REVIEW OF LEGISLATION, 1947.
(Western Australia.)

Introductory.

The election of March, 1947, brought into office a coalition government drawn from the ranks of the Liberal Party and the Country and Democratic League. [1] It displaced a Labour administration which had occupied the Treasury benches since March, 1933. At no time during that period had the Labour majority in the Legislative Assembly included any lawyers; among the few government supporters in the Legislative Council was one solitary member of the legal profession. In consequence there had been no Attorney-General, but only a lay Minister of Justice, for fourteen years. The parties which formed the new government not only contained several practising lawyers but selected four of them for ministerial office. One became Attorney-General and was responsible for the introduction of a number of constitutional and other measures, some of which, however, foundered on unexpected opposition from the Upper House.

I. CONSTITUTIONAL LAW.

Constitution Acts Amendment Act (No. 1).

This measure was not of great significance. When the number of ministers was increased from six to eight in 1927, [2] by an amendment of the Constitution Acts Amendment Act 1899, the draftsman overlooked the fact that the latter Act contained two sections [3] which referred to the number of ministers as six. One section only was then amended by the substitution of "eight" for "six"; the other section was at long last brought into conformity by the Act of 1947 and given a retrospective operation.

Re-election of Ministers.

Of greater importance was the Constitution Acts Amendment (Re-election of Ministers) Act, No. 4. Since the grant of respon-

[1] This party, whose members are drawn exclusively from non-metropolitan constituencies, had been the larger of the two Opposition groups in the previous Parliament, and its leader the official Leader of the Opposition; but its Liberal associates gained more seats at the election. The Liberal leader is now Premier and Treasurer, with the leader of the Country and Democratic League as Deputy Premier and Minister of Education, Local Government, and Industrial Development.

[2] Constitution Act Amendment Act, No. 25 of 1927.

[3] Sections 37 and 43 of 63 Vict., No. 19.

sible government in 1890 [4] it had been necessary for a member, on accepting ministerial office, to vacate his seat and submit himself for re-election. But for many years it has been a convention of the constitution that such by-elections should not be contested; this Act makes unnecessary what had long been matter of form only. Western Australia is the last of the States to abolish the requirement of re-election.

Payment of Members.

Act No. 52—Acts Amendment (Allowances and Salaries Adjustment) Act—provides for the payment of increased salaries to ministers, members, the President of the Legislative Council and the Speaker of the Legislative Assembly, and the Chairman of Committees of both Houses. Payment of members commenced in 1900 [5] with a modest allowance of £200 per annum; payment of ministers had accompanied the grant of responsible government, and in 1900 amounted to £6,200 divisible among six office-holders. [6] It was not until 1911, [7] when the member's allowance was raised to £300, that recognition was given to the greater responsibilities of certain members; the President and Speaker were to receive £700 per annum each, and the two Chairmen of Committees £500 each. In 1925 [8] salaries reached what was to be the maximum until 1944, members being then paid £600; but by an oversight the marginal allowances to the various officers had fallen by £100 in 1919 (when the salaries of all other members were raised) [9] and were not restored until 1927. [10] In 1930 all these salaries were reduced by 10%, and in the following year by 20%; it was not until late in 1935 that the full salaries were again paid. [11] In 1927, when the number of ministers was increased to eight, the amount provided for their remuneration was raised to £8,200; [12] but this too was subject to substantial reduction during the period 1930-1935. In 1944 provision was made [13] to add to all parliamentary salaries the cost-of-living allowance (£75) which had been granted to a large number of civil servants since 1936.

The new Act provides a "basic allowance" to all members of £960 per annum; an additional sum of £50 is payable to every

[4] By 53 & 54 Vict., c. 26.
[5] Payment of Members Act, No. 32 of 1900.
[6] Constitution Acts Amendment Act 1899, 63 Vict. No. 19, sec. 45 and Sch. IV.
[7] Parliamentary Allowances Act, No. 33 of 1911.
[8] Parliamentary Allowances Amendment Act, No. 32 of 1925.
[9] Parliamentary Allowances Amendment Act, No. 63 of 1919.
[10] Parliamentary Allowances Amendment Act, No. 28 of 1927.
[11] Parliamentary Allowances Amendment Act, No. 6 of 1930; Financial Emergency Act, No. 20 of 1931; Financial Emergency Act Continuance Act, No. 27 of 1932; Financial Emergency Act, No. 1 of 1934; Financial Emergency Act Amendment Act, No. 26 of 1934; and Financial Emergency Act Amendment Act, No. 19 of 1935.
[12] Constitution Act Amendment Act, No. 25 of 1927.
[13] Parliamentary Allowances Amendment Act, No. 34 of 1944. This Act was repealed by Sec. 5 (7) of the 1947 Act.

member any part of whose constituency is more than fifty miles from Parliament House, Perth. The allowances of President and Speaker, and of the two Chairmen of Committees, are respectively £400 and £200 greater. The Leader of the Opposition in the Legislative Assembly, whose position had been recognised since 1911 [14] by an additional allowance of £200, now receives a margin of £500. The number of Ministers is unchanged, but the amount divisible among them is raised to £10,250.

Judicial Salaries.

The same Act increases the salaries of the Supreme Court judges by £300 per annum; the allowance for the Chief Justice is now £2,600, and for each of three puisne judges, £2,300. But the office of third puisne judge became vacant in 1939 and has not since been filled. The present government has not made public any views it may hold as to the need for an appointment; the occasional diversion of a Supreme Court judge to a Royal Commission, under this administration and its predecessor, has always and necessarily been followed by the appointment of a temporary Commissioner of the Supreme Court. [15]

Royal Style and Titles.

An Act (No. 38) of this name recognises the change in the royal style and titles consequent upon the passing of the Indian Independence Act 1947 [16] and provides for the elimination from all official documents of the words "Emperor of India" or their Latin equivalent. It is regrettable that the error "Indiae Emperator" disfigures the official text. [17]

Proceedings by or against the government.

The common law petition of right was abolished in Western Australia by the Crown Suits Act 1898. [18] Under that Act the aggrieved subject could proceed by way of statutory petition (which served as both writ and statement of claim) filed in the Supreme

[14] Parliamentary Allowances Act, No. 33 of 1911, sec. 3.
[15] Under sec. 57 of the Supreme Court Act 1935 (repealing and re-enacting a provision first made by sec. 10 of the Criminal Code Amendment Act 1911), when the Court sits as the Court of Criminal Appeal it must consist of an uneven number of judges. The failure of two governments to fill the judicial vacancy has led to the anomaly of the trial judge always sitting on the appellate tribunal.
[16] 10 and 11 Geo. 6, c. 30.
[17] This may be the fault of a proof-reader at the Government Printing Office, not of the draftsman or of Parliament. If so, it is curious that Hansard twice makes the same mistake in its report of the Minister's second reading speech in the Assembly (Parliamentary Debates, vol. 120 (N.S.), pp. 1917, 1918), but corrects the error in its report of the second reading in the Upper House (ibid, p. 2010).
[18] 62 Vict., No. 9. See *The Crown v. Dalgety & Company, Limited,* (1944) 69 C.L.R. 18.

Court, but only in respect of an alleged breach of contract or of a tort alleged to have been committed in connection with a "public work" as defined by the Act; the petition had to be filed within twelve months of the alleged cause of action. Damages for personal injury arising out of a matter made justiciable by the Act were limited to £2,000. Proceedings in the name of "The Crown" could be commenced against the subject by writ of summons or other appropriate process, followed by information instead of statement of claim.

The Crown Suits Act 1947, No. 11, repeals the 1898 Act and provides by sec. 5 that "subject to this Act, the Crown may sue or be sued (as "The State of Western Australia") in any court of [19] otherwise competent jurisdiction in the same manner as a subject." Sec. 6 enacts a new period of limitation; (a) the plaintiff must give written notice to the Crown Solicitor within three months from the time when the cause of action first arose, and (b) he must issue his writ not less than three months after giving notice but not more than twelve months after the cause of action arose. The same section provides for an extension of these periods, (i) where the injured party was "unaware of the facts constituting the cause of action" and could not with reasonable diligence have discovered them within the three months, and (ii) where the injured party dies within the statutory periods. The Act does not affect any rights exerciseable by or against any statutory corporation or public instrumentality already conferred by any other Act.

The Attorney-General may intervene in any proceedings under the Act (i) if the constitutional rights of the Crown may be directly or indirectly affected, or (ii) if any question arises as to the constitutional validity of any Act of the State Parliament. Under the 1898 Act proceedings were stayed on the certificate of a law officer that the royal prerogative might be affected and could not be resumed without the approval of the Secretary of State.

As under the repealed Act, no execution will issue against the State; but the Registrar of the Supreme Court must give to the successful plaintiff a certificate of the amount of the judgment and costs. When this certificate is presented to the Governor he "shall" cause the amount to be paid out of the Consolidated Revenue Fund.

The Constituencies.

The Electoral Districts Act 1947, No. 51, makes important changes in the method of determining the fifty electoral districts into which the State is divided for the purpose of elections to the Legislative Assembly. From 1890 to 1929 the districts were defined by the Legislature itself, which was never wedded to the principle of

[19] The Act as officially printed reads, "in any court or otherwise competent jurisdiction." It is understood that this obvious misprint will be corrected by an Amending Bill this year.

districts with approximately equal numbers of electors; such is the distribution of population in the State that for many years the largest territorial electorates have contained the fewest electors. The North-West (i.e., all that area which lies north of the Tropic of Capricorn, together with a coastal belt extending approximately 300 miles inland and lying between Capricorn and 27½ degrees south latitude) has always received special consideration despite its meagre population. Under the Constitution Act 1890 [20] it was given six electorates out of a total of 30; it retained that number when the total was raised to 50 in 1899. [21] It lost two seats at the redistribution of 1904 [22] but succeeded in keeping the remainder until the present day although its population has been a steadily diminishing percentage of the whole.

In 1929 a new redistribution was made on the basis of the recommendations of an extra-parliamentary Electoral Commission set up under the Electoral Districts Act 1922. The State was divided into four areas: North-West, Metropolitan, Agricultural, and Mining and Pastoral, each being defined by reference to existing electoral districts. The North-West was to keep its four seats; as to the remainder, a system of weighting was adopted. Every three electors in the Metropolitan Area were to be counted as two, and every single elector in the Mining and Pastoral Area as two; the total number of electors in those areas, corrected as stated and added to the number of electors in the Agricultural Area, was then divided by 46 to obtain a quota. The corrected electoral population of each area was then divided by the quota; fractional remainders could be ignored or an additional seat allotted at the discretion of the Commissioners, provided that the total number of districts could not exceed 46. [23] The Commissioners' recommendations were to be submitted to Parliament.

Effect was given to that scheme by the Redistribution of Seats Act 1929. The North-West, with 1.6% of the electoral population, had four seats or 8% of the total; the Metropolitan Area with 51.3%, seventeen seats or 34%; the Agricultural Area with 39.5%, twenty-one seats or 42%; and the Mining and Pastoral Area with 7.4%, eight seats or 16%.

The 1947 Act reduces the number of North-West seats to three and alters the method of allocating the remainder. The Agricultural Area and the Mining and Pastoral Area are combined, and each elector therein counts as one; in the Metropolitan Area every two electors count as one. The 1922 procedure is then to be followed, except that where there are fractional remainders the Commissioners

[20] 53 and 54 Vict., c. 26, Schedule A.
[21] Constitution Acts Amendment Act, 63 Vict., No. 19.
[22] Redistribution of Seats Act, No. 21 of 1904.
[23] Although the Metropolitan Area showed the largest fractional remainder the Commissioners recommended, and Parliament approved, the allocation of an additional seat to each of the other two Areas.

have no discretion but must allot the extra seat to the Metropolitan Area. The preliminary recommendations of the Commissioners are to be published in the Government Gazette; their final recommendations [24] are to be published in the same way and will come into operation three months after publication and without reference to Parliament. In future, whenever the Legislative Assembly so resolves, or whenever the Chief Electoral Officer reports to the Minister that not less than five districts show a variation from the quota of not less than twenty per cent., Commissioners are again to be appointed to re-define the districts according to the statutory plan. Again their recommendations will come into force without recourse to Parliament.

The allocation of seats under the new Act will differ considerably from the 1929 distribution. [25] If the estimates of electoral population at the end of 1947 can be accepted as reliable, the North-West, which now has only a little more than 1% of that population, will have three seats or 6% of the whole; the Metropolitan Area with 57.7%, 20 seats or 40%; the combined Area outside Perth with 41.1%, 27 seats or 54% (of which 21 seats go to agricultural areas as defined in 1929 and 6 to the remainder). [26]

So far as concerns the Legislative Council, [27] little change is made. For this House there are ten Electoral Provinces, each returning three members one of whom retires in rotation every second year. The twenty Electoral Districts of the Metropolitan Area are grouped in three Provinces (Metropolitan, Metropolitan-Suburban, and West) for Legislative Council elections; the Act provides by sec. 9 for a revision of the boundaries of the first two so as to make the number of electors in each approximately the same. No change is to be made in the boundaries of the North Province (which contained the four North-West Districts, now

[24] i.e., their recommendations after they have considered any objections raised to the first (preliminary) plan of redistribution.

[25] The proposed redistribution was published in the Government Gazette (No. 33) of 2 August, 1948. Not a single electorate is left untouched! Previous forecasts as to what seats would be likely to go to each of the three major parties have had to be hastily revised; the revised forecasts may in turn need to be reconsidered if the Commissioners make any substantial changes before issuing their final report under sec. 10 of the Act.

[26] Although the Agricultural Area's share of the total electoral population has declined from 39.5% to 32% during the past 18 years, it will have the same number of seats under the new Act as under the old. The Metropolitan Area gains its three seats at the expense of the North-West and the old Mining and Pastoral Area.

[27] The Upper House is elected on a property franchise which, although not very high, excludes a fairly large number of Assembly electors. But enrolment is not compulsory; many qualified persons, it seems, do not apply to be enrolled because of the widespread lack of interest in Council elections. One of the qualifications is that of householder (at a minimum annual rental of £17); a Bill passed the Legislative Assembly in 1947 to extend the franchise to the householder's wife but was rejected by the Council: see Parliamentary Debates (W.A.), Vol. 120 (N.S.), 1530-1531, 1589-1597, 2620-2621, 2790-2805).

reduced to three); the remaining Provinces are to consist of "a number of complete and contiguous Electoral Districts as nearly as possible comprising the same area as at the date of the passing of this Act each Province contains." There is no "weighting" in the Legislative Council as in the Assembly; but the Agricultural and Mining Area is divided into six Provinces (18 members) as against three Provinces (9 members) for the more populous Metropolitan Area. The tenth Province (3 members) embraces the North-West with its enormous area but scanty population. [28]

Temporary transfer of certain powers to the Commonwealth.

A conference of Commonwealth and State representatives having agreed, in November, 1942, [29] that it would be desirable to vest the entire responsibility for post-war reconstruction in the Commonwealth, Western Australia passed in 1943 the Commonwealth Powers Act. [30] This Act referred certain enumerated powers to the Commonwealth, but only for five years after Australia should have ceased to be engaged in hostilities; the legislature reserved the right to repeal or amend the Act at an earlier date. On 5th February, 1946, another Act of the same title (which is described as No. 57 of 1945 and came into operation on 1st January, 1946) received the royal assent; it referred "price-control" to the Commonwealth until 31st December, 1947. The Commonwealth Powers Act 1943 Amendment Act [31] has removed the organised marketing of wheat from the list of matters referred to the Commonwealth; and the Commonwealth Powers Act 1945 Amendment Act [32] has accordingly provided that the activities of any locally established wheat-marketing board shall not be subject to the Commonwealth's price-fixing laws and regulations. A second Act of the same title [33] has transferred

[28] The Act may prove difficult to amend, particularly when a Labour administration is in office. It can only be amended (or repealed) by an absolute majority of both Houses by reason of sec. 73 of the Constitution Act 1889 (52 Vict., No. 23), a provision which is repeated in sec. 13 of the Electoral Districts Act 1947. Since it is highly improbable that the Labour Party can ever command a majority in the Legislative Council unless and until (a) the present franchise is greatly extended and (b) enrolment and voting are made compulsory—both of which seem unlikely—it is probable that substantial amendments could not be made under a Labour Government. But it does not follow that amendment will be any easier under a government of a different political complexion; see reference in note *27* to the Council's rejection of an important government Bill in the 1947 session.

[29] Sec. 51 (xxxvii) of the Commonwealth Constitution (63 & 64 Vict., c. 12) confers legislative powers with respect to—"Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law." For the history of this agreement see 33 Round Table 177-182, and K. H. Bailey. "The Constitution and its Problems," at pp. 102-103 of *Australia,* edited by C. Hartley Grattan (1947, University of California Press).

[30] No. 4 of 1943.

[31] No. 30 of 1947.

[32] No. 31 of 1947.

[33] Commonwealth Powers Act 1945 Amendment Act No. 2 (No. 73 of 1947).

control over milk prices to the Milk Board of Western Australia which had been reconstituted by the Milk Act 1946. A third Act [34] continued the reference of all other price-fixing powers until 31st December, 1948. [35]

II. JUDICIAL.

Stipendiary magistrates' courts.

The Stipendiary Magistrates Act 1930 was amended in 1947 [36] to provide that a Local Court magistrate, a Police or Resident magistrate, or a Coroner (but not a deputy coroner) may be appointed temporarily to assist a stipendiary magistrate in any Local Court, Court of Session, or magisterial district although the assistant does not enjoy the security of tenure guaranteed to stipendiary magistrates under the Principal Act. This amendment was thought necessary because sec. 9 of the Principal Act provides that "After the commencement of this Act no person shall be appointed a paid or salaried magistrate, or a police or resident magistrate, or a magistrate of a local court, except pursuant to the provisions of this Act."

Children's Courts.

The Child Welfare Act 1907-1941 [37] is repealed by an Act of the same name [38] which, inter alia, varies the jurisdiction exercisable by the "special magistrate" [39] appointed to each Children's Court. Under sec. 20 of the repealed Act each Court could exercise jurisdiction over offences "committed by or against children"; under sec. 20 of the new Act this branch of power is limited to "all offences alleged to have been committed by children." For the most part the new Act follows the pattern of the old, but removes the anomaly that under the repealed Act *a child of any age under eighteen could be charged* with being a destitute or neglected child. [40] The object of such a charge was not to punish

[34] Commonwealth Powers Act 1945-1947 Amendment (Continuance) Act (No. 81 of 1947).

[35] This reference of power has come to a premature end. The Federal Government, having signally failed to persuade the electors to approve a constitutional amendment to vest the price-fixing power permanently in the Commonwealth, decided to abandon the field to the States. At the time of writing (September, 1948) a Bill is before the legislature of Western Australia to establish a State system of price-control.

[36] Stipendiary Magistrates Act Amendment Act (No. 14 of 1947).

[37] No. 31 or 1907. The Act, as amended to the end of 1927, is reprinted in the Appendix to the 1927 Acts; it was subsequently amended by No. 12 or 1936 and No. 56 of 1941.

[38] No. 66 of 1947.

[39] Defined in the new Act (as in the repealed Act) as "A police magistrate, government resident, or resident magistrate, or a Justice of the Peace nominated by the Governor for the purposes of this Act" (see sec. 4 of both Acts).

[40] For the meaning of "destitute child" and "neglected child", see sec. 4 of the 1907-1941 Act; sec. 4 of the 1947 Act varies and adds to the definition of "neglected child" only.

the child but to enable the Court to commit him (or her) to the care of the Child Welfare Department, to send him to an approved institution, or to place him on probation under the supervision of the Department. Under sec. 30 of the new Act the child is not charged; but an application may be made to the Court for a declaration that the child is destitute or neglected, and the Court, if satisfied that the application ought to be approved, may so declare and then deal with the child as under the repealed Act.

III. LOCAL GOVERNMENT.

Municipalities.

The Municipal Corporations Act Amendment Act [41] amends the Principal Act [42] in several particulars, of which two only require notice. Municipalities are encouraged to add to the amenities of their district by the grant of a power to use loan money for the construction, maintenance, and management [43] of open-air or enclosed swimming pools (sec. 8). They are also authorised to borrow money from the State Housing Commission for the construction of roads required for the Commission's purposes, the loan to be repaid out of the rates levied on the land served by such roads (sec. 12).

Another amending Act [44] enables a municipal corporation to compel owners of dwelling houses (already built, or constructed after the passing of the Act) situate within one hundred yards of an electric main to equip all or any rooms (as the council may require) with appropriate fittings so that electricity can be supplied to the occupants. But the council cannot act until so requested by the occupant, and has a discretion; if it decides to exercise its power, it must give the owner three months in which to comply.

Road Districts.

The Road Districts Act Amendment Act [45] amends the Principal Act [46] by giving to road districts [47] the same power to borrow money from the State Housing Commission for road construction as is conferred upon municipalities. The amending Act also makes

[41] No. 86 of 1947.
[42] The Municipal Corporations Act 1906-1946 (consolidated to the end of 1938 and reprinted in Vol. I of the Reprinted Acts of Parliament of Western Australia, 1939; subsequently amended by Nos. 19 of 1939, 41 of 1940, 11 of 1941, 18 of 1943, 59 of 1945 and 12 of 1946).
[43] Including a power to segregate the sexes in such swimming pools! (sec. 5).
[44] No.44 of 1947.
[45] No. 25 of 1947.
[46] Road Districts Act 1919-1946 (consolidated to the end of 1942 and reprinted in Vol. II of the Reprinted Acts of Parliament of Western Australia. 1943; subsequently amended by No. 19 of 1943 and by Nos. 9, 46, and 64 of 1946).
[47] Road Districts are to be found in urban, suburban, and country areas. Their powers are not as great as those of municipalities, and they normally use a different method of land valuation for rating purposes.

a number of changes in the procedure prescribed for the election of members of Road Boards. The Road Districts Act Amendment Act (No. 2) [47a] authorises the same powers of compulsion in regard to electrical installation as are vested in municipal corporations. A third amending Act [48] makes an inroad on the principle that a member of a public body must take no part in the discussion or decision of any matter in which he is personally interested, a rule which is to be found in express terms in sec. 134 of the Principal Act. Regulations may now be made exempting specified matters from the operation of the section; moreover, where so large a number of the members of a Road Board are personally interested in a particular matter that to disqualify them all would impede the transaction of business, the Minister may exempt those members from the prohibition against participation. But the Road Board itself must take the first step by applying to the Minister and making full disclosure of all known and relevant facts. Another section of this amending Act deals with houses "so dilapidated in appearance as to be out of conformity with the general standard of appearance of the other neighbouring dwelling houses." If the house is in a road district to which the Building Regulations in the Second Schedule to the Principal Act have been applied, the Board may seek from a magistrate an order that the owner repair it so as to make it conform with the "general standard." If the order is made, and the owner does not comply within the period specified in the order, the Board itself may carry out the necessary repairs and sue the owner for the cost.

IV. GENERAL.

Powers of the Public Trustee.

The office of Public Trustee was created in 1941 [49] and superseded two older offices, those of the Curator of Intestate Estates set up in 1918 [50] and of the Official Trustee established in 1921. [51] Among other things he could be validly appointed as an executor; at the request of persons (or a majority of them) entitled to take out probate, letters of administration, or administration *c.t.a.* he could make application in their stead; and in certain circumstances he could apply independently for letters of administration of an intestate estate. It is now provided [52] that he can apply for an "order to administer" (*a*) where there is no executor, capable of acting and willing to act, within the jurisdiction, (*b*) where the person "first entitled to administration" is unable or unwilling to apply or is not resident within the jurisdiction, (*c*) where the execu-

[47a] No. 44 of 1947.
[48] Road Districts Act Amendment Act (No. 3), No. 57 of 1947.
[49] Public Trustee Act, No. 26 of 1941.
[50] Curator of Interstate Estates Act, No. 9 of 1918.
[51] Official Trustee Act, No. 8 of 1921.
[52] Sec. 10 of the Principal Act as amended by sec. 3 of the Public Trustee Act Amendment Act, No. 12 of 1947.

tor renounces probate and the person first entitled to administration declines in writing to apply, (*d*) where no application for probate or administration is made within three months of death, (*e*) where, after thirty days from death, there appears to the Court to be "no reasonable possibility" of any person's applying within three months of death, (*f*) where the estate or any part is unprotected or liable to waste and the executor, widow, husband, or next-of-kin of the deceased is absent or unknown, (*g*) where the estate or any substantial part is of a perishable nature or in danger of being lost or destroyed, or (*h*) in any other case in which the Court thinks it expedient or proper to make an order in favour of the Public Trustee. Where the personal representatives have died, after taking out probate or administration but before completely administering the estate, the Public Trustee, if the unadministered part does not exceed £500 in value, may file with the Court and publish in the Gazette notice of election to take over the administration; on his filing the notice he is vested with the same powers as if he had obtained a grant *de bonis non*. Under sec. 24 of the Principal Act the management and care of the property of every insane person automatically vested in the Public Trustee unless a committee or manager had already been appointed under the Lunacy Act 1903-1926; under sec. 8 of the 1947 Act, if such an insane person dies leaving an estate of the gross value of not more than £100, the Public Trustee may pay thereout the funeral expenses and other debts and may pay the balance to a legatee or the next-of-kin without requiring production of probate or letters of administration.

Incorporated Associations.

Although a new Companies Act [53] was passed in 1943 which was based on similar legislation then in force in the United Kingdom and in the other States of the Commonwealth, the legislature did not make any provision for the creation of companies limited by guarantee. In consequence, associations formed for other than trading or profit-making purposes which sought the protection of the "corporate shield" had still to seek registration under the Associations Incorporation Act 1895. Despite the great increase in group-activities during the last half-century the Act remained unaltered for fifty-two years; it has now been amended [54] (*a*) to simplify proof that an alteration of the name, rules, or trust deed has been effected in the proper manner, and (*b*) to enable such associations to vary or add to their objects provided that such variation or addition does not take them out of the "non-profit-making" category.

[53] Companies Act, No. 36 of 1943, which did not come into operation until 1st January, 1948; it had then been amended by No. 31 of 1946, and Nos. 32 and 84 of 1947.

[54] Associations Incorporation Act Amendment Act, No. 71 of 1947.

Companies.

Two amending Acts have been passed. [55] Sec. 154 of the Principal Act [56] exposed to very heavy penalties (a fine not exceeding £200 or imprisonment for not more than one year, and disqualification for five years from holding office as a director) any director who voted on any resolution relating to a contract or proposed contract in which he was personally interested; directors of proprietary companies and of co-operative companies can now vote on such contracts with impunity. [57] Another penal provision contained in sec. 147 of the Principal Act has now been repealed; [58] subsection (5) had provided that if any shareholder (or his wife or child) were indebted to the company in a sum equal to the nominal value of his shares or to the amount subscribed thereon, whichever was the lower, he should be guilty of a misdemeanour under the Criminal Code and be liable to one year's imprisonment with hard labour if, while so indebted, he acted as a director or took any direct or indirect part in the management of the company.

Film censorship.

Censorship is and has been for many years exercised by the Commonwealth over all imported films (by virtue of regulations made under the Customs Act); films already passed by the Commonwealth censors are exempted from the operation of the Censor ship of Films Act. [59] The only other films to escape the local net are (i) films of topical events in Australia if screened within fourteen days of the event, and (ii) advertising films (other than "trailers") unless the State censor has specifically directed that any such film must run the gauntlet of his approval. In effect the Act will apply to all films (other than topical or advertising) produced in Australia; and in regard to such films the censor's powers are very wide. He is required by sec. 12 of the Act to refuse his approval to any film which, in his opinion, is (*a*) indecent or obscene, or likely to be injurious to morality, or (*b*) likely to encourage a public disorder or crime, or (*c*) undesirable in the public interest. If the power of rejection is exercised with caution and commonsense, little harm may be done; but it is obvious that the third ground of compulsory rejection is capable of far-reaching extension and must, in the hands of a narrow-minded but conscientious censor, lead to the automatic rejection of any film containing, for example, a political bias which makes it in his opinion "undesirable in the public interest." The only appeal from the censor is to the Minister or a person appointed by the Minister, a very inadequate safeguard against an illiberal use of the power. The Act provides, however, that arrangements may be made for Commonwealth

[55] See note 53, supra.
[56] Companies Act, No. 36 of 1943.
[57] Sec. 7 of No. 32 of 1947.
[58] Sec. 3 of No. 84 of 1947.
[59] No. 79 of 1947

authorities to exercise the local censorship powers, both original and appellate; those authorities have, in the past, exercised their powers in regard to imported films in a manner which has rarely provoked public criticism, and if they adopt a similar attitude towards Australian films there will probably be little cause for complaint. But any such arrangement between State and Commonwealth may be terminated on three months' notice; substantial disagreement between the two as to what is "undesirable in the public interest," particularly in times of economic insecurity or political excitement, might result in the withdrawal of the delegated authority and in drastic action against local films. It may be, however, that the distribution of films made outside Western Australia will be protected to some extent by sec. 92 of the Commonwealth Constitution—"trade, commerce, and intercourse among the States . . . shall be absolutely free"; evidently some doubts are entertained on this point, since sec. 2 of the Act provides that "This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment hereof would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power."

Contributory negligence and joint tortfeasors.

The Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act [60] adopts in substance most of the provisions of the Law Reform (Contributory Negligence) Act 1945 [61] and amends part of the Western Australian statute known as the Law Reform (Miscellaneous Provisions) Act 1941. [62] For some reason the legislature has not copied the words of section 1 (1) of the English Act (except for the proviso thereto) but has substituted its own version in the following terms:—

"Whenever in any claim for damages founded on an allegation of negligence the Court is satisfied that the defendant was guilty of an act of negligence conducing to the happening of the event which caused the damage then notwithstanding that the plaintiff had the last opportunity of avoiding or could by the exercise of reasonable care have avoided the consequences of the defendant's act or might otherwise be held guilty of contributory negligence, the defendant shall not for that reason be entitled to judgment, but the Court shall reduce the damages which would be recoverable by the plaintiff if the happening of the event which caused the damage had been solely due to the negligence of the defendant to such extent as the Court thinks just in accordance with the degree of negligence attributable to the plaintiff."

Sec. 3 of the Law Reform (Miscellaneous Provisions) Act 1941 had copied word for word sec. 6 of the English Act of 1935; [63] but

[60] No. 23 of 1947.
[61] 8 & 9 Geo. 6, c. 28.
[62] No. 29 of 1941.
[63] Law Reform (Married Women and Tortfeasors) Act, 25 & 26 Geo. 5, c. 30.

sec. 3 is repealed by sec. 7 of the 1947 Act which re-enacts the 1941 provision with certain amendments and some omissions and additions. The words "whether a crime or not" have been omitted from the second line of subsection (1); subsection (4) has disappeared entirely. A substantial addition to subsection (1) (c) seeks to define the circumstances in which a person is entitled to indemnity in respect of the liability for which a contribution is sought, and ends with a proviso (which appears to relate to the whole of the paragraph and not merely to the description of the indemnifying circumstances), which could perhaps have been expressed a little less obscurely:—

Provided that except in the case of an indictable offence arising out of some negligent act or omission, no contribution may be claimed by a person who is responsible for damages in tort if in the circumstances of the case he is or might be found guilty of any indictable offence (including an indictable offence punishable on summary conviction).

V. MARKETING SCHEMES.

Wheat.

The Wheat Marketing Act [64] is not to come into operation until proclaimed, and is unlikely to be proclaimed if the wheatgrowers in this State prefer the federal scheme of organised marketing. [65] The State Act provides for the establishment of a Western Australian Wheat Marketing Board of five members, all at first appointed by the Governor but later to be replaced by one person nominated by the Minister and four elected by the local wheatgrowers. The Board may fix a day after which, with two major exceptions, all locally grown wheat must be sold or delivered to the Board; the principal exceptions are (*a*) wheat required by the grower for use on his own farm and (*b*) wheat which is the subject of an interstate contract, this exception being necessary in order to avoid the nullifying effect of sec. 92 [66] of the Commonwealth Constitution. The duty of the Board is to sell all wheat delivered to it and to account for the net proceeds to the growers and to other persons interested in a particular farmer's crop. The scheme as set out in the Act is to continue until 31st October, 1951; in February of that year a ballot of wheatgrowers is to be held to decide whether (*a*) the Act shall be continued after the named date or (*b*) the Board shall thereafter act merely as a wheat-selling agency for such farmers as wish to make use of it.

[64] No. 49 of 1947.
[65] See the various Commonwealth Acts: Wheat Industry Stabilization Acts, Nos. 24 and 80 of 1946; Wheat Industry Assistance Act, No. 71 of 1946; Wheat Export Charge Acts, Nos. 25 and 79 of 1946; and Wheat Tax Act, No. 78 of 1946.
[66] . . . . trade, commerce and intercourse among the States . . shall be absolutely free.

The Act contains in sec. 3 (1) a provision not unusual in legislation of this kind, that it is to be read and construed subject to the Commonwealth Constitution so that if any part is held to conflict with that Constitution the remainder of the Act is still to have effect.

Potatoes.

A Potato Growing Industry Trust Fund Committee is set up by No. 69 of 1947, and is to consist of three persons, all of whom are at first to be nominated but of whom two will later be elected by the growers. The Committee is to administer a fund derived from (a) annual contributions from growers of such sums as are prescribed by the Minister but so as not to exceed the maximum set out in sec. 21, and (b) fines imposed for contravention of the Act. The fund itself is to be used (1) to meet the costs of preventing or eradicating diseases affecting potatoes, (2) to compensate growers for losses caused to them through the adoption of preventive and other measures, (3) to promote scientific research in relation to potato crops and their handling, (4) to provide financial assistance for the benefit of growers, and (5) to promote and encourage the industry generally. This Act (which does not come into operation until proclaimed) must be read in conjunction with the Marketing of Potatoes Act [67] of the previous year, which set up a Western Australian Potato Marketing Board with powers of compulsory acquisition similar to those to be vested in the Wheat Marketing Board.

Dried Fruit.

The organised marketing of dried fruit began in 1926 [68] and has since been continued for successive periods by various Acts. The last of such Acts was the Dried Fruits Act Amendment Act 1944, [69] which continued the operation of the principal Act of 1926 until 31st March, 1947. By a legislative oversight no action was taken during the 1946 session to extend the life of the Act, although the Board established thereby continue to function as if the Act had not lapsed. An abortive attempt was made by the Government to obtain legislative approval of a Bill to revive the expired Act as from 1st April, 1947, but on 16th October, 1947, the Bill was ruled out of order by the Speaker. [70] Later in the session a new Bill was introduced (and passed) which is a consolidation of the 1926 Act and its amendments with two minor changes. The new Dried Fruits Act [71] is therefore no innovation; it still contains a number of provisions identical with those of the corresponding South Australian

[67] No. 26 of 1946.
[68] Dried Fruits Act, No. 49 of 1926.
[69] No. 2 of 1944.
[70] See Parliamentary Debates (W.A.), Vol. 119 (N.S.), at pp. 1183-1184, 1323-1331.
[71] No. 56 of 1947.

Act [72] which the Privy Council has declared to be unconstitutional. [73]

VI. MISCELLANEOUS.

In addition to passing the Acts already described, the legislature adopted, inter alia, measures

(1) to continue rent-control until 31st December, 1948; [74]

(2) to exclude a farmer's after-acquired assets from the operation of a mortgage or charge created under the Rural Relief Fund Act; [75]

(3) to continue the State lottery, the net proceeds of which are used to subsidise hospitals and other charitable institutions; [76]

(4) to provide statutory recognition of the degrees of the Faculty of Dental Science recently established in the University of Western Australia; [77]

(5) to enable the State Housing Commission to make agreements with local authorities relating to the construction of roads; [78]

(6) to enlarge the lending powers of the Rural and Industries Bank of Western Australia, a State-owned corporation; [79]

(7) to provide for the issue of licences to street photographers; [80]

(8) to enable the State Treasurer to grant financial assistance, either directly or through the Rural and Industries Bank, to persons engaged in mining or other industries; [81]

(9) to provide for the construction, maintenance, and administration of reticulated water supplies to country areas; [82]

(10) to confer upon the State Electricity Commission [83] wide powers to control the price of coal gas and to require all "gas undertakers" (other than local authorities) to furnish such annual accounts, statistics, and returns as the Commission may require; to limit "standard rates of dividend" to 5½% on preference and 6% on ordinary shares; to require the surplus profits, if any, to be

[72] No. 1657 of 1924; later replaced by the Dried Fruits Act, No. 2181 of 1934.
[73] *James v. Cowan*, (1932) A.C. 542; 47 C.L.R. 386.
[74] Increase of Rent (War Restrictions) Act Amendment (Continuance) Act, No. 5 of 1947.
[75] No. 17 of 1935, as amended by No. 39 of 1942 and No. 6 of 1947.
[76] Lotteries (Control) Act Amendment (Continuance) Act, No. 7 of 1947.
[77] Dentists Act Amendment Act, No. 13 of 1947.
[78] State Housing Act Amendment Act, No. 27 of 1947.
[79] Rural and Industries Bank Act Amendment Act, No. 36 of 1947
[80] Street Photographers Act, No. 46 of 1947.
[81] Industry (Advances) Act, No. 53 of 1947.
[82] Country Areas Water Supply Act, No. 62 of 1947.
[83] Established by the State Electricity Commission Act, No. 60 of 1945.

applied in effect as to three parts towards reducing the price of gas to consumers, and as to the fourth part to increasing the dividend payable to ordinary shareholders and employee-shareholders; [84]

(11) to vest in the State Electricity Commission power to test the calorific value of gas supplied by any gas undertaker (including a local authority), to inspect gasworks, to recommend to the minister deviations from the declared standards (i.e., between 475 and 550 British thermal units as defined in sec. 2); to provide for the imposition of penalties on any gas undertaker who supplies gas of a lower calorific value than the standard declared for his undertaking; [85]

(12) to ratify an agreement made between the government and H. A. Brassert & Co. Ltd. of London for the exploitation of the iron ore deposits on Koolan Island (off the coast of Western Australia, 16 degrees south latitude), and to authorise investment (up to one-half of the issued capital) in any company formed to mine for iron, coal, or limestone, or for kindred purposes; [86]

(13) to enable the Commissioner for Railways to purchase and operate motor and other vehicles for the road transport of passengers or goods. [87]

[84] Gas Undertakings Act, No. 68 of 1947.
[85] Gas (Standards) Act, No. 75 of 1947.
[86] Iron and Steel Industry Act, No. 67 of 1947.
[87] Government Railways Act Amendment Act, No. 72 of 1947.