

# LEGISLATIVE SUMMARY

VICTORIA 1960

## Constitutional Amendment

### *Treating*

The Constitution Act Amendment (Treating) Act 1960 (No. 6690) makes an amendment to sections 244 and 245 of the Constitution Act Amendment Act 1958 which relate to the treating of people at elections. By section 244 a candidate who provides meat, drink or entertainment to influence voters is guilty of a misdemeanour and the voter so treated is debarred from voting. Section 245 is a complementary provision relating to the offence being committed by persons other than a candidate. These provisions are very far-reaching and it is thought convenient to relax them in respect of certain minor infringements. The new Act then provides for a section 245 A, which exempts any person from these last two provisions if he does no more than give light refreshments by way of afternoon tea or supper following a public political meeting to any persons who have attended or are believed to have attended that meeting. That this is a very fair amendment is obvious when it is remembered that the date when treating first becomes illegal is the day of nomination of the candidates.

## Administration of Justice

### *Legal Profession*

A series of amendments is carried out by the Legal Profession Practice (Amendment) Act 1960 (No. 6625). Section 2 makes it obligatory that bank managers produce to an auditor enquiring into a solicitor's account, any document relating to the operation of the account. Section 3 gives important powers to the Council of the Law Institute, by inserting sections 87A and 87B to the principal Act, that, for breaches of the rules relating to trust accounts, failure to apply for a practising certificate and failure to lodge an audit report there will be the power not only to refuse to reissue a certificate but also to impose a penalty of up to £100. Section 4 is designed to give the Law Institute control over the printing and distribution of receipts for use by solicitors. Finally, it is enacted that if the Law Institute Council is of opinion that there has been a defalcation in respect of a trust account, it may apply to the Court for an order requiring the solicitor's banker to make no further payments out of the solicitor's trust account.

### *Supreme Court Act*

The Supreme Court (Proceedings before Master) Act 1960 (No. 6634) repeals sections 107, 108, and 109 of the principal Act, dealing with

procedure before Masters. It is felt that such procedural rules could be determined more conveniently by the Judges themselves, and that they would be unable to carry out their reform of Order 55 while those sections of the main Act were in force.

A further amendment relating to Masters was introduced by the Supreme Court (Orders) Act 1960 (No. 6668). This gives wider powers to the first and second clerks of the Master when the Master is unable to be present; not only can they now do such acts as are required to be done under section 179, but any acts necessary to give effect to the report or proceedings of Judge, Master or Acting Master.

#### *Administration and Probate*

Since 1956 the judicial functions of the Master of the Supreme Court have been of an increased extent. Consequently his administrative functions in relation to probate and administration have been reduced, and the Administration and Probate (Offices) Act 1960 (No. 6640) alters the Administration and Probate Act 1958 to give effect to changes in the Rules of the Supreme Court. Section 2 (a) removes the Registrar of Probates from the direction of the Master, and section 2 (a) (i) affects office procedures, requiring that what has in the past been done in the office of the Master will be done in the office of the Registrar.

#### *Police Offences*

Where a person is charged with drunkenness or obscene, threatening or abusive language or behaviour, he may be released by a senior police officer on paying a deposit of up to £25, as surety for the payment of any penalty.<sup>1</sup> If he does not appear at the notified time, the trial can proceed and any excess money will be paid into consolidated revenue.

#### *Kidnapping*

The offence of kidnapping is one which does not occur very often, and so it is only now that specific provision is to be made for it in the Crimes Act. The Crimes (Kidnapping) Act 1960 (No. 6731) defines the act of kidnapping thus:

Whosoever leads takes or entices away or detains any person with intent to demand from that person or any other person any payment by way of ransom for the return or release of that person or with intent to gain for himself or any other person any advantage (however arising) from the detention of that person shall, whether or not any demand or threat is in fact made

be liable to up to twenty years imprisonment.<sup>2</sup> As to what is an 'advan-

<sup>1</sup> Police Offences (Amendment) Act 1960 (No. 6649).

<sup>2</sup> Crimes (Kidnapping) Act 1960 (No. 6731), inserting s. 63 A in the Crimes Act 1958.

tage from the detention of a person', there is yet no authority, nor is there likely to be any for some time. The new Act also provides that in any such offence the Court may order a private whipping. (Generally it is necessary that a crime be a crime of violence for whipping to be able to be ordered.)

At the same time, the Act increases the penalty for those who demand money with menaces; the new penalty is to be ten years, not three.<sup>3</sup> If the demand is in writing the penalty is, as before, fifteen years.

Finally, a much more general amendment was made to the criminal law, one which will not apply only to kidnapping and similar offences. The penalty for being an accessory after the fact to a felony has been increased. In future the maximum penalty, previously two years, will be five years.<sup>4</sup> It is doubtful whether this will affect the practice of the Court very much, for accessories after the fact include a very wide range of offenders, and in some cases the fault is fairly slight. Yet for more serious offences the judge will be given an opportunity to pass a heavier sentence.

### Public Welfare

#### *Child Welfare*

The treatment of young offenders and of wards of the State has always caused many problems, and of the greatest importance is the new Social Welfare Act.<sup>5</sup> The Act establishes a Department of Social Welfare within the Chief Secretary's Department. This Department is to have three branches. The first will relate to family welfare, and takes the place of the previous Children's Welfare Department in so far as that Branch had cared for children in need of care and protection. The second will relate to youth welfare, which is a new branch altogether and which is intended to take out of the child welfare or family welfare branch the delinquent child over fourteen years, and to remove from the care of the Penal Department the young offender up to the age of twenty-one years. The third will relate to prisons, and will be substantially the present Penal Department, which, however, will not be concerned with the young offender already referred to. A further feature of the Act is the setting up of an efficient statistics branch, as recommended by the committee set up under The Honourable Mr Justice Barry, to investigate juvenile delinquency in this State.<sup>6</sup>

The Family Welfare Division will develop preventive work with families in an endeavour to maintain the family entire rather than wait until the stage is reached where the children have to be removed

<sup>3</sup> *Ibid.* s. 3.

<sup>4</sup> *Ibid.* s. 4.

<sup>5</sup> Social Welfare Act 1960 (No. 6651).

<sup>6</sup> *Ibid.* Division 4.

for their care and protection; for example, it provides allowances for children in necessitous circumstances, and it has the care of children, including delinquents, of under fourteen years of age. At the same time Division 6 of the Act provides for the transfer of the Children's Court probation service to the Department of Social Welfare. Division 7 deals with the development of youth activities in the community through the Youth Council and Training Division. Children's Courts are empowered to convict offenders between fourteen and twenty-one years to special Youth Training Centres, where youths are given suitable activities and training. Finally, which is very important, Division 5 sets up a training provision, to plan and coordinate the training of persons for the purposes of the Act. The Director-General of Social Welfare may organize such lectures or examinations as he thinks necessary, and a Training Council is set up to advise him.

### *Children's Court*

A minor amendment to the Children's Court Act is made by the Children's Court (Amendment) Act 1960 (No. 6633). The amendment makes it clear that the Court has a power of detention when there is a sum awarded which is greater than £10.

### *Health*

Three minor amendments to the Health Act 1958 are carried out by the Health (Amendment) Act 1960 (No. 6732).

Firstly, the fee for the examination of septic-tank plans previously £1, may now be up to £4.<sup>7</sup> Secondly, the mixing of harmful dyes with medicines is prohibited.<sup>8</sup> Previously there had been concern that there was no provision preventing this practice, although the additions to foods of injurious materials had already been dealt with. It was accordingly only necessary to extend section 230 of the principal Act so as to include drugs. Finally, provision is made that meat inspectors must submit regular monthly reports,<sup>9</sup> instead of annual ones, as it was felt that this would be much more useful, particularly for stopping the spread of disease in abattoirs.

The Health (Tuberculosis Arrangement) Act 1960 (No. 6707) provides for the ratification of an arrangement between the Commonwealth and the State, operative until 1963, providing that in return for certain moneys to be paid by the Commonwealth the State will provide free services in respect of tuberculosis in institutions where this money is applied.

<sup>7</sup> Health (Amendment) Act 1960 (No. 6732) s. 2.

<sup>8</sup> *Ibid.* s. 4.

<sup>9</sup> *Ibid.* s. 5.

**Fiscal***Stamps Act*

There has been an amendment to section 100 of the Stamps Act 1958. Subsection 3 had defined 'premiums' for the purposes of application for insurance licences so as to exclude 'any portion of such gross premiums actually paid by way of re-insurance effected in Victoria with any other such company person or firm'. The Stamps (Amendment) Act 1960 (No. 6611) excludes from such re-insurances those 'made pursuant to any prior obligatory agreement in writing'.

*Land Tax*

The rates of land tax are to remain the same as during last year pursuant to the Land Tax (Rates) Act 1960 (No. 6711).

The Land Tax (Relief) Act 1960 (No. 6710) provides that those who receive pensions, such as old age pensions, and whose income does not exceed the maximum pension allowance and £26 *per annum*, not counting child endowment payments, and those people in similar positions, in the eyes of the Commissioner, may receive certain relief for land tax. If the Commissioner is satisfied that a person is of necessitous circumstances, he may, with the approval of the Treasurer, either release the taxpayer from payment, or postpone payment.

**Conveyancing and Real Property***Stratum Estates*

The Transfer of Land (Stratum Estates) Act 1960 will make conveyancing easier in the field of own-your-own flats. It is customary for a service company to be formed in these schemes, and it has the ownership of land that does not belong to any of the flat owners. The owners of flats make covenants with the company that they will ensure that there is, for instance, proper maintenance, insurance and repair of the building and garden. As these are not able to be fitted into the class of restrictive covenant, there have often been difficulties in enforcing them. These and other difficulties are dealt with by the present Act, which inserts three new sections into the Transfer of Land Act, sections 98A, 98B, and 98C.

Section 98 A is designed to prevent shares in service companies from passing to those who own no flat. No shares in service companies shall be allotted except when they are sold with a stratum estate, and the shares shall be included in any certificate of title passing the land. This has the effect that shares and land stay in the same hands. The section also provides that no dealing with the stratum estates shall be registered until the service company is registered as proprietor of the residual land, this being an extra safeguard to purchasers.

Section 98B also provides important safeguards by limiting the powers of a majority of the shareholders in such a company. The memorandum or articles of such companies are not to be changed so as to affect the allotment of shares, or the rights of voting, except with the consent in writing of the registered proprietors for the time being of the several stratum estates. But such alterations, invalid by this Act, can nevertheless be made where an order has been made by the Court dispensing with any necessary consents; this could be of value both where an owner is for some reason unable to give any consent, and where one of the owners unreasonably refuses his consent, to the inconvenience of others.

Finally, section 98C deals with the enforcement of rights and covenants. The service company is given power to register the service agreement under the normal provisions of the Transfer of Land Act, the service agreement being able to be varied or cancelled by the parties to it. On registration very wide effect is given to agreements in it. Firstly, the rule relating to perpetuities does not apply, and secondly, all the conditions and covenants in it, whether positive or negative and whether touching the land or not, will be binding on the owner of the land for the time being as specially defined and on the service company and its successors.

The Act, then, gives great efficiency to the service-company type of arrangements which, if properly made use of, can now overcome many of the disadvantages latent in own-your-own flats.

### *Valuation of Land*

Whilst the Local Government Act makes valuations of properties compulsory for every municipality, it lays down no standards of qualifications for those making the valuations. Thus in the past, rates have varied very much from municipality to municipality. The Valuation of Land Act 1960 (No. 6653) affects the matter in two ways. First, it provides for the appointment of a Valuer-General, who has duties of collecting information and supervising councils, and second, it provides certain qualifications for valuers. The Valuer-General is required to collect such evidence as he thinks desirable to assist valuers,<sup>10</sup> and, if called on by a municipality, he is required to make the valuation himself. At the same time he is given powers to supervise valuations. He must be given notice that a valuation is to take place, and information must be submitted to him, and if he is not satisfied by any valuation this is reported to the Minister for Local Government, and the Governor-in-Council can order a new valuation to be made.

<sup>10</sup> Valuation of Land Act 1960 (No. 6653) s. 5.

Part II of the Act sets up a Valuers' Qualification Board,<sup>11</sup> which determines whether a valuer is able to undertake valuations for municipalities, and which is able to cancel or suspend the certificate of a valuer; there is appeal to a judge of the Supreme Court from any person aggrieved by the Board's decision.

Part III of the Act amends certain sections of the Local Government Act accordingly.<sup>12</sup> Valuation must, of course, be carried out by a valuer with the requisite certificate, but if no qualified valuer is available then some other person may be authorized to act. Section 255 of the Local Government Act is amended to require valuations to be made every three years, or every six years if the land is not subject to any rates for the Melbourne and Metropolitan Board of Works. At the same time, a sworn valuer under the Transfer of Land Act will no longer be appointed under the machinery of that Act, but such sworn valuers will be persons holding a certificate of qualification from the Valuers' Qualification Board.<sup>13</sup> However, apart from this last provision, the Act is generally concerned with making valuations for rates more accurate and less liable to vary from place to place.

#### *Allotments of Land*

Section 4 of the Sale of Allotments of Land Act 1958 has been widened to deal with new types of promises.<sup>14</sup>

First, the previous enactment is replaced by one extending to all sales of any interest in land. It is made an offence to make or publish any false representation or wilfully false promise in order to induce any person to buy land. Furthermore, it is an offence to promise that the seller or some person named by him will buy back the land at a profit to the buyer, or that some other land of the buyer will be bought, or that the seller will see that the buyer makes a profit on the land. Similarly it is an offence to make misleading or deceptive promises or to conceal material facts. Finally, the practice of salesmen of telling buyers that certain services will be provided in the near future is dealt with, and it is provided that any person who makes a statement that amenities or services normally provided by the State or by a State authority will be guilty of an offence unless he has been advised in writing by the requisite authority that such services will be provided. The penalties under this section are a fine of up to £250 or imprisonment of up to twelve months.

#### *Town and Country Planning*

Some doubt has been felt as to the power of the Minister under section 5 of the Town and Country Planning Act 1958 to require the

<sup>11</sup> *Ibid.* s. 9.      <sup>12</sup> *Ibid.* s. 14.      <sup>13</sup> *Ibid.* s. 16.

<sup>14</sup> Sale of Allotments of Land (Amendment) Act 1960 (No. 6685).

Town and Country Planning Board to prepare a scheme when a council is already preparing a scheme. The Minister's power is put beyond doubt by section 2 of the Town and Country Planning (Amendment) Act 1960 (No. 6637).

Prior to this Amending Act a right of appeal to the Minister was available by the refusal of the responsible authority to issue a permit or by the conditions attached to a permit. It is now provided, however, that persons who may be detrimentally affected by the grant of a permit can lodge an objection and have a right of appeal to the Minister. Furthermore, where the authority is of opinion that the grant of a permit may cover substantial detriment to third persons it can order notice to be given to such persons, who must then lodge their objection within fourteen days. Furthermore, these persons are notified if the permit is granted, so that they may exercise their right of appeal.

Finally, where an interim development order permits a certain use which is prohibited by a by-law there can be an appeal to the Minister, who may determine that such a by-law is to be of no effect to the extent that it conflicts with the development order.

#### *Landlord and Tenant*

The Landlord and Tenant (Further Amendment) Act 1960 (No. 6623) deals with the control of rents and evictions. Because there have been doubts whether some of the appointments of magistrates as Fair Rents Boards were valid, section 51 of the principal Act has been replaced by a new section. The Governor-in-Council may establish such Fair Rents Boards as he thinks fit within the metropolitan area, and any such Board is to have jurisdiction in respect of any part of that area. Each Board is to consist of a stipendiary magistrate sitting alone. Provision is made for areas not within the metropolitan area. There is also a provision retrospectively validating any acts of a stipendiary magistrate acting as a Fair Rent Board in so far as his capacity so to act is concerned.

A further amendment is carried out by section 3 of the amending Act, which makes a determination of a Board valid only from the date of the making of the determination. Previously such determinations could be retrospective as far as the date of application by parties.

Finally, it is made an offence by any knowingly false representation or by threats or intimidation or false promises to induce or attempt to induce any person to sign an agreement relating to a lease of any premises whether prescribed premises or not.

#### *Estate Agents*

Several important if unconnected amendments to the Estate Agents



Act 1958 are made by the Estate Agents (Amendment) Act 1960 (No. 6734).

Firstly, applicants for an estate agent's licence must give notice of their application in a daily newspaper.<sup>15</sup> In the past it was only necessary to publish notice at the court-house.

Secondly, several changes are made in section 34 of the principal Act, which concerns certain information which must be given to the purchaser. It is provided that where a person signs on behalf of another it will be sufficient to deliver the statement to the person who actually makes the bid.<sup>16</sup> Further, the description of the business or real estate required by section 34 need only be such that the real estate or business can be readily identified—it need not be an absolutely definite description.<sup>17</sup> Finally, in regard to section 34, non-compliance will not allow avoidance of the contract except in relation to misrepresentations as to finance or when the statement as to finance has not been complied with.<sup>18</sup>

Thirdly, it is enacted that an employee of an estate agent will be committing an offence if he takes part in a sale in which he is interested only indirectly.<sup>19</sup> This equates the employee's liability with that of the estate agent himself, who cannot be directly or indirectly interested.

Finally, there is a provision that trust accounts are to be kept in a separate current account in a bank, and shall be kept separately from any money of the agent.

### *Land Act*

The Land (Public Authorities) Act (No. 6612) provides that public authorities which are corporate bodies may transfer land to another authority or surrender it to the Crown without the necessity of proving special legislation, if they have the consent of the Governor-in-Council.

## **Local Government**

### *Pensions*

The Local Authorities Superannuation (Amendment) Act (No. 6692) enables the Local Authorities Superannuation Board to effect insurance directly with municipal employees rather than through insurance companies. It enacts that no further contracts will be taken out with insurance companies, and that as far as existing policies are concerned, the Board will have to determine whether it is to be continued, surrendered or converted into a paid-up policy. Section 8 of the Act increases the size of the Board in view of this change in its functions, and gives greater representation to the employers, and at the same time adds a representative of the Treasurer.

<sup>15</sup> Estate Agent (Amendment) Act 1960 (No. 6734) s. 2.

<sup>16</sup> *Ibid.* s. 3 (a).

<sup>17</sup> *Ibid.* s. 3 (b).

<sup>18</sup> *Ibid.* ss. 3 (c), (d).

<sup>19</sup> *Ibid.* s. 4.

### *Disqualification*

An important, and in the past troublesome, part of Local Government law is that relating to the disqualification of councillors and officers. The matter was referred to the Parliamentary Statute Law Revision Committee in 1959, and its decisions have been largely put into effect by the Local Government (Disqualifications) Act 1960 (No. 6693). Section 53 of the principal Act has been replaced, and special exemptions from disqualification have been adopted, for example, where in a sale to a councillor similar sales are open to other persons not councillors, and in a *bona fide* retail sale to the councillor not in a written contract and not coming to more than £50 *per annum*.<sup>20</sup> Similar changes have been made in respect of council officers, but the exemption from disqualification relating to retail sales under £50 has not been applied to them.<sup>21</sup> However, this same section provides that offences by officers will not lead to disqualification, though the maximum fine has been raised to £200. A new section 181 is similarly substituted, this section prohibiting councillors from discussing or voting in matters in which they have a pecuniary interest. For the first time there is a specific exception as to matters of a general application.<sup>22</sup> Maximum penalties are here increased to £100.

The burden being on a councillor, whose position is challenged, to prove he is not disqualified was criticized by the High Court in *Allen v. Tobias*,<sup>23</sup> and the matter is dealt with in detail by section 3 (2) of the present Act. Section 4 inserts a new section, section 157A, in the Local Government Act, giving the Court power to award costs against a municipality rather than against a councillor or a council officer.

### *Scaffolding*

The government and the community at large have an interest in the maintenance of safe working conditions, both for the welfare of employees and for increased industrial efficiency. The responsibility for the administration of scaffolding regulations is generally with municipal councils. Under the Local Government (Scaffolding Inspection) Act 1960 (No. 6723) a Scaffolding Regulation Committee is to be set up, which has as its main function the preparation of draft scaffolding regulations. A Supervisor of Scaffolding Inspection is also to be appointed, who will act as chairman of the Committee, inspect and report as to the manner in which councils are administering the regulations, and implement certain directions of the Minister. Pro-

<sup>20</sup> Local Government (Disqualification) Act 1960 (No. 6693) s. 2, inserting ss. 53 in the main Act. Also the new provisions in s. 2, inserting ss. 53 (2), (f), (g), (j), (k), (m) and (n) in the main Act.

<sup>21</sup> *Ibid.* s. 5, substituting a new s. 166 in the Local Government Act 1958.

<sup>22</sup> *Ibid.* s. 6, inserting s. 181 (1) (a) and (b) in the main Act; see also the new provisions in s. 6, inserting ss. 181 (1) (e), (f) and (n) in the main Act.

<sup>23</sup> (1958) 32 A.L.J.R. 32.

vision is made for the administration of regulations in any case where the council defaults. The appointment of inspectors is in the hands of local councils and inspectors may direct the cessation of work, there being a fine of up to £200 for non-compliance.

### Companies

#### *Fees*

The Companies (Fees) Act 1960 (No. 6627) increases some of the fees payable under the Companies Act 1958. These alterations resulted from discussions between the representatives of the States and the Commonwealth, when it was agreed that fees be increased. The Act provides firstly for certain amendments to sections 9 and 11 of the principal Act, which will allow the Governor-in-Council the power to fix fees of up to £10 instead of £2 as previously.

Second, a new schedule is substituted for the second schedule of the principal Act, regarding fees to be paid to the Registrar. For the registration of companies whose nominal capital does not exceed £5,000, the fee is raised from £15 to £20. For every further £1,000 capital up to £100,000 the increase is £1; for every further £1,000 up to £500,000, 10/-; for every further £1,000, 5/-.<sup>24</sup> At the same time fees are set out for companies not having a share capital,<sup>25</sup> and for any other companies, societies or associations.<sup>26</sup>

#### *Vending Machines*

A further amendment to the Companies Act 1958 was prompted by the recent appearance of vending machine schemes.<sup>27</sup> These schemes had been designed so that they would not grant rights within the very wide definition of 'interests' in section 63 of that Act; this section provides that before a company can issue an invitation to the public to subscribe for any interest a statement must be issued which will be deemed to be a prospectus, so that it must provide detailed information. But the definition of 'interest', though wide, was not wide enough. Vending machine companies would sell a machine to a subscriber, and would instal and maintain it as his agent. The new definition of 'interest' is this: (a) a right to participate in profits or assets, (b) an expectation of profits from the efforts of a promoter or third party, or (c) rights in a contract which in substance involves the investment of money, except debentures of a corporation, or a life assurance or partnership.

The matters to be set out in the statement to be deemed a prospectus are those contained in the seventh schedule of the Companies Act, or where the interest is other than in the marketable securities of

<sup>24</sup> Companies (Fees) Act 1960 (No. 6627) s. 3, inserting the second schedule in the Companies Act 1958.

<sup>25</sup> *Ibid.* s. 3, second schedule.

<sup>26</sup> *Ibid.* s. 3, second schedule.

<sup>27</sup> Companies Act 1960 (No. 6620).

companies there must also be set out such matters specified in the fifth schedule as the Registrar requires. This extension of the class of information required was prompted by difficulties which had arisen in the case of mixed unit trusts.

The Companies Act provision dealing with share banking, section 259, is also extended. It was not clear how far that section extended, but to ensure that cases contemplated by this amending Act are included, the definition of 'share' is extended by adding to section 259 (8)—'and includes interests to which the provisions of section 63 of this Act apply', that is, 'share' under section 259 is to include all 'interests' as defined above.

### Miscellaneous

#### *Business Names*

For some time there have been restrictions on public companies and private companies in borrowing money from the public. In the case of private companies it is illegal to borrow money from the public. Very similar problems arise in the case of firms. It is open to a firm to adopt almost any name it wishes, including impressive and dignified words, such as 'fidelity', 'guarantee', or 'assurance', which give the impression of great security. Such firms have in the past put advertisements in newspapers, inviting the public to lend money at high rates of interest, and this has been quite lawful, although the possible dangers are similar to those which prompted restrictions on private companies. The Business Names (Public Borrowing) Act 1960 (No. 6706) enacts that no person shall publish or authorize invitations to the public to deposit money with certain firms or persons. These firms or persons are those who are required to be registered under the Business Names Act 1958. They include firms with names not being the true surnames of all partners or corporations which are partners, and individuals or corporations which have changed their name.<sup>28</sup> In effect, this covers all firms or persons whose name does not set out the full names of the individual members.

It is to be noted that the prohibition applies only to advertisements made to the public. The Act does not prevent firms or persons affected from seeing privately others from whom they wish to borrow money.

### General

#### *Labour and Industry*

The determinations of Wages Boards under the Labour and Industry Act 1958 are of the effect of common rules applying to all employers and employees in the trades to which they relate in Victoria, and they have an indirect effect upon a wide range of people. The Boards

<sup>28</sup> Companies Act 1960 (No. 6620).

deliberate in private, and the public know nothing until a determination is made. There is a right of appeal to the Industrial Appeals Court. The present Act enables then, not merely parties to the dispute, but the Minister to intervene in the public interest in any hearing of an appeal against a Wages Board determination,<sup>29</sup> and either on his own discretion or on representations of any body interested to refer to the Industrial Appeals Court any determination of a Wages Board.<sup>30</sup> If the Court gives leave such interested bodies may be represented before it by counsel. The Court may then treat the reference as an appeal in which the Minister has intervened.

The Act also increases penalties which have not been revised for some time, and which are consequently obsolete.<sup>31</sup> Section 5 increases penalties for not providing safe working provisions, and penalties for the breach of a determination of a Wages Board are increased to a maximum of £50, £100, and £150 for first, second and third offences, penalties throughout the Act generally being similarly increased to a maximum of £25, £100, and £150. The new maximum penalty able to be imposed under regulations under the main Act is £100.

### *Licensing Hours*

The Licensing (Amendment) Act 1960 (No. 6659) carries out certain recommendations by Judge Fraser, as well as dealing with some minor matters. No extension of hotel hours was contemplated, as the policy of the government is to make no change without the support of a majority in a referendum. Judge Fraser's recommendation for differential license fees was not put into effect as there was the possibility that the decision of the High Court in the *Dennis Hotels* case that such fees were validly imposed, would be overruled on appeal by the Privy Council.<sup>32</sup> The amending Act introduces a restaurant licence,<sup>33</sup> which may be granted on the same basis as hotel licences; a licensed restaurant is permitted to serve liquor except beer or cider with meals until 10 *p.m.* or later if a special permit is granted. The holder of an Australian wine licence, granted before the Act, may apply for a restaurant licence and, if successful, may sell beer and cider until 6 *p.m.*, as well as possessing the ordinary powers under a restaurant licence. Where a meal is served with liquor, a period of

<sup>29</sup> Labour and Industry (Amendment) Act 1960 (No. 6631), s. 2 (1).

<sup>30</sup> *Ibid.* s. 3 (1).

<sup>31</sup> *Ibid.* s. 5.

<sup>32</sup> (1960) 33 A.L.J.R. 470; [1960] Argus L.R. 129; (1960) 2 *M.U.L.R.* 543. The plaintiff company applied to the Privy Council for leave to appeal. Leave was granted with the Privy Council reserving the question whether it had jurisdiction to entertain the appeal. On the hearing of the appeal the Privy Council decided that it had no jurisdiction to hear the appeal pursuant to s. 74 of the Commonwealth of Australia Constitution, as no certificate had been granted by the High Court, and as the appeal involved an *inter se* question.

<sup>33</sup> Licensing (Amendment) Act 1960 (No. 6659) ss. 2, 4.

thirty minutes is allowed by the Act after the time when serving of liquor must end so that the wine may be consumed.

Under the Act the Licensing Court may issue a supper permit to hotel licensees who apply.<sup>34</sup> This permit will apply from 10.30 *p.m.* to 11.30 *p.m.*, with half an hour for consumption.

In regard to clubs, it is provided that new clubs may be issued with a licence subject to a condition that all liquor be consumed on the premises; this condition is for the protection of hotels.<sup>35</sup> On the view the High Court had taken, clubs could only provide liquor on Sundays if the member has a meal during the permitted hours for drinking with meals. Some clubs are, by the new Act, allowed to serve liquor to members and their visitors during certain hours on Sundays.<sup>36</sup>

Finally, the Act deals with certain anomalies; for instance, a licensed grocer can now sell beer in cans as well as bottles.<sup>37</sup>

Recently the High Court held that temporary licence fees under the Licensing Act 1958 were invalidly imposed.<sup>38</sup> So the Licensing (Fees) Act 1960 (No. 6616) substitutes a new section 19 (1) (b) of the principal Act. It provides that a fixed fee is to be paid in respect of each day on which a licence is required. Consequently it is neither a tax on the production or manufacture of goods, nor is it in respect of the quantity or value of goods.

#### *Motor Car Act*

Various amendments are made to the Motor Car Act 1958 by the Motor Car (Amendment) Act 1960 (No. 6628). Penalties are increased for driving unregistered motor vehicles,<sup>39</sup> or for driving without a licence.<sup>40</sup> A fee can be charged for testing applicants for a driving licence.<sup>41</sup> Noteworthy amongst other provisions of the Act is section 14, which makes it an offence to tamper or interfere with another person's motor vehicle without just cause. This is aimed at would-be thieves who are caught in the act of breaking open a car, as it is often very difficult under these circumstances to prove illegal using.

The Motor Car Act 1958 was further amended by the Motor Car (Driving) Act 1960 (No. 6658). Drunken drivers have always been a problem, and the present Act is an attempt, not to make a new offence, but to prevent them from driving. Where a policeman feels on reasonable grounds that a driver is incapable of having proper control of a car, he may forbid him to drive, ask him for the ignition key, or may himself render the car immobile. If the driver refuses to comply he is guilty of an offence.

<sup>34</sup> *Ibid.* s. 8.

<sup>35</sup> *Ibid.* s. 14.

<sup>36</sup> *Ibid.* s. 16.

<sup>37</sup> *Ibid.* s. 5.

<sup>38</sup> *Dennis Hotels Pty Ltd v. State of Victoria* (1960) 33 A.L.J.R. 470; [1960] *Argus* L.R. 129.

<sup>39</sup> Motor Car (Amendment) Act 1960 (No. 6628) s. 2.

<sup>40</sup> *Ibid.* s. 5.

<sup>41</sup> *Ibid.* s. 4.

The Motor Car (Third-Party Insurance) Act 1960 (No. 6650) enacts, *inter alia*, that instead of an insurer taking action under section 27 of the Motor Car Act 1958 he may disclose to the Commissioner of Police any information showing that a person is unfit to drive a motor car.

### *Water Act*

As the number of local authorities has increased in the last few years, the procedural instructions laid down by the Water Act 1958 have not kept pace with the need for fast and efficient administration, and the Water (Amendment) Act 1960 (No. 6728) is mainly concerned with this problem. For instance, section 8 overcomes a technical difficulty which prevents the transfer of waterworks from municipality to waterworks trust.

At the same time there is a provision saving a member of an authority from disqualification by reason only of certain retail contracts up to £50 with the authority.<sup>42</sup> Further important amendments were prompted by insufficient penalties to deter landowners from taking more water than they are entitled to. New penalties are up to £50 for the first offence, and £250 or three months imprisonment for subsequent offences.<sup>43</sup> Another respect in which water users had been injuring their neighbours was by building dams and structures that prevented water passing down stream; section 3 of the amending Act gives specific powers to the Commissioner to alter or remove structures that do not comply with conditions under which permission for construction was given.

### *Racing Act*

The purpose of the Racing (Totalizators Extension) Act 1960 (No. 6619) was to permit off-course bets to be made on racecourse totalizators at agencies throughout Victoria. Credit must be established

- (a) by lodgment of a sum, against which bets can be made, or,
- (b) by remitting money with the bet, personally or by letter or telegram.

The only information which can be posted at the agencies is the name and location of the event, and the names of all starters. The Totalizator Agency Board is to decide whether it will bet at a particular meeting.

Of the 12 *per cent* which can be deducted from investments on the totalizator 40 *per cent* will be paid to the treasury, and the rest will be applied by the Board for expenses or the establishing of agencies or certain payments to racing clubs.

<sup>42</sup> Water (Amendment) Act 1960 (No. 6728) s. 10.

<sup>43</sup> *Ibid.* s. 22.

*Fisheries*

The Fisheries (Crayfish) Act 1960 (No. 6683), which amends the Fisheries Act 1958, is concerned with the preservation of crayfish. A new section 50A is inserted to penalize those who catch soft shelled crayfish or crayfish carrying eggs, or deal in such crayfish.

*State Pensions*

Certain increases in superannuation pensions payable to retired State employees are authorized by the Superannuation (Addition to Pensions) Act 1960 (No. 6694). It increases the pensions of those receiving up to £7 *per* week by 12s. 6d. *per* week, but so as not to exceed £7. Widow's pensions are also increased. The Police Regulation (Pensions) Act 1960 (No. 6695) extends these provisions to former police officers, with the same restriction that the increased pension shall not exceed £7.

I. C. F. SPRY