

COMMENT

SUMMARY OF TASMANIAN LEGISLATION FOR 1962

During the year the Tasmanian Parliament passed in all 77 statutes, of which the Companies Act, No. 66, and the Local Government Act, No. 67, were the largest and most important. Few of the other statutes were of major importance, consisting mainly of amendments to existing legislation. Attention must be drawn, however, to the creation of a united Law Society for the island, by the Law Society Act, No. 27, the closing off of loopholes by new amendments to the Deceased Persons Estates Duties Act 1931, and the statutory recognition of stratum titles in this year's amendment to the Conveyancing and Law of Property Act 1884.

A summary of matters dealt with is set out below.

The Statutory Authorities (Municipal Appointments) Act, No. 1, amends the Metropolitan Transport Act 1954 and the Ambulance Act 1959 so that newly appointed members of the Metropolitan Transport Trust or of the Ambulance Commission respectively will not be disqualified from office in the municipal council which recommended their appointment. Section 5 provides that Aldermen of the Cities of Hobart and Launceston are not disqualified from the office of Lord Mayor or Aldermen by reason of their sitting on the Metropolitan Transport Trust, the Ambulance Commission or the Metropolitan Water Board. The legislation follows last year's controversy on this matter.

The Local Courts Act, No. 6, amends the Local Courts Act 1896. A newly added section 46A permits a defendant to join a third party to the action in appropriate circumstances. Section 48 has been amended to allow a defendant to pay moneys into court either with a denial of liability or in full satisfaction of the plaintiff's claims. Under the existing provision he could only do the latter.

The Parliamentary Salaries and Allowances Act, No. 10, repeals the Act of the same name of 1955. The Act makes a radical change in the present system of fixing Parliamentary salaries. Instead of fixing salaries by a special statute passed from time to time as required, the new statute provides for the creation of a Parliamentary Salaries Tribunal. This Tribunal will consist of two members to be appointed by the Governor, one of whom must hold or have held a judicial appointment, and the chairman of the Public Service Tribunal *ex officio*. The Tribunal will have the power to make, at intervals of not more than three years, determinations as to what should in its opinion be paid to Ministers of the Crown and to officers and members of Parliament. Such determinations shall, after publication in the Gazette, have effect as if it were enacted in the statute and by subsection 7 of section 5 shall not be revoked until it has

been in force at least three years. The Tribunal is also given power to make recommendations concerning the remuneration of members of Parliamentary committees and the pensions of members and former members.

The Acts Interpretation Act, No. 11, amends the Acts Interpretation Act 1931. A new section 21 (3) provides for the continuance in office for a further six months after the expiration of his term by any person who has been appointed to a statutory office or place for a fixed term and who has not been re-appointed or replaced by another person. An additional section 23A invests delegates with the discretionary powers with which their principal has been invested by statute, whilst sections 23B and 23C confer upon the Governor the power to make *interim* appointments to statutory bodies or alternatively enable a statutory body of more than two members to proceed despite the existence of a vacancy. A new section 29 makes very detailed provisions with respect to the reckoning of time. According to subsection 6 where any prescribed period does not exceed six days, Sundays and holidays shall not be included at all. Section 29A provides for the application of Commonwealth standards of weight and measures to Tasmanian statutes. A new section 30 (2) permits the service of notices by certified mail as well as registered mail.

The Auctioneers and Estate Agents Act, No. 14, amends the Auctioneers and Estate Agents Act 1959. Section 30 has been amended by abrogating the right to vary the statutory commission charges by agreement between agent and customer. The Act also alters the method of hearing applications for the grant or renewal of a licence. A new section 42 has been substituted dealing with fidelity bonds. The new section makes it clear that the insurer will be liable even if part of the transaction in respect of which a claim is made occurred before or after the period of the bond. It is notable that the Supreme Court gave to the existing provision an interpretation to a similar effect in *Re K. R. Wood & Co.*¹ Section 42 (4), however, now limits the liability of an insurer in respect of bonds for succeeding periods to an aggregate of ten thousand pounds.

The Licensing Act, No. 14, in amending the Licensing Act 1932 is intended to make the work of the police easier. Sections 11 and 12 impose a criminal liability upon the servants and agents of a licensee, if they do any act upon licensed premises, which if done by the licensee, would have constituted an offence under the Act.

The Mining Act, No. 17, amends the Mining Act 1929. Tasmania now falls into line with the mainland States in vesting in the Crown with retrospective effect and without compensation, all oil, helium and atomic substances (which includes uranium and thorium) found within the State. The territory of the State is defined as consisting of all lands (whether covered by the sea or not) lying to the southward of Wilson's Promontory in thirty-nine degrees and twelve minutes of south latitude and to

¹ Tasmanian Supreme Court, 9 August 1962, unreported.

the northward of the forty-fifth degree of south latitude, and between the one hundred and fortieth and one hundred and fiftieth degrees of longitude, together with Macquarie Island and three nautical miles around that island. An additional section 46A imposes upon the holder of an oil lease the duty to commence drilling within six months after the date of commencement of the lease. Furthermore, the lessee is under an obligation to drill each well to an oilbearing depth or to the satisfaction of the State authorities that the well is unsuccessful. Should oil be found, the lessee must continue to produce oil unless he satisfies the authorities that further production is not practicable. Contravention of these terms leads to forfeiture of the lease.

The Marriages Registration Act, No. 23, results from the passing of the Marriage Act 1961 (Cth.). It repeals the Marriage Act 1942. The Act then proceeds to make provision for the registration of marriages celebrated in Tasmania under the provisions of the Federal Act.

The Shops Act, No. 25, amends the Shops Act 1925 by providing for compulsory holidays and defining the hours when petrol stations may remain open. Also, the Shops Act, No. 56, makes minor amendments to the Shops Act 1925, particularly in relation to newspaper vendors. Consequential amendments to the Sunday Observance Act 1908 were made by Act No. 60. It is now lawful to sell newspapers and bread on Sundays.

The Law Society Act, No. 27, provides for the repeal of the Tasmanian Law Societies Act 1887 and for the incorporation of the Northern and Southern Law Society in a body corporate by the name of 'The Law Society of Tasmania' with perpetual succession and common seal. Membership is compulsory for all practising members of the profession, including certain State and Federal public servants, whilst provision is made for the admission of other lawyers as associate members. Included in the Act are provisions as to the Society's powers, including its power to call general meetings, to institute proceedings and make by-laws. The Act also provides for the creation of a disciplinary committee of five members with power to strike practitioners off the roll, to suspend them from practice or to impose fines not exceeding one thousand pounds. Section 19 provides for an appeal to the Supreme Court or in the alternative, a hearing *de novo* by the Supreme Court. In the latter case the original order shall cease to operate unless confirmed by the Court. The practitioner, however, will be suspended from practice pending the hearing.

The first by-laws of the Society, which set out its Constitution, are contained in a Schedule to the Act.

The Legal Assistance Act, No. 28, replaces the Act of the same name of 1954. Its provisions are mainly consequential upon the formation of the new Law Society and it substantially re-enacts the earlier scheme.

The Legal Practitioners Act, No. 29, amends the Legal Practitioners Act 1959 in certain important aspects. It provides for the taking out of annual practising certificates by firms instead of individuals as before, except in the case of an individual practising on his own account. Part VI

of the principal Act is replaced by a new Part VI which provides for the lodging by the firm or individual, as the case may be, of a fidelity bond in the form prescribed by the Act as a precondition to the issue of a practising certificate. The existing Solicitors' Guarantee Fund is wound up.

Since the Legal Practitioners Act 1959 envisages the possibility of persons practising as barristers only in Tasmania, consequential amendments are made to Part VII which deals with illegal practice.

The Business Names Act, No. 44, replaces the Registration of Firms Act 1899. It provides for the appointment of a register of business names and the registration of the names used by businesses in Tasmania as well as particulars of the nature of their business, the names of the partners or proprietors and the place of business. The Act also imposes the obligation to renew registrations every three years and empowers the Registrar to cancel registrations in certain circumstances. In the case of absent proprietors section 8 compels the registration of a resident agent in the State. Such a person is to act as the agent of the proprietor for the acceptance of notices under the Act and of any process. Of particular interest is section 26 of the Act which prohibits any person from using or referring to a business name that is registered or required to be registered under the Act, in any invitation to the public to make deposits or loans of money.

The Milk Act, No. 46, amends the Milk Act 1947 in providing for the reconstitution of the Milk Board in order to include an elected representative of milk vendors.

The Building Societies Act, No. 50, amends the Building Societies Act 1876. It extends the powers of a Building Society to invest its funds, whether surplus or not, in ordinary trustee investments under certain conditions, and to make personal loans to shareholders. A terminating society is authorised to invest surplus funds in trustee investments.

The Deceased Persons' Estates Duties Act, No. 62, in amending the principal Act of 1931 is designed to tighten the net and to prevent the avoidance of death duty by the manipulation of trusts, companies or informal gifts. To that end the definition of the words 'disposition of property', 'gift *inter vivos*' and 'settlement' is extended in order to include transactions not in writing, and the allotment of shares, the creation and abandonment of trusts and all other interests in property or any act or omission on the part of the deceased resulting in the enrichment of another person at the expense of the property of the deceased.

The tightening up of the definition section of the Act has necessitated a revision of section 5 of the principal Act, which defines the estate of a deceased person for the purposes of the assessment of death duty. However, a new subsection 5 is added bringing within the definition of 'gift *inter vivos*' the issue of shares and debentures not for full consideration by a company controlled by the deceased. Subsection 5 (b) provides that a covenant to pay shall not be sufficient consideration, except to the extent that the covenant was performed at the date of death. A new

subsection 7 substitutes assets into which the original gift can be traced at the date of death for the actual gift, unless it was a gift of money in which case the actual amount is to be included in the estate. Subsection 12 excludes gifts to any one donee where the aggregate value was less than £100.

Another concession made is contained in a new section 7 (1). According to this section the deceased's interest in the principal matrimonial home provided it was occupied by him and his spouse as such immediately prior to his death and provided it was left to his spouse or his child, is exempt up to £5,000. A similar exemption is made in respect of the furniture of such home up to a value of £1,000. The exemption for gifts to religious bodies is extended to the missionary activities of such bodies outside Tasmania. On the other hand the existing exemption in respect of legal charges and trustees' commissions has been abolished.

A new section 16A confers upon the Commissioner wide powers of valuing shares and debentures, especially in the case of proprietary or unlisted public companies. The Commissioner is also authorised to disregard the variation of any shares or debentures so as to decrease their value where such a variation could have been prevented by the deceased.

Finally, an additional section 31A gives the Commissioner a wider degree of control by prohibiting registration of transfer of title to land, shares, debentures, the payment out of moneys and the delivery of any property in safe deposit except on the production of a certificate that duty has been paid or by the leave of the Commissioner. Furthermore, by section 31A the legal personal representative must notify all persons concerned in the registration, payment or delivery as above within two months of the deceased's death.

The Workers' Compensation Act, No. 63, amends the First Schedule to Workers' Compensation Act 1927 so as to provide for new rules in calculating compensation.

The Companies Act, No. 66, was passed in order to bring Tasmania into line with the generally uniform provisions on companies now operative throughout the Commonwealth. It differs little from the general scheme.

The Local Government Act, No. 67, is one of the major legislative achievements of the past year. It both consolidates and reforms the existing statute law on the subject. It replaces not only the Local Government Act 1906 but incorporates a host of matters formerly dealt with in separate Cemeteries, Impounding, Dog, Town and Country Planning, Building and Municipal Loans Acts. Unlike its predecessor the new Act applies to the cities of Hobart and Launceston except where otherwise indicated.

It makes several innovations of a major character. One of the most important of these is perhaps the creation of a Municipal Commission with power to inquire into and report to the Governor on questions affecting the subdivision of the State into municipalities. Its report must be obtained before the Governor can exercise any of his powers in respect

of the creation, extinction of municipalities or cities or the alteration of their boundaries.

Other features of the legislation are: the possibility of creating County Councils consisting of two or more municipalities which may take over all or part of the functions of such municipalities; Division III of Part I allows a corporation with a population of not less than twenty thousand to petition for incorporation as a city. In default of a petition by the corporation the inhabitants of such a town can compel the corporation to hold a poll on the issue; Division IV of Part XVI gives municipal councils power to provide for the civil defence of the population in case of war; Division III of that Part authorises councils to remove burial grounds on certain conditions, and finally Division XXI provides for municipal slum clearance schemes. In the last mentioned case a municipal council can not only acquire the slum properties concerned by negotiation or resumption but has the choice of doing the development itself or have it carried out by private enterprise.

Provisions of lesser importance include: section 144 which prescribes a procedure for the dismissal of the executive officers of the municipality; section 177 which extends the authority of councils seawards; section 178 which permits municipal organisations to be invested with powers and functions under the defence power of the Commonwealth; section 200 which gives councils a limited power to control traffic, including its speed, within the municipality; section 226 which provides for the indemnification out of municipal funds of any council officer acting in good faith in the course of his duties; section 253 providing for judicial review of the validity of municipal rates; section 695 which as a concomitant of the extension of the town planning powers of a municipality, provides for the issue of a certificate by the corporation to interested persons as to the restrictions existing with regard to a given piece of land. Such a certificate, however, will not create an estoppel but will, if false, give rise to an action for deceit or negligent misrepresentation. Finally, sections 899, 900 and 901 seek to settle the ultimate liability for the cost of municipal charges and notices as between owner and occupier and several owners.

The Act also has its antiquarian aspects. Section 332 transfers the duty to repair roads existing at common law from the inhabitants of a parish to the local municipality. This will render a municipality liable to prosecution on indictment in case of failure to repair. Section 473 (6) provides that restrictions on the user of land imposed by a municipality and subdivision shall be enforceable by the corporation as if it were lord of all other lands in the municipality and the tenants in chief were natural persons holding of the corporation for life. Section 692 allows a corporation to acquire commons for pasture (and, of course, recreational purposes as well). Section 495 provides for the descent of burial plots held in fee simple to the heir-at-law according to the common law in case of intestacy.

The Local Government (Consequential Amendments) Act, No. 68, makes amendments necessitated by the Local Government Act 1962 to a number of statutes, including the Acts Interpretation Act 1931, the Audit Act 1918, the Crown Lands Act 1935, and the Sewers and Drains Act 1954.

The Statutory Authorities Act, No. 69, repeals the Statutory Authorities' Borrowing Act 1929 and the Statutory Authorities' Administration Act 1937. Substantially the Act reproduces the existing legislation except in so far as it has been incorporated into the Local Government Act 1962.

The Law of Animals Act, No. 70, serves to consolidate several enactments relating to trespass by animals. It substantially repeats earlier legislation relating to distress damage feasant and dogs except in so far as these provisions have been incorporated into the Local Government Act 1962.

The Police Offences Act, No. 71, amends the Police Offences Act 1935, in relation to various kinds of public annoyance and includes penalties for having dangerous animals (particularly dogs) at large unless they are under the immediate custody of some competent person. Section 4 adds section 15A to the principal Act, providing for police offences in towns, including unlawful blasting, damaging streets and interfering with public works, whilst section 15A provides for police offences on highways. The Commissioner is empowered to prohibit or regulate the holding of any public entertainment which may corrupt public morality or which is likely to cause a breach of the peace. (s. 10).

The Conveyancing and Law of Property Act, No. 72, amends the Conveyancing and Law of Property Act 1884. Section 2 provides for the revival of easements and restrictions, in the absence of express provision to the contrary, upon disunity of seisin of parcels of land which were formerly separate but have since become merged. Section 3 makes the attornment of the lessee unnecessary where there is a conveyance of a reversion in the land expectant on the determination of the lease. This attornment will also be unnecessary in the creation or conveyance of a rent charge to issue or issuing out of the land. By section 4 the benefit of a covenant relative to land will extend to the successors of title of the covenantee, which term includes the future owners and occupiers of the land benefited, although they are not expressly mentioned in the covenant. Similar provisions relate to the burden of the covenant.

By far the most important amendments are those contained in sections 5 and 6 of the Act which provide for the conveyance of flats and parts of buildings. The Act provides for two methods in which this can be done. Section 75A provides for the conveyance of an estate in a chamber in a building. On such a conveyance certain mutual easements and covenants shall be implied for the benefit of the owner of the chamber and the owners of the rest of the building respectively. Section 75B confers wide powers upon the Supreme Court as a court of equity in the event of destruction of upper chambers. Section 75A makes similar provisions

in case of dispute over the repair or rebuilding of buildings containing severally owned chambers. Section 75B (5) provides for an accrual to the owner of the surface of the title to chambers which have remained unoccupied for twelve years.

The alternative method consists of the creation of stratum titles in accordance with a new Part XI A to the Act. Here the Tasmanian legislation follows largely the model of the Conveyancing (Strata Titles) Act 1961 (N.S.W.). Unlike the New South Wales scheme, however, the Tasmanian scheme is applicable to land not under the Real Property Act 1862 provided it is either wholly under the Act or wholly without it. Also, unlike the New South Wales Act, it extends to the subdivision of one-storey buildings or the division of a building from the soil lying around and under it. Finally, the new Part makes it possible to bring previously divided buildings under the provisions of this Part.

Section 90D confers upon the Recorder of Titles the power in the first instance to order the removal or modification of restrictions upon the user of land in certain specified circumstances. In some cases he may order the payment of compensation. The Recorder will also have power to interpret the legal effect and validity of any restriction. An appeal lies to the Supreme Court or in the alternative proceedings before the Recorder of Titles may be removed into the Supreme Court.

Section 90E provides that insurance money from a burnt building may and shall on the request of a person interested, be expended on its restoration.

The Real Property Act, No. 73, amends the Real Property Acts of 1862, 1863 and 1886. Section 4 provides for the grant of easements in memoranda of mortgage as encumbrance, while section 5 authorises the Recorder of Titles to discharge covenants, easements and other restrictions on freehold land on his own motion, unless the person claiming its advantage can show good cause. An appeal lies to the Supreme Court from his decision. Sections 8 and 9 provide for simpler forms of covenant and also for the form of a discharge of such covenants.

The Town Building Act, No. 74, is substantially concerned with the building of party structures on a common boundary. It regulates the mutual rights of the owners of adjoining lands respecting the erection of party walls, the settlement of disputes by an Arbitrator, the power of an adjoining owner building a party wall to enter the premises of his neighbour and the recovery of expenses in respect of party structures.

The Public Health Act, No. 75, is a consolidation Act replacing the Public Health Act 1935 and the Food and Drugs Act 1910. It adds new provisions dealing with places of assembly and packed meat and frozen food.

The Cinema Act, No. 76, provides for the registration of cinemas with the Cinema Board and the regulation of the use of projectors and similar apparatus.

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