discharging the manager, when a patient again becomes capable. The estate is to be managed in accordance with the provisions of the Public Trustee Act 1941 (section 62 (2))[49] under the general supervision of the Master of the Supreme Court. The manager may receive, by the Court order appointing him or by subsequent orders (which may be varied or rescinded by the Court on application), a wide variety of powers, specified in detail in section 68; he may also apply to the Court

by requiring the letters to be addressed to one of the persons in question "as such" was passed by the Legislative Council [(1962) 162 PARL. DEB. 1423-1424] but disagreed to by the Assembly (*ibid.*, 1683-1687).

47 This section contains another unhappy afterthought; subsec. (1) provides that, unless the superintendent thinks that a visit is not in the interests of the patient, relatives and friends "shall be permitted" to visit patients at generally appointed visiting hours, and a medical or legal practitioner shall be permitted to visit at a time (specially) appointed by the superintendent; but subsec. (2), after saying that the section does not apply to a "Division 6 patient", goes on to say that in every other case the superintendent *may* allow a visit "subject to such terms and conditions as he thinks fit."

48 "Prescribed person" is nowhere defined; presumably what is meant is a person prescribed by Rules of Court under sec. 87 or by regulations made under sec. 88.

49 Presumably it is intended that the provisions of the Act shall apply *mutatis mutandis* if the manager is not the Public Trustee but some other trustee corporation, or a natural person.

at any time for a direction in respect to the exercise of any of those powers (section 67). If an incapable person has powers as a trustee or guardian, or his consent is required to the exercise of some power by another person, the Court may order that the powers be exercised, or the consent given, by the manager (section 69). Section 70 makes provision for the appointment of new managers, and sections 72 and 73 for the keeping and examination of managers' accounts. Provision is made in section 75 for the setting aside of transactions (transfers, sales, alienations, charges, or leases of any property, real or personal) entered into by a person within the month preceding his being proved an incapable person,[50] or while he is an incapable person. No transaction is to be set aside after the lapse of two years from its date, nor if the Court is satisfied that it was entered into by the other party in good faith, without notice of the disability and for adequate consideration, or if it is proved that at the date of entering into the transaction the person in question was not incapable. Section 76 provides a summary proceeding, on complaint before a judge, for the recovery of any property (of an incapable person) wrongly held, detained or converted, for the recovery of damages in respect of injury to any property of an incapable person, and for the recovery of any money owed to an incapable person.[51]

Part VII contains certain miscellaneous provisions. Section 79 declares that a person under 18 years of age who is suffering from mental disorder and is not receiving the necessary treatment is a "neglected child" within the meaning of the Child Welfare Act 1947. Section 80 confers immunity from civil or criminal proceedings upon all persons who have acted in good faith in accordance with the requirements of the Act.[52] Sections 81 to 83 make certain special provisions with respect

50 It is not quite clear what is the purpose of fixing this point of time. Under sec. 63 (as noted above) a psychiatrist reports that in his opinion the patient is incapable of managing his own affairs; then on application to the Court for appointment of a manager it is to be "proved to the satisfaction of the Court" that the person in question is incapable. That proof of incapacity may be some little time after the psychiatrist's report was made: but one would have thought that the "danger period" would be the month before the psychiatrist saw the patient. This view is reinforced by the fact that the parallel provision in the ancillary legislation amending the Public Trustee Act (sec. 26 of the Public Trustee Act Amendment Act 1962) allows the setting aside of a transaction entered into *within one month before becoming an incapable patient,* and he becomes an incapable patient when the notification of that condition is signed by the superintendent.

51 The section says, tautologically and, it is submitted, ungrammatically, "due and owing to an incapable person."

52 It is interesting to note that the draftsman has preferred to insert a special clause rather than to rely on incorporating the provisions of para. H of the Second Schedule to the Interpretation Act 1918.

to "referrals": A referral is to specify the facts upon which the referring practitioner's opinion as to the mental condition of the patient was formed; no referral is to be signed without the signatory having seen and personally examined the patient (and a patient may not be admitted to hospital, nor may an order be founded on, a referral which purports to be founded only on facts communicated to the referring practitioner by others). Certain persons who may be interested in the patient or in the hospital may not sign any referral. Section 85 enables a referral which is incorrect or defective in any material particular to be amended, within 14 days after admission under it, by the person who signed it; if it is not amended within 14 days the patient may be discharged or a new referral procured. Finally, section 89 requires the Medical Board to set up and keep a register of persons specially trained or skilled in the practice of psychiatry.

By way of ancillary legislation, Act No. 34 of 1962 makes certain amendments to the terminology of the Public Trustee Act 1941 to conform with the new legislation, and re-enacts Division (4) of Part II of the Principal Act (dealing with the powers and duties of the Public Trustee with respect to the estates of incapable persons) with the same end in view. In some respects, as already indicated, this legislation is inconsistent with the principal legislation.[53]

The Criminal Code Amendment Act 1962 (No. 35 of 1962) amends, or re-enacts with amendments, sections 149, 334, 335, 336, and 337 of the Code, but includes also a new section 339A empowering any court, which convicts a person (whether summarily or on indictment) of an offence of which drunkenness was an element or a contributing cause, to ascertain whether the offender is an inebriate, *i.e.*, a person who habitually uses intoxicating liquor to excess.

The mode of ascertainment is that the judge or magistrate is to inspect the offender, or to appoint some person to report on him; a medical practitioner must certify, on the basis (at least in part) of facts observed by him, that the offender is in his opinion an inebriate; and corroborative evidence of this must be given by some person other than the practitioner. If the offender is found to be an inebriate the court may order him to be placed for not more than twelve months in an institution for the reception of convicted inebriates. The setting-up of such an institution is authorized by a new Part VIB of the Prisons Act 1903 (sections 64O to 64Q), inserted into the principal Act by Act No. 36 of 1962.

[53] See note 49, *supra*.

Pharmaceutical Chemists.

The Pharmacy and Poisons Act Amendment Act 1962 makes some amendments to the qualifications requisite for registration of a pharmaceutical chemist. A person seeking registration must, under a new para. (aa) added to section 21 (1), have completed a prescribed course of practical training, with a pharmaceutical chemist or chemists, of not less than 2000 hours, in accordance with conditions to be prescribed under an amended section 53, and must also have passed all the prescribed examinations (or such examinations as the Council thinks substantially equivalent to them). Persons seeking to qualify under the four years' apprenticeship provisions of section 21 (1) (b) must have commenced service before the date of coming into operation of the amending Act,[54] under a contract of apprenticeship made, and endorsed by the Council, before that date, and must qualify before 31st December 1968.

V. CONTROL OF PRICES AND COMMODITIES.

Marketing of apples.

In introducing the Agricultural Products Act Amendment Bill in the Legislative Assembly the Minister[55] explained that the government had decided, in the light of the report of a Royal Commission appointed late in 1961, that the marketing problems of the State's apple producers should be handled, for the 1963 season, by an "Apple Sales Advisory Committee." The task of this new body would be (a) to assess (i) the nature and date of the 1963 crop and (ii) the local demand, and (b) to make recommendations as to what types of sub-standard apples should be completely excluded from the market. From statements made on both sides of the House it would appear that while total production increased in 1962, the volume of exports and the export price both fell, and a good deal of consumer resistance appeared in the local market to sub-standard apples. The Minister hinted that if the activities of the new Committee failed to satisfy both growers and consumers it may be necessary to establish a comprehensive marketing scheme for the industry.

The Committee is to consist of the Director of Agriculture (or his nominee) as Chairman, three representatives of the growers, one representative of each of the organized associations of dealers and shippers, and a lone consumers' representative nominated by the Minister.

[54] 29th March 1963.

[55] The Hon. Mr. C. D. Nalder (see (1962) 163 PARL. DEB. 2261 *et seq.*); the Bill became law as No. 87 of 1962.

The Fruit Cases Act 1919 had provided *inter alia* (by section 9) for the registration of fruit-packing sheds and of factories using fruit in the manufacture of articles of food or drink; the person in whose name the registration was effected thereupon became bound to keep detailed records of the name and address of every vendor to him, the date of purchase, the quantity and type of fruit purchased, etc. By the Fruit Case Act Amendment Act (No. 88 of 1962) like obligations are imposed upon "direct buyers" of fruit, *i.e.,* persons who in any year buy direct from a grower or from growers more than one hundred bushels of apples for re-sale wholesale or retail. The object is to prevent any apples which do not comply with the grade prescribed by the new Committee from coming into the market.

Breadbaking hours.

Under the Bread Act 1903-1949 and arbitral awards the permitted hours for breakbaking differ in the metropolitan and Kalgoorlie areas from those in force in the rest of the State. A new award by the Arbitration Court, applicable to the metropolitan area only, prohibited baking after 12 noon on Friday or at any time on Saturday or Sunday; the metropolitan area was defined in the Act as all that area within a radius of twentyfive miles from the General Post Office, Perth. It was then discovered that south of Perth, in a growing industrial area, there are two bakeries within the stated area and one just beyond the limit. To prevent the latter from gaining an advantage over its near-by competitors the Bread Act Amendment Act (No. 71 of 1962) extends the radius of the metropolitan area from 25 to 28 miles. An amendment moved by the Opposition, to prohibit bread lawfully baked outside the new metropolitan area after midday on Friday or at any time on Saturday from being brought into that area for sale, was defeated on a strict party vote.[56]

The Grain (or Wheat) Pool.

As long ago as 1932 a Wheat Pool was set up as a corporate body consisting of four named trustees and their successors. With the passage of time the Pool extended its activities to cereals other than wheat; in consequence an amending Act of 1961 (No. 67 of that year —the Wheat Pool Act Amendment Act) changed the title of the principal Act to the Grain Pool Act 1932-1961. By an oversight the

[56] The Minister in charge of the Bill refused pointblank to accept the amendment, saying that "The Government will not deny anyone the right to bring bread into the city on Saturdays if people have the courage to bring it into the city in order to sell it" (the Hon. G. P. Wild, in (1962) 163 PARL. DEB. 2794).

name of the corporate body was left unaltered as "The Trustees of the Wheat Pool of Western Australia"; the oversight is corrected by the Grain Pool Act Amendment Act (No. 18 of 1862) which abolishes the older title and substitutes "The Grain Pool of W.A."[57]

Plant diseases.

The powers of inspectors appointed under the Plant Diseases Act 1914-1960[58] are varied by an amending Act (No. 53 of 1962). The power to enter upon land, to board vessels, and to stop conveyances (and to make searches thereon or therein for infected plants) is extended to enable the inspector to take with him as many assistants as he requires. The amending Act also makes it an offence for a conveyance or vessel to fail to stop "when required to do so by a person who make himself known as being an inspector" (new section 13 (2)[59]).

VI. FISCAL.

Loans.

The development of the State appears to require in each year the expenditure of increasing amounts of money raised by way of loan. Though the 1962 programme is only slightly higher than that of 1961, the record of the past five years shows a steady increase, *viz.*,

Act No. 62 of 1958	£A16,742,000
81 of 1959	£A18,718,000
83 of 1960	£A20,264,000
80 of 1961	£A21,762,000
77 of 1962	£A21,980,000

57 The substitution of "W.A." for "Western Australia" is, in this reviewer's opinion, decidedly a change for the worse. If the dubious practice of using a pejorative abbreviation is extended must we expect to read in the preamble to future Supply Acts, "We Your Majesty's most dutiful and loyal subjects, the members of the Legislative Assembly of W.A. in Parliament assembled, etc."?

Incidentally it seems a pity that the opportunity was not taken to revise sec. 3 of the principal Act. Sec. 1A of the latest amendment preserves and continues as the Grain Pool of W.A. the body corporate previously known as "The Trustees of the Wheat Pool of Western Australia." Sec. 3 of the consolidated principal Act (see Reprinted Acts of the Parliament of Western Australia, Vol. 16, published in 1963) purports to incorporate as the Grain Pool of W.A. four named persons and their successors. All of the named persons have been dead for some years!

58 The Act, as amended to the end of 1958, is consolidated in Vol. 14 of the Reprinted Acts of the Parliament of Western Australia (hereafter referred to as REPRINTED ACTS).

59 It is permissible to ask how he is to "make himself known as being an inspector" to the driver of a fast-moving vehicle or the master of a ship under way?

The latest Loan Act, in section 2, authorizes "the Governor, from time to time, to raise by way of . . . loan several sums of money, not exceeding in the whole etc." This is the usual euphemism: Under the (Commonwealth) Financial Agreement Act 1928 the State has virtually lost its independent power of borrowing and has to be content with an allocation from the total loans raised by the Australian Loan Council on behalf of the Commonwealth and all the States.[60] It is still necessary, however, for the State Parliament to make payment of interest and repayment of principal a charge upon the Consolidated Revenue Fund of Western Australia, and this is done by section 4.[61]

Moneylenders.

An astute member of the Legislative Council[62] made the interesting discovery that the Money Lenders Act 1912-1959 exposed any person who came within the definition of moneylender in that Act to the risk of serious loss in certain circumstances. If such a person invested in the debentures of a company or in its "registered notes" (whether secured or unsecured), or put money on deposit with it, the transaction was avoided by the Act unless he took care to comply with the provisions of the Act which were designed to protect the borrower, not the lender. The hon. member therefore sponsored an amending bill which authorized the borrowing company in effect to repudiate the protection given to it by the principal Act — by giving written notice to each individual investor or depositor likely to be affected. With a few minor alterations in the Assembly the bill became law as the Money Lenders Act Amendment Act (No. 86 of 1962).

Stamp duties.

The Stamp Act Amendment Act (No. 20 of 1962) removes an anomaly that had its origin in 1941, when the stamp duty on share transfers was reduced from £1 to five shillings per cent. This applied

60 Each State has to submit its "loan requirements" every year to the Australian Loan Council, on which it is represented; whether it gets all it asks for depends on the Council's decision, based on the views of its financial advisers, as to how much the Australian investor is likely to be ready to lend in a given year.

If the Council thinks that the total sought cannot be raised, the Financial Agreement determines the allocation to each State in the absence of unanimity.

61 The Loan Act does not mention sinking fund contributions; but under the Financial Agreement all loans raised for the States by authority of the Loan Council must be amortized by an annual sinking fund payment of ten shillings per centum—to which the Commonwealth and the borrowing State contribute equally.

62 The Hon. H. K. Watson, an accountant by profession.

to shares in companies and in co-operative and provident societies, but not to building society shares; at long last they are put on the same footing as companies and other societies. The opportunity was also taken to remove from the Second Schedule all references to the War Munition Supply Company of Western Australia; the Treasurer saw no fiscal objection to eliminating them since the Company itself had been eliminated by dissolution *on 22nd May 1923*. The same Act deals with another case of hardship. It sometimes happens in the course of implementing a town-planning scheme that the local authority finds it necessary to resume the whole of a given area as a preliminary to providing new roads and to setting out a new subdivision. The former owner of a particular lot or block may then get it back substantially unchanged; if he does, a duty of ten shillings only was charged on the transfer. But if for some reason he cannot recover his original lot but is offered and accepts a new lot in replacement, he had to pay stamp duty at the rate of £1 per cent. of the value of the land. The Act now puts him in the same position as the man who virtually gets his own land back.

A second Amendment Act (No. 60 of 1962) brings the stamp duty on transfers of land and on hire purchase agreements more into line with the rates imposed by New South Wales and Victoria. On the former, the duty goes up from five shillings on every £25 or part thereof to twelve shillings and sixpence on every £50 or part thereof; on the latter, from 1 per cent. to 1½ per cent. This Act also changes the basis of taxation, and some of the rates of tax, in relation to insurance policies. *All* policies are now to bear duty at the rate of five per cent. of the premiums payable *except* (1) life insurance policies which continue to be exempt, (2) third-party (motor vehicle) policies — a flat rate of two shillings and sixpence, and (3) workers' compensation policies— three per cent. of the premiums. Stamp duty on receipts is also changed, but in such a way as to bring in approximately the same total revenue:—

	Old rate.	New Rate.
£1 to £4 19s. 11d.	One penny.	Exempt.
£5 to £24 19s. 11d.	One penny.	Threepence.
£25 to £49 19s. 11d.	Twopence.	Threepence.
£50 to £100	Threepence.	Threepence.
Over £100	Threepence for each £100 or part.	Threepence for each £100 or part.

The Stamp Act Amendment Act No. 3 (No. 69 of 1962) reproduces a provision contained in section 433 of the Companies Act 1943

(No. 36) but deliberately omitted from the new Act of 1961-1962. It authorizes the Treasurer to waive the stamp duty on documents necessarily executed where a new company is formed by reconstruction.[63]

VII. BUILDING, HOUSING, and DEVELOPMENT.

Housing loan guarantees.

Still another amendment of an Act passed as recently as 1957![64] The Minister for Housing, in moving the second reading of the Housing Loan Guarantee Act Amendment Bill (which became Act No. 52 of 1962), frankly admitted to the Legislative Council that "this is one of the imperfections in the operation of this particular piece of legislation which was discovered after the amendments were made to the Building Societies Act."[65] Under the principal Act, guaranteed advances could be made by an "approved institution" only in respect of houses completed six months earlier or not previously occupied. The new Act makes it possible for an approved institution to make loans by way of progress payments on the construction of a house provided that it has first obtained an appropriate certificate from a valuer appointed under the Act.

Coal mine accidents.

Miners injured or contracting disease in the course of their employment have always been within the ambit of the Workers' Compensation Acts, but for many years an auxiliary scheme of compensation has been in existence and a special fund maintained to which owners as well as workers contribute. The Coal Mines Regulation Act of 1946 repealed the earlier legislation but continued the auxiliary scheme by Division 8 under the caption "Accident Relief and Superannuation"; the benefits were available to "miners" and to "boys working in mines." As "open-cut" operations were extended, often at the expense of the deep mines, it was found that an increasing number of workers (such as truck drivers, surveyors and their assistants), though required to contribute to the fund, were not entitled to additional compensation for injury incurred away from the actual mine workings. The initiative

63 The Treasurer explained that as Western Australia each year seeks a special grant from the Commonwealth it has to satisfy the Grants Commission that its rates of taxation at least approximate to those imposed by the two most populous and wealthy States. It cannot continue to impose lower rates and hope that the Commonwealth will, by means of a special grant, bring its revenues up to the amount which it would have received by imposing "equivalent" rates: See (1962) 163 PARL. DEB. 2015-2018.

64 See (1960-1962) 5 U. WEST. AUST. L. REV. 630-632.

65 (1962) 163 PARL. DEB. 2068.

was accordingly taken by the trustees of the fund (consisting of representatives of the Mines Department, the owners, and the workers) to have the Act altered; their request was favourably received by the minister, who sponsored what became the Coal Mines Regulation Act Amendment Act (No. 21 of 1962). The amendment deletes the reference in section 38 of the principal Act to "miners" and extends its operation to persons who suffer injury or contract disease "during the course of their duties as employees of coal mines" provided that the injury or disease is such as to entitle them to benefits under the Workers' Compensation Act. The family of such an employee who is killed in a mine accident or who dies from disease contracted by him is also made eligible to receive benefits from the fund.

Inspection of scaffolding.

Further safety measures are required by the Inspection of Scaffolding Act (No. 76 of 1962) for the protection of both workers and passers-by. The Minister introducing the Bill explained that his predecessor in office had set up a Building Industry Safety Committee representing management, labour, and the government itself, and that the Committee recommend the proposed changes. The definitions of "scaffolding" and "gear" are widened by section 6; on all scaffolding that rises more than twenty feet from ground level (except in the erection of single-storey houses) a trained and certificated scaffolder must be employed; and for all gear above the same height a licensed "rigger" must be present; power is given by section 10 to make regulations prescribing what training has to be undertaken and what examinations passed before a licence will be issued. The powers of inspectors are increased to enable them to order the dismantling of defective scaffolding or the adoption of measures to make it unusable.

The Minister ran into trouble after he had spoken about the alteration of the definition of "serious bodily injury" (arising out of a scaffolding accident; this used to mean an injury likely to put the injured person off work for at least seven days, but now means an injury likely to incapacitate the victim for at least three working days). Not that the (Labour) Opposition objected to this; but as every death or serious bodily injury must be reported within twenty-four hours to an inspector of scaffolding (and no alterations of or repairs to the scaffolding or gear may then be made without the written authority of an inspector or police officer), the Opposition wanted notice also to be given to the industrial union of which the dead or injured worker was actually a member or was eligible to become a member. In committee an amendment to this effect was

actually moved, the underlying idea being that an early inspection of the scene of the accident by a union representative might provide valuable evidence in a subsequent compensation claim. But the Minister[66] opposed an amendment at that stage (in the Legislative Assembly) because he said that he would have to refer it to the Department of Labour which in turn might want to consult the Committee; he added, however, that if after examination "it is fit and proper to introduce the amendment in another place that will be done."[67] But when the Bill came before the Legislative Council six days later and a similar amendment was moved there, the minister[68] in charge of the Bill opposed it on the different ground that "It (*i.e.*, the Act) should not be the vehicle by which action can be taken in respect of other Acts, particularly the Workers' Compensation Act."[69]

Rights in subterranean water.

The Rights in Water and Irrigation Act 1941-1954 gave considerable power to the minister to control the construction and use of artesian wells but not the exploitation of other forms of subterranean water supply. Act No. 70 of 1962, passed to conserve the limited water supplies in the northern part of the State, greatly extends the minister's powers to any proclaimed area.[70] Within such an area all existing wells, whether they draw artesian water or water which has to be pumped to the surface, must be licensed; no new well can be dug, nor an existing well be enlarged, except under licence. The minister is given power to limit the output from any well, to interfere where he thinks water is being wasted or misused, and to enforce measures to prevent pollution of subterranean sources.

In a very short second-reading speech the minister[71] did not explain why these drastic and far-reaching powers had suddenly become necessary — an omission which enabled the Deputy Leader of the Opposition to score a neat debating point as well as to indulge in some telling criticism of the Bill. The scene changed, however, when the minister candidly admitted that he had mislaid a substantial part of

66 The Hon. G. P. Wild, M.L.A.

67 (1962) 163 PARL. DEB. 2463-2466.

68 The Hon. A. F. Griffith, M.L.C.

69 (1962) 163 PARL. DEB. 2615. He added that "It should not be the responsibility of the inspector to police the notification by the owner to the union concerned"; but it is submitted that the amendment as framed imposed no such responsibility on the inspector.

70 By new sec. 18 (1) areas can be proclaimed only if they are situate north of the 26th parallel of south latitude.

71 The Hon. G. P. Wild, M.L.A.

his brief! After he had made good the error the House listened much more sympathetically, especially when he explained that the principal purposes of the bill were to ensure an equitable distribution of the limited waters of the River Gascoyne[72] and to deal with the danger of increasing salinity as the result of an extravagant and wasteful use of limited supplies of subterranean water.[73] In committee the only change made was to section 20 as amended by the new bill; subsection (5) had provided that, if a person aggrieved by the refusal of a license (*sic*) gave notice to the minister within 30 days of "his wish to be heard", the minister "may" cause an inquiry to be conducted by persons nominated by him, at which inquiry the aggrieved party had the right to be heard. The minister accepted an amendment to substitute "shall" for "may"; but the appeal was still, as members pointed out, from Caesar to Caesar because the minister after the inquiry could give "such decision as he thinks fit".

Tractor production: The State cuts its losses.

Some years ago the then government, anxious to encourage secondary industries in this State, heard that Chamberlains of Melbourne (manufacturers of pistons) were minded to establish somewhere in Australia a plant to make agricultural tractors (hitherto all imported). Chamberlains were persuaded by offers of substantial financial assistance to come to Western Australia, where plant and equipment provided by the Commonwealth during the last war for the manufacture of small arms and ammunition was made available "on very generous terms"[74] for the new venture. A new company, Chamberlain Industries Proprietary Limited, was formed with a nominal capital of £50,008;[75] but its financial resources were so limited that it had to

[72] The extravagant use of water drawn from wells relatively close to the river might cause more distant wells to become completely dry, temporarily or even permanently.

[73] (1962) 163 PARL. DEB. 2518.

[74] The Hon. A. R. G. Hawke (now Leader of the Opposition, but Premier when the new venture was started): (1962) 163 PARL. DEB. 2524.

[75] Nominal indeed, as appears from statements made to the House by the Hon. C. W. M. Court, Minister for Industrial Development: "Perhaps I should explain at this stage that of the £50,008 capital only £8 was paid in cash, because the original members of the Chamberlain company created 50,000 of the 50,008 shares by book entry:" (1962) 163 PARL. DEB. 2545. Later, in reply to an interjection, the Minister said: "The member for Mt. Marshall . . . would accept the term "intangibles" as the method by which the necessary capital was raised. . . . the company did commit its private assets in another State where it successfully carried on a business. These assets formed part of the security. From memory that is what I recall of the transaction, but the family did not contribute more than £8 in cash to the share capital": *Ibid.*, 2553.

rely on very substantial advances from the State Treasury and from the Rural and Industries Bank (a State-owned organization). From the beginning it appears to have run into trouble; its early management seems to have had little experience of large-scale production, and though the Company did begin to produce very efficient tractors it was able to do so only after long and expensive delays, and in very small numbers at a tremendous unit cost. Its financial situation had deteriorated to such an extent (at the expense of the Treasury and the Bank) that late in 1955 an all-party committee of the Legislative Assembly was set up to investigate the affairs of the Company and to recommend what should be done. After long deliberations the committee suggested *inter alia* that a sum of approximately £1,750,000 should be written off by Treasury and Bank as completely irrecoverable, and that a long-term loan of £2,250,000 be made to the Company to replace its short-term indebtedness to the State. It was thought that if this were done the Company might be able to transform itself into a public company and to attract more working capital by the sale of debentures (to be guaranteed by the government) or shares. Effect was given to the first of these recommendations in 1959 by executive action on the part of the Treasury and the Bank. Though this seemed to relieve the Company from part of its debts, doubts subsequently arose whether it was effective to do so; and so long as those doubts were unresolved it was impossible for the Company to raise any fresh capital. The Chamberlain Industries Pty. Ltd. (Release of Debt) Act, No. 67 of 1962, sets the matter at rest. It declares by section 2 that the Company was *not* released from liability in respect of the sum purported to have been written off in 1959, and then by section 3 authorizes Treasury and Bank to write off that sum (and interest thereon accrued since 1st July 1958) and to release the Company from its liability in respect thereof.

It would appear from the minister's statement to the House that the Company's affairs are now in much better shape; as from 1958-1959 it has shown an increasing trading profit (not taxable because of accumulated losses incurred in past years), but it is ominous that the profits in that and later years have amounted to not much more than half of the bounty on tractor production received from the Commonwealth. That bounty will continue to be paid until June 1966; what will happen after that time must depend upon the way in which the company's sales increase and its production becomes more diversified, and upon the federal government's decision in less than three years' time whether it is justified in giving further aid and encouragement to the industry.

The government's spokesman did not explain what, if anything, had been done to give effect to the other recommendation of the 1958-1959 committee; it would seem, however, that they remained a dead letter, because the minister said that the new plan was to make a long-term loan to the Company (the term to be reduced from fifty years, as proposed by the committee, to thirty), to lend it £100,000 to enable it to meet its immediate and seasonal obligations, and to encourage its transformation into a public company which would then raise half a million pounds by the sale of shares to employees of the company, satisfied farmers, and other investors. At the time of writing the company appears still to be a proprietary company.[76]

Iron ore: Tallering Peak etc. deposits.

In 1961 the government of Western Australia entered into an agreement with Western Mining Corporation Limited (a company incorporated and registered in the State of Victoria) whereby the company was granted exclusive rights to mine iron ore in a substantial area some 70 miles north-east of the port of Geraldton.[77] Certain royalties would be payable to the State by the company, which also undertook to build a railway line from the ore area to the nearest railhead and to provide and maintain wharf-loading facilities at Geraldton. It did not take the company long to discover that exploitation of the Tallering Peak deposits would be uneconomic; it therefore sought and obtained[78] a further concession in the richer Koolanooka Hills approximately 120 miles south-east from Geraldton. It is at liberty to develop the new area in priority to that originally granted; estimates of the total resources of the two areas have varied considerably.[79]

Iron ore: Mount Goldsworthy deposits.

A much larger project is contemplated by the Iron Ore (Mount Goldsworthy) Agreement Act (No. 9 of 1962) in regard to a relatively

76 The 50,000 shares issued to the original members of the company have long since become the property of the Bank; the minister optimistically thought that some day they might have a market value of £5 per £1 share. Even if that prediction comes true the Bank will recover only a small proportion of its loss.

77 See Iron Ore (Tallering Peak) Agreement Act, No. 49 of 1961.

78 By an agreement given legislative approval by Act No. 68 of 1962.

79 During the debate on the Bill the Minister suggested that the two areas might contain about 2½ million tons of ore with an iron content of 60% or more. On 14th December 1963 it was announced in the *West Australian* that the operating company had entered into contracts with Japanese interests for the supply of 5,100,000 tons of ore; delivery to commence in April 1966 at the rate of 500,000 tons per annum.

small area some 60 miles east of Port Hedland, which itself is situated about 300 miles north of the Tropic of Capricorn. The parties to the agreement are the State of Western Australia and a consortium (described in the agreement as the Joint Venturers) consisting of Consolidated Gold Fields (Australia) Proprietary Ltd., a company incorporated in the Australian Capital Territory, Cyprus Mines Corporation (of New York), and Utah Construction and Mining Co. (a Delaware corporation). The iron ore, which lies within a comparatively small area of some sixteen square miles, is to be exported at the rate of approximately one million tons per annum with a total extraction of 15 million tons. The agreement requires the Joint Venturers *inter alia* to build a deepwater jetty off Depuch Island for 40,000-ton ore ships, and to construct a causeway from the mainland to the Island and a railway from the mining area to the wharf area; they will also be responsible for the erection of townships on the Island and in the actual mining area—if they decide to go ahead with the project. They were required by the agreement to start, within one month of the signing of the document, a "major programme of geological investigation and cognate activities"; in effect they are given two years as from 27th February 1962 to decide whether to go on with the project or to abandon it.[80] Subsidiary provisions are to be found in the Mount Goldsworthy-Ord Ranges-Depuch Island Railway Act (No. 50 of 1962).

VIII. GENERAL.

Business names.

A new Business Names Act (No. 8 of 1962) is another example of the commendable desire for uniformity in certain aspects of commercial law throughout Australia; it is basically the product of a conference of State Attorneys-General and, at the time of its introduction in the Parliament of Western Australia, had already been enacted by New South Wales and Victoria. The new Act does not depart substantially from the principles and provisions of the superseded Business Names Act 1943-1946 except in regard to three matters. (1) Under the older Act, certain words such as "Royal", "Empire", "Commonwealth", "State", etc., could not form part of a business name except by consent of the Governor published in the *Government*

80 A few days after the Koolanooka Hills-Tallering Peak announcement (see previous note) the news was published that the Joint Venturers had decided to continue their project subject to a few modifications of their agreement with the State; the pace of development will apparently depend on their negotiating contracts for the sale of the ore to overseas interests.

Gazette; the new Act contains no specific prohibitions, but has a general provision (in section 9) which (i) enables the Registrar to refuse to register, unless the Minister consents to the registration, any business name which he thinks "undesirable" and (ii) empowers the Minister himself, by notice published in the *Government Gazette* and notified to the Attorneys-General of the Commonwealth and other States, to prohibit the registration of particular names or classes of names. (2) Where the applicants for registration of a business name are all resident outside the State, the application must contain the name and address of a "resident agent" within the State and an authority to him to accept service of notices and of process (section 8). (3) A registered business name must not be used—under a penalty of £500—in any invitation to the public to lend money to the person or firm using the registered name (section 26).

Licensing law.

Three amendments of the Licensing Act were introduced and passed quite late in the session, of which two were very brief. Act No. 59 of 1962 changes the basis of licensing fees and reduces the rate, though a substantial increase in taxation will result; the major reason for the change is to bring the return from liquor licences more into line with that raised in nearly all the other States.[81] In the past most liquor licences have cost the holder 8% of the wholesale value of the liquor (excluding from the calculation of "value" both excise duty and transport costs) sold in each preceding year; in future the rate will be 5½%, but the value on which it is exacted will be cost *plus* excise duty.

The Licensing Act Amendment Act No. 2 (No. 64 of 1962) has but one operative section; but its effect is very important for certain hotelkeepers. On Sundays the law-abiding resident in the metropolitan area could only get a drink (and then only between five and six p.m.) if he got into his car and drove at least 20 miles away from the city. It was only "outside an area bounded by a circle having a radius of twenty miles from the Town Hall in Perth" that the magic fluid could lawfully be bought and consumed; but as roads do not radiate from the Town Hall in straight lines like the spokes of a wheel it was inevitable that some hotels much more than 20 miles from Perth by road were still within the prohibited circle while their luckier com-

81 Without this adjustment of method and tax the State would be penalized more than £200,000 by the (Commonwealth) Grants Commission according to the Premier and Treasurer (the Hon. D. Brand, M.L.A.): (1962) 163 PARL. DEB. 2023-2024.

petitors were closer (by road) to Perth but nevertheless outside the circle. To make competition more competitive Act No. 64 of 1962 does away with the geometric circle and in effect substitutes as the test, "Is this particular hotel more than 20 miles (from Perth Town Hall) by the shortest road route?" If it is twenty miles and one yard away it can open its bar doors between five and six p.m. on Sundays.[82]

The Licensing (Rottnest Island) Act (No. 66 of 1962) extends to the hotel on that island the privilege of restricted opening on Sundays; the hotel is a few hundred yards short of twenty miles from the Perth Town Hall!

A fourth and much more substantial amending Bill (containing nearly seventy clauses), first introduced in the Legislative Council, came to grief because the two Houses continued to disagree about two clauses—one to make the minimum subscription to a licensed club two guineas, and the other to debar any such club from selling beer in kegs to its members. Late in the evening of 15th November 1962 the Council sent a message to the Assembly insisting on the retention of these two clauses; shortly after 4 a.m. on 16th November a motion was submitted to a weary Assembly on behalf of the government not to insist upon its attempt to amend the first clause; but the motion was lost, progress was reported without the second clause being discussed, and at 5.55 a.m. the House adjourned—the session was at an end and the Bill had lapsed.

Alsatian dogs.

In this State it has been an offence since 1929 to keep an unsterilized Alsatian dog of either sex,[83] and for many years thereafter it was apparently an easy matter to police the prohibitory Act because the number of such dogs in the State was very small. But things have recently changed; according to the Minister,[84] in the sixteen months preceding the introduction of the new legislation over 300 dogs have been brought into the State; moreover, the breeding of Alsatians was going on apace despite the prohibitions of the then existing Act. Few

82 This limited period is often referred to as "the Sunday session" and more frequently and tersely as "the session." Since the objective of many frequenters of "the session" appears to be to drink a lot of alcoholic liquor in a little time, the cynic wonders what virtue there is in a system which encourages the drinker to drive at least twenty miles back to his home after his potations—instead of letting him have a drink or two at his local hotel (from which he could go home by taxi if he felt unsure of his driving skill after "the session").

83 See Alsatian Dog Act, No. 34 of 1929 as amended by No. 6 of 1938 and No. 61 of 1952.

84 The Hon. C. D. Nalder, M.L.A., Minister for Agriculture, speaking to the second reading of the Bill: (1962) 163 PARL. DEB. 2688.

members of either House were prepared to dispute the need to sterilize these animals, which are accused *inter alia* of being prone to savaging young children and of mating too readily with the dingo, Australia's only native dog, and thereby producing a particularly vicious and cunning half-breed with a marked propensity for eviscerating young lambs. Criticism was directed mainly against specific provisions of the new Bill, which some members, especially in the Assembly, thought too severe. The gist of the new Act is to prohibit any person from keeping an Alsatian dog without a permit from the Agriculture Protection Board, which must not issue a permit until it is satisfied that the dog has been sterilized and that it has an identification mark tattooed on it; the fee payable on issue or transfer of a permit is £5 in addition to the payment for a licence under the Dog Act.[85] A permit is to be issued without charge in respect of an Alsatian kept by a blind person as a trained guide dog or of an animal kept as a police dog. The Board is empowered to require the keeper of an unsterilized dog to destroy it immediately and itself to seize and destroy the dog if the person fails to comply. Penalties for non-compliance with the provisions of the Act are increased to a maximum of £50 (and to an irreducible minimum of £15 if the offence consists of failure to obtain a permit or to destroy an unsterilized dog); a fixed penalty of £2 per day is incurred if the offence is continued after conviction.

British Petroleum Limited.

In 1952 a company was incorporated in England with the name of Australasian Petroleum Refining Limited for the purpose of establishing a refinery at Kwinana in Western Australia. The refinery having been built and the company having been registered in this State as a "foreign company", it subsequently changed its name to BP Refinery (Kwinana) Limited and transferred its board of directors and its entire management from England to Western Australia. It wished to identify itself completely with this State, and was promoting a private bill in the United Kingdom to enable it to do so; complementary legislation was necessary here because the existing Companies Act makes no provision for the transfer of a company holus bolus from one jurisdiction to another. The BP Refinery (Kwinana) Limited Act (No. 10 of 1962) enables the company, on lodging with the Registrar a certified copy of the Act of the United Kingdom authorizing its transfer and the other customary documents, to become

[85] Local government authorities must not issue a licence unless a permit under the Alsatian Dog Act is produced.

registered as a company limited by shares. This course was deemed preferable to voluntary liquidation in England and the formation of an entirely new company in Western Australia.

Lotteries.

Since the establishment of State-organized lotteries conducted by a statutory Lotteries Commission, no person or organization other than the Commission could run a lottery (under whatever name it might try to disguise itself) without the Commission's consent. The Commission always had power to allow a religious body or "charitable organisation" to conduct guessing competitions, raffles or art unions (a popular synonym for a lottery) in connection with any bazaar or fair held by it; the principal Act merely states that a "charitable organisation" is "any organisation which in the opinion of the Commission has *for any of its objects*[86] the raising of money for charitable purposes." The Lotteries (Control) Act Amendment Act (No. 17 of 1962) adds to the end of that sentence, "or for the promotion and advancement of social welfare, including public recreation and sport."

Third-party insurance.

The Motor Vehicle (Third Party Insurance) Surcharge Act (No. 56 of 1962) imposes a surcharge of £1 per annum on every policy effected or renewed after 31st December 1962, but does not allocate the revenue so obtainable to the Motor Vehicle Insurance Trust (which is responsible for the payment of duly established claims) for its own purposes. The Trust is required by the Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 57 of 1962) to pay the amount of all surcharges into Consolidated Revenue Fund. In introducing the first measure the Premier and Treasurer[87] explained that as the compulsory insurance premiums in this State have been lower than, for example, in Victoria, the State would be penalized by the Grants Commission if it did not raise its charges;[88] he added that the additional revenue raised by the surcharge would help the State to meet the ever-increasing cost of treating in public hospitals the ever-increasing number of victims of automobile accidents. There are a few exemptions from the new surcharge, of which the most notable are (a) a motorized wheelchair used by an incapacitated or crippled person, and (b) any vehicle used solely in interstate trade.[89]

86 Italics added by reviewer.

87 The Hon. D. Brand, M.L.A.: (1962) 163 PARL. DEB. 2025.

88 *Cf.* note 81, *supra.*

89 No doubt this exemption was inserted to avoid any risk of the surcharge, if imposed on "interstate" vehicles, being held invalid for violation of that

The most important provision in the Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 2) (No. 72 of 1962) relates to the liability of a negligent driver to passengers in his vehicle who are injured by his negligence (or partly by his negligence and partly by the negligence of the driver of another vehicle). Under section 6 (2) of the principal Act the liability of the Motor Vehicle Insurance Trust was in effect limited to £2,000 for each injured passenger and to £20,000 for all such passengers;[90] if damages greater than £2,000 were awarded to an injured passenger, the errant driver (if there was no question of apportionment with the driver of another vehicle) had to pay the excess himself—if he could. The new Act raises the individual limit to £6,000 and the total to £60,000 and makes even these limits inapplicable to motor vehicles licensed to carry passengers for hire or reward.

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indefinable "freedom of commerce among the States" which the High Court considers to be almost unconditionally guaranteed by sec. 92 of the Constitution.

90 This was brought about circuitously. The principal Act created a Motor Vehicles Insurance Trust with a monopoly of third-party insurance; in consideration of a premium payable on first registration of a motor vehicle and on every subsequent renewal the Trust was to issue a third-party policy; but the section then went on to provide that a policy would comply with the Act even if an individual passenger's claim against his own driver was covered only to the extent of £2,000 and the claims of all such passengers were covered only to the extent of £20,000. Needless to say the policies issued by the Trust all contained these limitations of liability.