REVIEW OF LEGISLATION

I. Western Australia.

Introductory.

The bulk of legislation in this State looms continually larger. In this first session of the Twenty-second Parliament, which opened on 2nd August and closed on 22nd December 1956, 89 Acts became law. 24 Bills were introduced but not passed. Among the losses were a Bill to make all Saturdays bank holidays in Western Australia,[1] the "annual assault on the franchise for the Legislative Council",[2] another of the many attempts to extend jury service to women[3] and the controversial Local Government Bill, providing one statute for all local authorities, which lapsed at the third reading stage in the Assembly with the prorogation of Parliament.

Most of the Acts were of an amending nature; in some cases 3 and 4 Bills were introduced during the session to amend the one statute. A feature of some of the amending legislation was its clumsy drafting and the manner in which it was related to the parent Act so that in a number of cases it is difficult to piece the statute together. The practice of annexing to an amendment a Schedule which itself contains amendments to other Acts is one that can only lead to more confusion in an already confused field.

The most far-reaching piece of legislation was certainly the Unfair Trading and Profit Control Act by which Western Australia for the first time has entered the field of monopoly and anti-trust.

I. CONSTITUTIONAL.

No Acts were passed calling for review under this heading.

II. ADMINISTRATION OF JUSTICE.

Royal Commissions.

Virtually without debate the Royal Commissioners' Powers Act 1902-14 was amended by the inclusion of a further section.[4] It is not uncommon for the members of a Select Committee of either House of Parliament to be appointed as members of a Royal Commission.

1 Bank Holidays Act Amendment Bill.
2 See 3 U. WESTERN AUST. ANN. L. REV. 501. The Bills in question were the Electoral Act Amendment Bill (No. 1) and the Constitution Acts Amendment Bill.
3 Jury Act Amendment Bill.
4 Royal Commissioners' Powers Act Amendment Act, No. 40 of 1956.

Where one or more members are not able to be present at any particular hearing doubts have been cast on the validity of the proceedings. The purpose of the amending legislation is to enable a majority of members to form a quorum. This however, is only "for the purpose of this Act" (sec. 11) and would not preclude the presentation of a minority report by any members not in agreement with the majority.

Lethal weapons.

In moving the second reading of the Police Act Amendment Act (No. 20 of 1956), the Minister for Police said: "The purpose of this small but important Bill is to make it an offence to carry a lethal weapon in this State without lawful excuse."[5] The amendment accomplishes this by including in the category of idle and disorderly persons in sec. 69 of the Police Act 1892 "every person who, without lawful excuse, carries or has on or about his person any rifle, gun, pistol, sword, dagger, knife, sharpened chain, club, bludgeon or truncheon, or any other offensive or lethal weapon or instrument." (sec. 65 (4a)).

Offences by children.

Very few members in either House missed the opportunity to speak to the Bill which finally became the Child Welfare Act Amendment Act (No. 36 of 1956). As originally introduced by Mr. Ackland, the member for Moore,[6] the Bill provided that where a child under 14 had been found guilty of an offence with respect to which a fine or damages or costs might be ordered, the penalty was to be imposed against the parent or guardian "unless the court is satisfied that the parent or guardian cannot be found or that either has not conduced to the commission of the offence by neglecting to exercise due care of the child." While there was general support for the principle expressed, many members objected to the absence of any financial limitation and also felt that the onus of satisfying the Court they were not responsible for their children's misdeeds should not be thrown on parents. After discussion with the magistrate in charge of the Children's Court and the Under Secretary for Child Welfare, Mr. Jones moved amendments which altered the Bill to the form in which it eventually became law.

The magistrate is given a discretion to order a parent or guardian to pay an amount up to £150 but only after such person has been given an opportunity of being heard (sec. 137A (3)) and only where

[5] (1956) 144 PARLIAMENTARY DEBATES (Western Australia) 1372 (hereafter referred to as PARL. DEB.).
[6] (1956) 143 PARL. DEB. 936.

the Court is satisfied that the parent or guardian "has conduced to the commission of the offence by neglecting to exercise due care or control of the child" (sec. 137A (1)). The amendment also empowers the Court to order a parent or guardian to give security for the good behaviour of the child (sec. 137A (2)).

The other amendment to the Act[7] excited much less comment. Its purpose was to bring the Child Welfare Act into line with the Criminal Code as to the imprisonment that can be imposed on a child convicted summarily. The amendment provides that except in the case of treason, wilful murder, murder or manslaughter a child under 16 summarily convicted cannot be sentenced to imprisonment for more than 3 months.

Criminal law.

In 1954 an amendment[8] was made to sec. 486 of the Criminal Code to give a person charged with making a false statement touching any matter required by law to be registered in a register of births deaths and marriages the option of being dealt with summarily, if the justices are of the opinion "that the case is of a trivial nature or in the circumstances of the case the offender may be adequately punished upon summary conviction" (sec. 486 (2)). The difficulty in the way of such a provision being used frequently lay in sec. 574 of the Code which imposed a limitation of six months on a prosecution for an indictable offence "in order to the summary conviction of the offender." The Criminal Code Amendment Act (No. 11 of 1956) overcomes this by an amendment to sec. 574. However, the amendment is not limited to prosecutions under sec. 486 of the Code but removes the time limitation on all indictable offences punishable on summary conviction unless such a limitation is expressly provided (sec. 574 (3) (b) and (c)).

The Criminal Code Amendment Act (No. 2) (No. 43 of 1956) was the result of a Bill introduced by the Member for Mt. Lawley, Mr. Oldfield. It adds a new section (sec. 668A) to the Code, requiring the Court, "where a person is convicted of an indictable offence of which the use of a motor vehicle is an element, whether as the driver of the motor vehicle or not", to suspend the licence of the convicted person or disqualify him from obtaining a licence for a period of not less than 6 months nor more than 3 years. Several aspects of the section warrant comment. The provision is mandatory both as to suspension or disqualification and as to the minimum period of 6

[7] Child Welfare Act Amendment Act (No. 2), No. 77 of 1956.
[8] Criminal Code Amendment Act, No. 20 of 1954.

months. At some stage or other argument will certainly be addressed to the Court on the meaning of the expression "of which the use of a motor vehicle is an element." These problems however, did occur to members.[9] What did not seem to occur to them is the difficulty of reconciling this provision with sec. 33 of the Traffic Act 1919-56 which enables "any court before whom a person is convicted of any offence in connection with the driving of a motor vehicle" to suspend or disqualify "for such time as the court thinks fit." Admittedly the Criminal Code provision is wider in its terms and only applies to an indictable offence whereas the Traffic Act provisions can be availed of by "any court." Nevertheless unless the Code provision is interpreted as applying to cases not coming within the scope of sec. 33 of the Traffic Act some inconsistency seems to be inevitable. Interpreted in this way its scope could be wide. (In its original form the Bill contained the further phrase "or in connection with which the person has used a motor vehicle," but the Assembly accepted the Council's amendment deleting these words).[10] There are in the Code two instances of indictable offences in which the use of a motor vehicle is specifically an element, sec. 291A (dangerous driving causing death) and sec. 390A (unauthorised use of vehicles), but the amendment must contemplate other offences as well. What lends weight to this argument is that the Schedule to the Traffic Act Amendment Act (No. 3) (No. 74 of 1956)[11] amends sec. 390A of the Code by prescribing a mandatory suspension of licence for the offence, but the provisions are quite different from those contained in sec. 668A. Furthermore the same amendment to the Traffic Act substitutes a new sec. 60 dealing with the unauthorised use of vehicles which prescribes similar disqualifications to those laid down in sec. 291A of the Code. This is just one more example of what happens when one statute is amended without sufficient regard to other affecting legislation.

Evidence.

There are two aspects to the Evidence Act Amendment Act (No. 16 of 1956).

The Matrimonial Causes and Personal Status Code 1948-54 sec. 3(2) had, in relation to proceedings under the Code, abolished the *Rule in Russell v. Russell.*[12] That decision had held inadmissible evidence by a husband or a wife of non-access during the marriage

9 See for instance (1956) 144 PARL. DEB. 2490, (1956) 145 PARL. DEB. 2491.

10 (1956) 145 PARL. DEB. 3021.

11 See *infra* at p.

12 [1924] A.C. 627.

where such evidence would show or tend to show that a child born during the marriage was illegitimate. The rule has now been completely abolished and has no application to any judicial proceedings in this State.

In addition the amending legislation facilitates proof of identity "and is directed to the saving of time and expense in establishing the identity of a person who has previously been convicted."[13] Instead of production of the record of conviction together with proof that the person referred to in the record is identical with the person in the proceedings concerned (usually given by a member of the Police Force who was present when the previous conviction was recorded), *prima facie* evidence is now given by the production of an affidavit that the person whose finger prints are exhibited thereto is the person referred to in the record. It then becomes a question of showing that the fingerprints compared with those in the record belong to the accused. This will certainly overcome time and expense where the current proceedings are distant from the court of the previous conviction. However, several members pointed out that since this method of proof operates in respect of a previous conviction in any part of the Dominions it presupposes an efficient system of fingerprinting elsewhere with perhaps some possibility of injustice being done.

Traffic regulation.

Although the Traffic Act has been reprinted 7 times, the last reprint taking in all amendments up to and including 1954, a further reprint is needed to take into account the amending legislation of 1955[14] and 1956. The amendments wrought by the Traffic Act Amendment Act (No. 3) (No. 74 of 1956) are too extensive for detailed comment but a few general observations may be made.

Sec. 10 which governed the licensing of vehicles within the metropolitan area "has been amended on so many occasions that it has become disjointed and the provisions for renewals of licences are repetitive."[15] For these reasons the section has been repealed and re-enacted. There is an overall rise in licensing fees in regard to motor vehicles, but in doing so a policy has been adhered to of ploughing back "the additional moneys so earned . . . into the development of

[13] Second Reading Speech by the Minister for Justice, (1956) 143 PARL. DEB. 476.

[14] 3 U. WESTERN AUST. ANN. L. REV. 515.

[15] Second Reading Speech by the Chief Secretary, (1956) 145 PARL. DEB. 2747.

roads and amenities generally associated with transport."[16] These additional moneys, to come from increases in transfer fees and registration fees generally, are to be used for such purposes as making safer railway crossings, works associated with the Narrows bridge and the installation of traffic lights and signs. The increase in licensing fees has been accompanied by a change in the formula for calculating the power-weight of a motor vehicle, the basis of licensing fees. The Dendy Marshall formula, no longer used by any of the other Australian States, has been replaced by the R.A.C. formula. Detailed provisions are made to control overseas motor vehicles used temporarily in Western Australia; these provisions are designed mainly to conform to legislation in the other States.

An "owner-onus" clause of the type which has been in existence in England and the Eastern States for some time now has been adopted in regard to minor offences. If an owner fails when required, to give the identity and address of the person who was the driver or in charge of the vehicle at the time such an offence was committed, he "may be deemed by the prescribed officer to be the person who committed that offence" (sec. 34 (2)).

Once again the penalties for reckless, negligent and dangerous driving have been altered. For subsequent offences sec. 31 previously prescribed in addition to a fine and imprisonment, the suspension of licence "for such period as the court thinks fit but in no case less than three months." The mandatory minimum of three months now applies only to a conviction for reckless or dangerous driving and then only when the defendant has been "previously convicted of any of those offences within the period of five years prior to the commission of the subsequent offence;" in other cases the period of suspension or disqualification is at the discretion of the Court. A situation which had arisen quite frequently in relation to the automatic suspension provisions of sec. 31 was that of the defendant convicted previously of one of the specified offences but many years before the present penalties were imposed. Magistrates and justices had been heard to express their reluctance to suspend or disqualify in those circumstances but of course they had no choice. Now, for purposes of determining penalty, no conviction before 9th January 1954 will be taken into account (sec. 31 (1) (i)).

The penalty provisions for drunken driving have also been made more elastic to enable a Court to take into account the odd unfortunate

[16] Second Reading Speech by the Minister for Transport, (1956) 144 PARL. DEB. 2087.

case. The decision of the Court of Appeal in *Armstrong v. Clark*[17] had highlighted a situation of possible injustice. At the same time there is an obvious need to ensure that the drug taker is not given a free hand. A proviso to sec. 32 (1) permits the Court on a first conviction for being under the influence of drugs, if the Court holds that the drugs were taken pursuant to a medical prescription or administered by a medical practitioner in the course of treatment, to suspend or disqualify in its discretion for not more than three months. In addition to the right of medical advice a person charged with drunken driving is to be informed of his right to communicate with a legal practitioner and must be given every reasonable facility to do so (sec. 32 (2)). Again, in determining penalty no conviction before 24th January 1947 is to be taken into account. For a fourth and subsequent offence however, the penalty for drunken driving has now been specified as imprisonment for three years.

III. STATUS.

Marriage of minors.

The Marriage Act Amendment Act (No. 72 of 1956) was introduced in the Legislative Council to provide:
"(1) For a legal minimum marriage age of 16 years for females and 18 years for males.
(2) For a magistrate to hear and determine applications from persons of lower age seeking to marry because of the certified pregnancy of the intended bride.
(3) That no marriage, otherwise properly contracted shall be voided, if one of the parties is under the minimum age."[18]

At common law the age at which consent could be given and a valid marriage contracted was 14 years for males and 12 for females.[19] The only legislation on the matter in Western Australia was contained in sec. 9 of the Marriage Act 1894-1948 which forbade persons under 21 (and not previously married) to marry without their parents' consent. The amending legislation limits the ability of parents to consent to the marriage of minors by requiring the authority of a stipendiary magistrate if the intended husband is under 18 or the intended wife is under 16. Such authority is not to be given unless the intended wife is pregnant, the necessary consents have been given

17 [1957] 2 W.L.R. 400; [1957] 1 All E.R. 433. This was the case in which a diabetic who had injected himself with his usual and prescribed dose of insulin was convicted of driving under the influence of a drug.

18 Second Reading Speech by the Chief Secretary, (1956) 145 PARL. DEB. 3207.

19 RAYDEN ON DIVORCE, (6th ed. 1953) 61.

by the parents, and an order "should be made in the interests of the parties to the intended marriage, and of the unborn child" (sec. 8A (3)). Perhaps this puts a premium on pregnancy, but "the magistrate must be satisfied on other counts as well."[20]

As pointed out above a breach of the amending section of itself does not invalidate the marriage (sec. 8A (3)). But presumably the common law ages still remain and a party to a marriage who if male was under 14 and if female was under 12 could still resort to sec. 15 (m) of the Matrimonial Causes and Personal Status Code 1948-54 and obtain a dissolution of marriage on the ground of "nonage" despite the magistrate's order.

IV. PUBLIC HEALTH.

Powers of the local authorities to assist in the care of the aged and others.

In 1955 the Health Act 1911-54 was amended to permit local authorities to subsidise any institution or centre for the care of the aged.[21] "Experience has shown that this authority is not sufficient to enable local authorities to assist this most deserving cause to the extent which they might wish."[22] The Health Act Amendment Act (No. 17 of 1956) authorises local authorities to subsidise any district nursing system, infant health centre or hospital and authorises them to establish, maintain and grant financial aid to "any scheme or any institution or centre . . . for the care of the aged" (sec. 324).

Mental treatment.

There is a provision in the Lunacy Act 1903-50 which authorises the transfer of patients from one hospital for the insane to another, but there was no like provision under the Mental Treatment Act 1927 in respect of mental patients. Despite a suggestion that no Act of Parliament was necessary,[23] the Mental Treatment Act Amendment Act (No. 46 of 1956) enables the Inspector General to order the transfer of a patient from one hospital or reception house to another (sec. 4 (7) (a)). The immediate cause of the measure was that, because of the pressure on Heathcote Reception Home, a ward

20 Second Reading Speech by the Minister for Works, (1956) 145 PARL. DEB. 3711.

21 See 3 U. WESTERN AUST. ANN. L. REV. 506.

22 Second Reading Speech by the Chief Secretary, (1956) 143 PARL. DEB. 1215.

23 Hon. J. G. Hislop, (1956) 145 PARL. DEB. 2833-4; Hon. Sir Charles Latham, (1956) 145 PARL. DEB. 3002.

at Claremont Mental Home was being converted into a reception house for mental patients.[24]

Corneal and tissue grafting.

"A small but very important bill" was the description given by the Minister for Health in moving the second reading of the Corneal and Tissue Grafting Act (No. 19 of 1956).[25] The object of the Act is to permit corneal or other tissues to be removed from the body of a dead person and either used for immediate grafting or left in a "bank" for later issue. Apart from statute (for instance under the Anatomy Act 1930-46) a person cannot make a binding disposition of his body after his death so as to oust the rights and duties of his personal representatives as to its disposal.[26]

The Act provides that where a person either in writing or orally in the presence of two or more witnesses has expressed a request that his eyes or other tissues of his body be used for therapeutic purposes after his death "the person lawfully in possession of his body after death may authorise the removal of the eyes or other tissues unless he has reason to believe that the request was subsequently withdrawn" (sec. 2 (1)). Provision is made for requests to be forwarded to the Minister for Health or to "an approved institution"; how effective this will be in practice is perhaps doubtful.

Whether a deceased has made such a request or not, the person lawfully in possession of the body may authorise the removal of the eyes or other tissues unless he has reason to believe
(a) that the deceased had expressed an objection to this being done which he had not withdrawn; or
(b) that the surviving spouse or if there is no surviving spouse the nearest surviving relative objects (sec. 2 (b)).

Although the Bill was modelled on the English Corneal Grafting Act 1956, the expression in the English statute, "any surviving relative," became "the nearest surviving relative." While the former gives considerable scope for objection it is at least clear. But who is "the nearest surviving relative"? Some members expressed their dissatisfaction with the expression which was inserted by the Legislative Council.[27] To a suggestion by Mr. A. F. Watts that the Crown Law

24 Second Reading Speech by the Minister for Health, (1956) 145 PARL. DEB 2646.
25 (1956) 143 PARL. DEB. 455.
26 Williams v. Williams, (1882) 20 Ch. D. 659, and see 1 WILLIAMS ON WILLS, (1952) 30.
27 (1956) 144 PARL. DEB. 1220.

Department consider a clearer expression, the Minister for Health replied: "I think we should agree to it and we can amend it next year."[28]

Sec. (2) (1) is itself misleading as the result of an untidy amendment. The Bill referred to a request made "in writing at any time, or orally in the presence of two or more witnesses during his last illness." The phrase "during his last illness" was deleted as being too restrictive but the section now reads as if the words "at any time" refer only to a written request. The remainder of the Act is aimed at ensuring that no person other than a qualified medical practitioner removes or grafts the tissues and that they are retained only by "approved" persons, institutions or organisations.

Medical practitioners.

The Medical Act Amendment Act (No. 35 of 1956) makes Western Australia autonomous in its recognition of medical degrees now that a Medical School has been established.[29] It also aims to provide reciprocity with the other States and New Zealand, and with the United Kingdom and Eire, at least in relation to the licensing bodies specified in Schedule II to the amendment. It includes general provisions for the recognition of medical qualifications from other countries provided the standard is no lower than in Western Australia and provided that a degree of the University of Western Australia would be recognised as a sufficient qualification in the country concerned. The amendment also requires graduates in medicine, unless exempted, to have 12 months hospital experience before being entitled to full registration and entering private practice.

Nurses.

The minimum age for the registration of general, children's, mental and tuberculosis nurses has been 21. In some cases the training period is 3 years, in other cases 2. As trainees are accepted at 17½ years, in many cases they have a waiting period after the completion of training before they can be registered. "This hiatus of several months causes salary and seniority losses to these girls and has, I am told, caused girls unhappiness and unrest."[30] As this State is extremely short of nurses it was felt that this possible source of discouragement should be removed. The Nurses Registration Act Amendment Act

[28] (1956) 144 PARL. DEB. 1680.

[29] See 3 U. WESTERN AUST. ANN. L. REV. 517.

[30] Second Reading Speech by the Chief Secretary, (1956) 144 PARL. DEB. 1764

(No. 33 of 1956) deletes all reference to a minimum age in the original Act so far as the categories of nurses referred to above are concerned.

V. CONTROL OF PRICES AND COMMODITIES.

Monopolies, combines and restraint of trade.

Without a doubt the most controversial and far reaching legislation of the 1956 session was the Unfair Trading and Profit Control Act (No. 30 of 1956). It was fought bitterly by the Opposition both in the Assembly and in the Council, and in the final result it emerged with its original provisions considerably modified. Despite the importance of the measure it is not dealt with here in the detail it warrants, mainly because at the time of writing the ultimate future of the statute is uncertain; it continues in operation only until 31st December 1957.[31] If the Act is put on a permanent basis it is hoped to subject it to more extensive treatment in this journal.

The objects of the Act as described in sec. 6 are—

(a) to prevent unfair profit taking;
(b) to prevent unfair methods of trading;
(c) to prevent unfair methods of trade competition.

The economic background to the measure was described by the Treasurer in his Second Reading Speech as a period of general inflation in which the cost of living had been forced up to the detriment of wage and salary earners. The latter are subject to control and the legislation represents an attempt to impose a like check on capital in order to effect some sort of an adjustment between the two forces.[32] Whether the Act will have that effect as its advocates claim or whether it will only serve to dissuade outside business interests from this State as its opponents argue, it is too early to tell.

The Act is administered by a Commissioner ("a person having experience in commercial, business and trading affairs" (sec. 11 (b)), who is assisted by an Advisory Council of four persons representing in general business interests, primary producers and the public (sec. 9 (2)). The Commissioner is given wide powers with regard to any investigation or inquiry which he makes, including the power to require any person—

(a) to furnish information; or
(b) to answer any question in relation to any matter the subject of investigation or inquiry (sec. 19 (1)).

[31] The Act, in an amended form, has now become permanent.
[32] (1956) 143 PARL. DEB. 679 *et seq.*

On a warrant from a Justice of the Peace the Commissioner or his officers may enter premises and inspect any documents or stock (sec. 20 (1)). Documents are not to be removed but copies can be taken and such copies have as much evidentiary value as the originals (sec. 20 (2)). If required, a trader must produce to the Commissioner all specified documents and furnish the Commissioner with any information as to the conduct of his business (sec. 21).

As its title suggests, the Act is aimed at "unfair trading," a concept which is awkwardly defined in sec. 8 as meaning—

(a) taking any unfair profit;
(b) using any unfair trading method;
(c) using any unfair method of trade competition.

Acting in combination to do any of these matters, attempting to do any of them, aiding or procuring, all come within the definition.

The definition section then goes on to define "unfair trading methods" or "unfair methods of trade competition;" the Act does not suggest any reason why a distinction is drawn between the two expressions because the same definition covers both. The real sting lies in the definition of these expressions which mean—

(a) making or entering into any agreement
    (i) in restraint of or with intent to restrain trade or commerce contrary to the interest of the public; or
    (ii) to the destruction or injury of or with the intent to destroy or injure by means of unfair competition any industry the preservation of which is advantageous to the State;
(b) making or entering into an agreement for minimum resale prices of commodities or to limit the distribution thereof between persons in competition
(c) monopolising or attempting to monopolise or combining with any person to monopolise any part of the trade or commerce within the State.

Para. (c) is taken almost word for word from sec. 2 of the Sherman Act 1890 of the United States and will no doubt be the subject of considerable interpretation by the courts. It will be interesting to see the extent, if at all, to which our own courts will look for guidance on this matter to the decisions of the American tribunals.

"Unfair profit" is also defined, the special feature being that a profit is not unfair unless it is an excess profit *and* is the result of "unfair trading methods or unfair methods of trade competition."

The powers of investigation and inquiry conferred on the Commissioner are exercised in the following manner. If the Commissioner "has reason . . . to suspect that there is unfair trading . . . , he shall, if of the opinion that it is in the public interest to do so," investigate (sec. 28). If as a result of the investigation the Commissioner "has reason to believe that . . . a person is or has been guilty of unfair trading," the Commissioner shall hold an inquiry, again if of opinion that it is in the public interest. Both the investigation and the inquiry then require the interest of the public. The difference beween the exercise of the two powers is that reason to *suspect* is required for an investigation, reason to *believe* for an inquiry. Here too the difference in meaning of these two expressions will no doubt come before the courts. For the purpose of an inquiry the Commissioner is given wide powers including the powers of justices under the Justices Act 1902. He is not bound by "technicalities or legal forms" (sec. 29 (3) (d)). In this connection one of the requirements is that he "shall exclude the public from hearing the inquiry wholly or in part." The provision is therefore mandatory, but since it does not demand a total exclusion how is it to be exercised by the Commissioner? In the holding of an inquiry the Commissioner is in a real sense both prosecutor and judge and it is a serious weakness in the legislation that the person who directs the inquiry and therefore has had "reason to believe" that unfair trading has taken place is the same person who ultimately decides whether in fact the Act has been breached.

At the conclusion of an inquiry, if the Commissioner is satisfied that the charge is proved he may do one of three things—

(a) he may caution if the subject matter is trivial; or

(b) he may accept an undertaking that the person charged will cease to be a party to the agreement the subject of the charge; or

(c) he may declare the person to be a declared trader (sec. 30 (1)).

Once again the sting is in the tail, for if the Commissioner does make a declaration as in para. (c), sec. 32 gives him wide powers to direct the declared trader not to repeat or continue the unfair trading nor to commit any act of unfair trading. Even more importantly the Commissioner may direct him not to sell any goods or services at a greater price than that specified and not to sell in any manner or locality other than that specified. In this regard the Commissioner's powers seem unlimited, although he is not to declare a person "unless and until the Advisory Council has first determined the circumstances and conditions in and under which it appears right and proper in the

cause of justice to so declare" (sec. 30 (6)). The difficulty is that the Commissioner is only bound to have "due regard to such determination;" can this mean he is bound by it?

A person aggrieved by the decision of the Commissioner may within 21 days appeal to "the (sic) Judge of the Supreme Court . . . which appeal shall be held in Chambers and the Judge's decision on such appeal shall be final" (sec. 33). The Act thus excludes a right of appeal to the Full Court of the Supreme Court but presumably despite its terms cannot oust the jurisdiction of the High Court under the Judiciary Act 1903-55 sec. 35.

If the conditions specified in regard to a declared trader are disobeyed an offence against the Act is committed (sec. 34 (1)). Offences are dealt with under the Justices Act 1902; prosecutions must be commenced within 2 years and require the consent in writing of the Attorney-General.

Marketing of potatoes.

Since 1946 the growing of potatoes in this State has been the subject of a marketing scheme which prohibits the sale or delivery of potatoes to any person other than the Potato Marketing Board. However, in September 1956 there was considerable traffic in potatoes from Western Australia to the Eastern States where high prices were being offered. It was felt that the original Act, pursuant to which all potatoes delivered to the Board vested in the Board (sec. 24), did not go far enough to deal with the situation[33] and accordingly the present amendment[34] constitutes the growers of potatoes bailees in possession on behalf of the Board of all potatoes produced except those required for personal use (sec. 21A). Growers are made responsible for the safe keeping of the vegetables and heavy penalties are provided. However, the legislation was given a very limited lifetime, expiring on 31st December 1956.

Marketing of onions.

Unlike the measure discussed above, the Marketing of Onions Act Amendment Act (No. 83 of 1956) represents a lessening of control. The provisions of the original Act relating to the vesting of onions in the Onion Marketing Board no longer apply to onions harvested and marketed between 31st July and 1st November in any

[33] Second Reading Speech by the Minister for Lands, (1956) 143 PARL. DEB. 562.

[34] Marketing of Potatoes Act Amendment Act, No. 3 of 1956.

year. This is to encourage an onion growing industry at Carnarvon in the north of the State, the only area where harvesting takes place during these months.

Marketing of wheat.

For 24 years there has existed in this State a wheat pool selling wheat for those growers who participated in the co-operative scheme. To the horror of all concerned it was discovered in 1956 that the Wheat Pool Act 1932 which constituted the pool had never been proclaimed. Presumably then all transactions and proceedings under the Act were invalid. The Wheat Pool Act Amendment Act (No. 61 of 1956) in general terms validates the activities of the pool since its inception.

Trade descriptions in relation to textile products.

The Trade Descriptions and False Advertisements Act 1936-53 sec. 4C required every manufacturer and distributor when delivering textile products to a wholesaler or retailer to furnish a numbered invoice containing details of the constituent fibres comprising such textile products. Since approximately 75% of garments distributed to the retail trade in this State are imported from the Eastern States where no similar legislation exists, the section placed an almost impossible burden on local distributors. In practice it was not policed.[35] The section was repealed by the Trade Descriptions and False Advertisements Act Amendment Act (No. 52 of 1956). The public is still protected as the garments themselves are required to be labelled.

Liquid petroleum gas standards.

The object of the Liquid Petroleum Gas Act (No. 58 of 1956) is to enable the State Electricity Commission to fix the standard for liquid petroleum gas for sale in this State. This statute is a good (or bad) illustration of the practice which seems to be growing of annexing to an act a Schedule containing substantial amendments to other legislation, in this case to the Gas (Standards) Act 1947, Gas Undertakings Act 1947-51 and State Electricity Commission Act 1945-55. How is one expected to know that these Acts have been amended? A search of the indices in the statutes will not show it. Fortunately we now have a very thorough Pilot but nonetheless the practice is one which makes more difficult the already arduous task of determining the exact contents of a statute at any given time.

35 Second Reading Speech by the Minister for Labour, (1956) 145 PARL. DEB. 2761.

Retailing of motor spirits and accessories.

Three attempts were made to amend the Factories and Shops Act 1920-54; one was rejected by the Legislative Council and another did not pass the Legislative Assembly. The third[36] puts into effect some of the recommendations of the Royal Commission on the retailing of motor spirits and accessories.[37]

The Governor may prescribe any part of the State as a zone. All persons in that zone engaged in the retailing of motor spirits or accessories are then limited in the hours during which they may trade (sec. 100 (4) (a)). Provision is made for extraordinary trading hours during which time the trader of any shop prescribed in the regulations must sell if called on. A trader who does not desire to keep open his shop during extraordinary trading hours may give notice to the Minister and he cannot then be required to keep open during those hours. A trader not in a prescribed zone may open during any hours he thinks fit (sec. 100 (3)). The Automobile Chamber of Commerce Incorporated is empowered to represent traders and to recommend to the Minister alterations with regard to prescribed zones and conditions of trade within such zones in relation to particular traders, their hours and what requisites may be sold.

The amendment, however, comes into operation on a day to be fixed by proclamation (sec. 100 (2)) and as yet no proclamation has been made.

VI. FISCAL.

Land and income tax.

Land tax on improved rural land was suspended in 1931 when prices for primary products had slumped and the overall position of primary producers was at a low ebb. Although the situation had changed during World War II the tax had not been re-imposed. But in 1956 the Government considered that "there is a justification in the present general circumstances of our farming industries for a re-imposition of the land tax on improved rural lands."[38] Since for practical purposes the State is unable to levy income tax,[39] land tax

36 Factories and Shops Act Amendment Act (No. 3), No. 84 of 1956.

37 See Second Reading Speech by the Minister for Labour, (1956) 145 PARL. DEB. 3159.

38 Second Reading Speech by the Treasurer, (1956) 145 PARL. DEB. 2553.

39 The Treasurer spoke of the State Government not having "the legal authority to levy income tax"; this was before the decision of the High Court in State of Victoria v. The Commonwealth : State of New South Wales v. The Commonwealth, [1957] Argus L.R. 761.

was selected as a field which could be drawn upon for an increased amount of revenue.

The machinery involved is rather confusing. As the provision exempting from land tax improved lands used "solely or principally for agricultural, horticultural, pastoral, or grazing purposes" was originally intended as a temporary measure only it was included in the Land Tax and Income Tax Act 1931 and it was not until 1948[40] that, in a slightly extended form, it became part of the permanent measure, the Land and Income Tax Assessment Act 1907. The Land and Income Tax Assessment Act Amendment Act (No. 87 of 1956) re-imposes the tax in a curiously negative way by suspending the exemption for 2 years commencing on 1st July 1956.

The rest of the Act is mainly taken up with amendments deleting from the principal Act all reference to income tax. This had already been done by sec. 2 of and the First Schedule to the Income Tax Assessment Act 1937 but "the amendments . . . will remove any confusion that might occur by the continued reference in the principal Act to income tax matters."[41]

The actual rates of tax were altered by the Land Tax Act Amendment Act (No. 85 of 1956) which introduces a Second Schedule containing a sliding scale based on the unimproved value of the land. If land is improved tax is paid at the rate set out in the Schedule; if unimproved a further penny in the pound is levied.

Vermin tax.

With the re-imposition of land tax on improved rural land, vermin tax was abolished,[42] and from the land tax collected, the sum of £100,000 "or any greater amount approved by the Treasurer" will be paid each year to the credit of an account to be used for the purposes of the Vermin Act 1918-54. As the application of land tax to rural land operates only until 30th June 1958, this amendment has a similar lifetime.

Betting tax.

Two amendments were made to the legislation passed in 1954 licensing the system of starting price bookmaking.[43]

40 Land and Income Tax Assessment Act Amendment Act, No. 40 of 1948.

41 Second Reading Speech by the Chief Secretary, (1956) 145 PARL. DEB. 3143.

42 Vermin Act Amendment Act (No. 2), No. 82 of 1956.

43 See 3 U. WESTERN AUST. ANN. L. REV. 350.

The first[44] was an amendment to the principal Act, the Betting Control Act 1954, the result finally of a conference of managers of both Houses and thus inevitably a compromise measure. Because the amendment differentiates between the application of betting tax to "on-course turnover" and to "off-course turnover" it became necessary to define those terms (sec. 14). At least one bookmaker had shown reluctance to pay turnover tax on "commissions," i.e. large bets which a bookmaker distributes among other bookmakers in order to spread the risk.[45] In order to remove any doubt as to the legal right of the Commissioner of Stamps to collect tax on commissions, they are expressly included in the definition of "turnover." A bet made by a bookmaker in the capacity of backer but not of bookmaker is, however, exempt (sec. 14). As to tax levied on on-course turnover by bookmakers, the amount which the racing club concerned is entitled to retain has been increased from 20% to 40% (sec. 15 (5) (a)). As to off-course turnover, racing clubs will continue to receive 10% of the turnover tax on all galloping and trotting meetings, with this limitation that they will now share only in bets made on races within the State. Racing clubs will continue to participate in accordance with the amount of stake moneys which they have paid out during the year (sec. 16 (3b)).

The Bookmakers Betting Tax Act Amendment Act (No. 49 of 1956) was complementary to the previous legislation. It lays down different rates of tax for off-course and on-course turnover and in relation to the latter prescribes a different rate again where the annual turnover exceeds £50,000.

Death duties and the administration of deceased estates.

Regularly year after year amendments are made to the Administration Act 1903-55. As explained by the Treasurer in his Second Reading Speech[46] the principal object of the Administration Act Amendment Act (No. 81 of 1956) was to alter the rating system of death duties. The actual machinery for effecting this is contained in the Death Duties (Taxing) Act Amendment Act (No. 75 of 1956) which abolishes the system of assessing death duty as a percentage of the estate and substitutes "a system charging so much in the £ for each complete £ of income (sic) over and above £1,000 . . . the

44 Betting Control Act Amendment Act, No. 50 of 1956.

45 (1956) 144 PARL. DEB. 1294.

46 (1956) 144 PARL. DEB. 1963.

existing exemption of £200 of final balance in any estate is to be raised by the legislation to £1,000."[47]

In 1953 the Administration Act 1903 was amended by the insertion of sec. 69A which authorised the Treasurer to defer the payment of death duty in certain cases.[48] In the case of estates of persons who die after the coming into operation of the amendment the position is now as follows. Where the whole or part of the estate "consists of a dwelling house or an interest in a dwelling house which at the date of the death of the deceased person was ordinarily used by his widow as her ordinary place of residence" and the final balance of the estate does not exceed £10,000 and the value of the house does not exceed £6,000, the Treasurer may on application by the widow "defer, subject to such conditions, if any, as the Treasurer thinks fit, payment of the whole or such part of the duty as the Treasurer thinks fit, until the death of the widow" (sec. 69B). Attempts made by the Opposition to extend this privilege to a widower were unsuccessful.[49]

Sec. 90 (3) of the Administration Act 1903 exempted from duty certain beneficial interests which might otherwise be caught by the language of the section. "There is a doubt as to whether a strict interpretation of Sub-section (1) of Section 90 would have the result of bringing into an estate the valuation of an interest in a pension or a superannuation scheme."[50] To ensure that this does not happen sec. 90 (3) has been amended to exclude from duty "the beneficial interest in any money received or payable under any bona fide superannuation or pension scheme or arrangement."

Confusion had arisen as to the scope of secs. 100 and 100A of the original Act which provided for reduced duty on beneficial interests passing to certain relatives.[51] The Bill as introduced sought to restrict considerably the benefit of this relief but the Council insisted on its amendments to this and to other parts of the Bill.[52] In the result the benefit of the rebate extends to a widower, widow, parent, brother, sister or issue of the deceased. The amount of the relief remains the same as in the 1955 legislation but "rewording . . . was made necessary by virtue of the proposed change from a percentage application

47 *Ibid.*

48 See 3 U. WESTERN AUST. ANN. L. REV. 140.

49 See (1956) 145 PARL. DEB. 2535-6.

50 Mr. Court, Member for Nedlands, (1956) 145 PARL. DEB. 2536.

51 See 3 U. WESTERN AUST. ANN. L. REV. 512.

52 (1956) 145 PARL. DEB. 3475, 3817.

of probate duty to the rate in the £ as will apply under the . . . new system."[53]

Another important amendment to the Act was the result of a compromise between the two Houses.[54] Sec. 136 of the original Act exempted from duty on the second occasion property which passed to a widow or widower or any parent or issue who themselves died within two years. The period has now been extended to 4 years and operates in favour of a brother or sister as well.

VII. BUILDING, HOUSING AND DEVELOPMENT.

Builders.

In an effort "to stimulate the building industry, and to encourage small builders and competent tradesmen to undertake the construction of cottages,"[55] the Builders' Registration Act 1939 was amended in 1953 to permit registration of a category which became known as conditionally registered builders, persons who need have no qualifications but whose capacity was limited to building works not exceeding £4,000. While this group once fulfilled a definite need, there was a feeling throughout the building trade that by 1956 the time had come for a review of the situation, particularly to encourage a higher standard of home building.

To meet this provision has been made[56] for two classes of builders, "A" class and "B" class. Registration as an "A" class builder is obtained by passing examinations provided the applicant has had seven years experience in the building industry. Registration as a class "B" builder is obtained by passing a much more simple examination together with five years experience. The ceiling for this type of builder is £5,000 (sec. 10A (3) (a)). Provision is made for the automatic registration as class "B" builders of those at present conditionally registered. But to ensure that they are genuinely engaged in building and not just nominally registered, failure to execute works to the value of £5,000 in any year results in deregistration unless satisfactory reasons are shown why this was not done. This is designed to cover such cases as illness or even a long holiday.

[53] Second Reading Speech by the Chief Secretary, (1956) 145 PARL. DEB. 2655.

[54] See (1956) 145 PARL. DEB. 3475, 3589.

[55] Second Reading Speech by the Minister for Works, (1956) 145 PARL. DEB. 2867.

[56] Builders' Registration Act Amendment Act, No. 63 of 1956.

Architects.

There was general agreement with the provisions of the Architects Act Amendment Act (No. 45 of 1956).

The Act now includes as a qualification for registration membership of the Royal Australian Institute of Architects, a body that was not in existence at the time the original Act came ino force. The Architects' Board is given effective control over registered architects to prevent 'misconduct', a word which is given a wide definition by the amending legislation (sec. 22A (1)). The jurisdiction previously vested in the Supreme Court has been abrogated, and the Board is empowered to enquire into cases of misconduct and for that purpose to exercise the powers conferred by the Justices Act 1902-48. A finding of guilt enables the Board to suspend or cancel registration and order the payment of costs (sec. 22A (5)). There is a right of appeal to a magistrate of the Local Court whose decision "has effect according to its tenor, is final, and is not subject to any appeal" (sec. 22A (8) (b)).

The decision of the Supreme Court in *Neal v. Sier*[57] highlighted the limitations of sec. 29 of the original Act, a section which aimed at preventing the misleading use of the description of 'architect.' In that case however, the Court held that an offence is not committed unless the use of the description by an unregistered person carries with it the implication that the person "is registered under this Act, or that he is qualified to practice as an architect or is carrying on the practice of architecture," this being the language of sec. 29. In his judgment Wolff J. (as he then was) said: "It seems to me that the section is so couched that a coach and four can be driven through it; and for my part I think it should receive some consideration from the Legislature."[58] That consideration has now been given and the amendment makes it an offence even to use the description of "architect" or "architectural practitioner" (sec. 29).

Housing finance.

The provision of adequate housing is not only a perennial source of worry to governments in this country but is also a constant cause of friction between the Commonwealth and State Governments. The Commonwealth and State Housing Agreement Act (No. 6 of 1956) authorises the execution by the State of Western Australia of the

[57] (1953) 55 West. Aust. L. R. 53.
[58] *Ibid.,* at 57.

agreement annexed as a schedule and which represents the latest agreement on the matter. It covers the period from 1956 until 1960 during which the Commonwealth will make advances for the erection of dwellings and the provision of finance to home builders. For the first two years of the agreement 20% of the allocation, and for the remaining three years 30%, is to be made available to building societies and other approved institutions (Agreement, Clause 6). The way in which loans are dispersed by these bodies, for instance the amount of loans and the interest charged thereon, is a matter for agreement between the Commonwealth and the State (Agreement, Clause 3). Of the money advanced to the State, up to 5% can be required by the Commonwealth to be used for the erection of dwellings for personnel of the armed services. However, where moneys are so allocated the Commonwealth will advance an additional amount to the State to equal the allocation. Money advanced for the erection of dwellings, as distinct from the provision of finance to home builders, must be used for dwellings "of reasonable size and standard, primarily for families of low or moderate means" (Clause 11 (1)). A family "of low or moderate means" has been interpreted by the State Housing Commission with the approval of the Government as "one who is qualified as a worker under the State Housing Act."[59]

State Housing homes.

The State Housing Act Amendment Act (No. 32 of 1956) has two main objects, "to grant concessions to those who are purchasing houses under the State Housing Act; and for the purpose of classifying a section that has been the cause of some dispute and litigation in the Supreme Court."[60]

The maximum period during which houses could be purchased, as distinct from leased, from the State Housing Commission was 40 years. That limitation has now been removed and houses may be purchased or leased from the Commission over such period as the Commission determines. Added benefits have been conferred on those purchasing under the leasehold provisions of the present Act; in particular, instead of the land being revalued every 20 years, a lease-holder is entitled to purchase the land at the original appraised figure.[61] Other provisions enable a person buying under the leasehold

59 Second Reading Speech by the Minister for Housing, (1956) 143 PARL. DEB. 678.

60 Second Reading Speech by the Chief Secretary, (1956) 144 PARL. DEB. 2447.

61 See Second Reading Speech by the Minister for Housing, (1956) 144 PARL. DEB. 1886.

scheme to obtain a title quite early, subject of course to a mortgage to the Commission (sec. 32A).

The State Housing Act 1946 as originally passed contained no mandatory provisions for the payment of rates in respect to vacant land held by the State Housing Commission, although in the discretion of the Minister an amount could be paid to the appropriate local authority. A later amendment[62] required the Commission to make an annual payment "of the current rate." The meaning of this expression was eventually determined by the Supreme Court in an unreported decision as meaning the full rates as determined from year to year and not simply the rate prevailing at the date of acquisition of the land. Sec. 22 has been reworded to give effect to the Court's decision.

Town planning.

The Town Planning and Development Act Amendment Act (No. 79 of 1956)extends for a further 12 months i.e. until 31st December 1957 the powers that had been given to the Minister for Town Planning in 1955 to make interim development orders.[63]

The original Act prohibited the registration, without the approval of the Town Planning Board, of a transfer, mortgage or lease for more than 10 years of land less than half an acre in area unless it comprised the whole of a lot shown on a plan registered in the Department of Lands and Surveys or in the Office of Titles or Registry of Deeds (sec. 21 (1)). There was, however, no prohibition against the disposal of land as such and a case was instanced in which purchasers had suffered as a result of contracting to buy land the subject of a subdivision created without authority.[64] The amendment prohibits the subdivision sale or lease for more than 10 years of land except as lots. Protection is accorded to purchasers by a provision that where a transaction "cannot be completed because that land cannot be dealt with as a lot or lots, the person who paid the consideration is entitled to a refund of the consideration from the person to whom it was paid" (sec. 20 (1)).[65]

Much more controversial were the provisions aimed at clarifying the question of injurious affection. Sec. 4 of the principal Act permitted

62 State Housing Act Amendment Act, No. 27 of 1950.

63 See 3 U. Western Aust. Ann. L. Rev. 522.

64 (1956) 145 Parl. Deb. 2951.

65 This precludes the possibility of a plea of illegality defeating a purchaser's ability to recover, as in George v. Greater Adelaide Land Development Co. Ltd., (1929) 43 Commonwealth L.R. 91.

a claim for compensation by any person whose "land or property is injuriously affected by the making of a town planning scheme." While in certain cases compensation was not recoverable, "there is considerable doubt and quite a lot of fear among local authorities as to the affect that a comprehensive zoning scheme might have upon them."[66] To allay this fear compensation for injurious affection will not be payable in relation to town planning schemes which come into force after 17th January 1957 unless:—

(1) a zoning scheme is such that it precludes private development in the area, for instance if the land is taken for roads or school grounds or recreation grounds or:—

(2) a scheme prohibits the continuance of non-conforming use which but for the prohibition would not have been unlawful (sec. 12 (2a) (b)).

Parking facilities.

In moving the second reading of the City of Perth Parking Facilities Act (No. 86 of 1956), the Minister for Transport said: "The chief purpose of this Bill with the somewhat unusually long Title is to confer on the Perth City Council authority to control parking . . . within the City of Perth . . . The intention is that the operations of the Perth City Council . . . should be subject to the Minister . . . to see that there is no conflict between the parking procedure decided upon by the council and the effect it might have upon traffic matters generally."[67]

The Act represents an attempt to deal with some of the difficulties involved in controlling an increasingly growing motor vehicle population and in particular parking in the City of Perth. "It will be seen that the Bill refers to parking. All other matters pertaining to the administration and enforcement of the provisions of the Traffic Act and regulations will continue to be operated by the police."[68] Nevertheless in the event of an inconsistency between the two statutes, the City of Perth Parking Facilities Act prevails (sec. 6 (2)).

The Perth City Council is given all powers necessary to establish parking stations, to provide and operate parking facilities and metered zones and metered spaces, to instal parking meters and charge fees for the use of parking facilities and to appoint stands for the use of

[66] (1956) 145 PARL. DEB. 2950.
[67] (1956) 145 PARL. DEB. 2867.
[68] *Ibid.*, at 2870.

specified vehicles or classes of vehicles (sec. 11). Sec. 11 (2) ensures the control of the Minister by providing that these powers are not to be exercised without his approval. As might be expected no private parking stations or parking facilities can be established within a parking region without the approval of the Council. This is to make sure that substantial car parks, such as multi-storey parks, are not erected on sites which would result in obstruction to traffic, for instance by disgorging vehicles on to main arteries. Concomitant with the powers conferred on the Council, that body is empowered to appoint officers to administer the Act, including inspectors who are to police the parking provisions and institute proceedings for offences. In this regard there is an "owner-onus" clause (sec. 19 (2)), rather milder than that introduced into the Traffic Act.[69]

As a guarantee against the possibility of the Council using its powers simply to fill its own coffers, sec. 7 of the Act requires it to operate and maintain a "Parking Fund." Into this fund are paid all fees and charges collected together with any moneys borrowed for parking purposes. From it will be met the expenses of administration, of acquiring land, the erection of structures, the purchase of equipment and generally all expenses in connection with the scheme (sec. 7 (3)). It will be kept quite distinct from the normal funds of the Council.

The Act contains another instance of the unfortunate practice of annexing a Schedule containing substantial amendments to another statute, in this case to the Traffic Act 1919-55.

Vermin control.

The Vermin Act Amendment Act (No. 57 of 1956), among other things, aims at improving control measures undertaken by the Agriculture Protection Board for the destruction of vermin. The Board or a board of a district may prohibit trapping during such time as poison is being used in any district and thus make the poisoning campaign more effective (sec. 102A). The amendment also extends the protection from personal liability for acts done in the course of duty which is conferred on vermin control officers by the Agriculture Protection Board Act 1950 to "the taking of measures for obtaining information" for the carrying out of the Vermin Act 1918-54. This applies also to "the taking of those measures in respect of vermin" (sec. 103 (5a) (b)) and is designed to protect "these officers from prosecution on technical grounds, when carrying out scientific tests on animals."[70]

69 See *supra* at p. 96.
70 Second Reading Speech by the Chief Secretary, (1956) 145 PARL. DEB. 3080.

The Bill itself sought to give wide powers to "authorised persons" to require information and to prohibit any person from assaulting or using abusive language to an authorised person. As well as a penalty of £100 for such offences, the Bill provided the same penalty for attempting to commit such offences. The House found amusement in trying to see how a person could *attempt* to use abusive language. There was opposition to these proposals both in the Assembly and especially in the Council which rejected these parts of the Bill. It was pointed out by several members[71] that officers are adequately protected by the Police Act 1892-1956 and by the Criminal Code in which the penalties are nowhere as great as those contemplated by the Bill. Very reluctantly the Government agreed to accept the measure in its altered shape.[72]

Bills of sale.

The Bills of Sale Act 1899-1940 sec. 5 defined crops as meaning "European flax, hemp, wheat, maize, barley, oats and grass, whether for hay or for grain, and all cereal and root crops and fruit." It made no mention of tobacco, the production of which is now assuming some importance in Western Australia. This has created difficulties in the past where growers have sought finance and the security given by means of a bill of sale has been of doubtful legality. The Bills of Sale Amendment Act (No. 9 of 1956) has overcome this by including 'tobacco' in the definition of 'crops.'

Crown land and Crown leases.

Three amendments were made to the Land Act 1933-1954. The first was the Land Act Amendment Act (No. 41 of 1956). It had been suggested that the definition of "Crown Lands" in sec. 3 of the original Act left in doubt whether land between high and low water mark came within the definition. The addition of sec. 3 (2) puts the matter beyond doubt.

The amendment's other object was to prevent trafficking in pastoral leases.[73] Now, except in special cases to be approved by the Minister, no pastoral lease may be transferred or sublet within 2 years of the lease unless the lessee has made the requisite expenditure on improvements and can prove that the area has been stocked and

71 For instance Hon. A. F. Watts, (1956) 145 PARL. DEB. 2944.

72 See remarks by the Minister for Agriculture, (1956) 145 PARL. DEB. 3353.

73 See Second Reading Speech by the Minister for Lands, (1956) 144 PARL. DEB. 1678.

kept stocked in accordance w... the terms of the amendment (sec. 143 (4) (b)).

The Land Act Amendment Act (No. 2) (No. 48 of 1956) sought to deal with an anomaly that had arisen in regard to timber reservations in Crown leases. Before 1933 conditional purchase leases contained no reservations of timber rights to the Crown. Since then, except for domestic use, timber rights have been reserved in leases (Land Act sec. 20). Since that date also Crown grants have been issued on similar terms although until 1956 the practice was to issue Crown grants free of timber rights in respect of those pre-1933 leases. In 1954 however, the view was taken that a lessee "does not obtain a vested right to a Crown grant until he has paid the purchase price and fulfilled all the conditions of the lease, and that grants must be in accordance with the law in force at the time."[74] Incidentally this view was confirmed in a rather indirect way by the opinion of the Privy Council in *Midland Railway Co. of Western Australia Ltd. v. Western Australia.*[75] Now, where in an instrument issued before 18th December 1956 no reservation or only a limited reservation of timber was reserved, the Crown Grant is not subject to a reservation notwithstanding it may have expressly contained a reservation. This means that a purchaser of land interested in the timber rights may in some cases need to search further back than the Crown grant and inspect the actual lease; to that extent sec. 68 of the Transfer of Land Act 1893-1950 is now misleading.

The Land Act Amendment Act (No. 3) (No. 51 of 1956) is only short but it confers wide powers on the Ministers of the Crown to enter into agreements for the disposal of Crown land without the limitation as to area, price and the manner of disposal prescribed by the original Act. That limited the area of land that could be made available to any one person, group or corporation to 5000 acres. It was felt that to attract private investment on a larger scale it must be open to the State to enter into negotiations free from such limitations. The immediate urgency of the measure was the then pending visit of Mr. Chase as representative of a group of American financiers interested in land in the Esperance area and who in fact entered into an agreement for the settlement and development of approximately 1,500,000 acres in that area. There is a saving clause to protect unwise

74 Second Reading Speech by the Chief Secretary, (1956) 145 PARL. DEB. 2980.
75 (1956-57) 30 AUST. L.J. 266.

executive action. Any agreement not ratified by Parliament within six months "shall be void and of no effect" (sec. 89D (1)).

IX. GENERAL.

Validation of title.

While the vast majority of land in Western Australia is held under the Torrens system, some, particularly in the older districts such as Geraldton, Bunbury and Albany is under old system or general law title. Some of the weakness of old system conveyancing was highlighted in respect of land at Albany sold in 1874 by the Albany Municipal Council for non-payment of rates but as to which no Crown grant could be traced. Albany Lot 184 (Validation of Title) Act (No. 5 of 1956) validates the estate in fee simple which the purchaser thought he had acquired. The opportunity was not overlooked by at least one member to advocate the bringing under the Transfer of Land Act 1893-1950 of the remaining land held under the general law.[76]

Rural and Industries Bank.

The Rural and Industries Bank Act 1944-54 provided that a Commissioner of the Bank (of whom there are six) vacates his office if he has "any direct or indirect pecuniary interest in any agreement with the Commissioners otherwise than as a member and in common with the other members of an incorporated company consisting of at least twenty members" (sec. 17 (e)). The section was reproduced from the Agricultural Bank Act 1934 when that institution was replaced by the Rural and Industries Bank in 1944 and operated there "as a safeguard against a commissioner profiting from his office by trading with the old bank, which purchased large quantities of merchandise, livestock and plant for supply to new sellers. It does not apply to the conditions prevailing in a general banking business."[77] Nonetheless the section was there, wide enough in its terms according to a Crown Law Department opinion[78] to debar a Commissioner from having a housing loan from the Bank or conducting a current account Some of the Commissioners had housing loans entered into before their appointments and all had current accounts with the Bank. The Rural and Industries Bank Act Amendment Act (No. 15 of 1956)

[76] Mr. Bovell, Member for Vasse, (1956) 143 PARL. DEB. 750.

[77] Second Reading Speech by the Minister for Railways, (1956) 143 PARL. DEB. 925.

[78] *Ibid.*

therefore validates the original appointments of the Commissioners and permits them to operate current accounts, continue existing loans and obtain a loan after appointment as Commissioner "with the approval of the Governor granted on the recommendation of the Minister" (sec. 17 (2) (c)).

Further and extensive amendments to the original Act were made later in the session,[79] the purpose of which was to facilitate and regulate the savings bank operations of the Bank. Only one section calls for particular comment, sec. 65 (2) and (3) which permits the Bank to take money on deposit from trustees "and the Commissioners may pay to the trustee or the trustees the amount or any portion of the amount . . . and the payment . . . is a complete discharge to the Commissioners for the payment" (sec. 65E (2) (a)). It was pointed out[80] that the Trustees Act 1900-55 sec. 5 permits as one of the authorised investments *fixed* deposits. The amendment, unless the Trustees Act were also amended could give the Rural and Industries Bank an advantage over private savings banks. The Minister for Lands who introduced the Bill stated that an amendment to the Trustees Act would be put before the house later in the session and this was in fact done.[81] It is suggested however, that this was unnecessary and inadvisable. The mere fact that the Rural and Industries Bank was permitted to accept moneys from trustees on other than fixed deposits could not relieve the trustees of their obligations under the Trustees Act and in fact the amendment specifically provided that "nothing . . . relieves the trustee or trustees from any legal liability to account for or apply any money paid to him under these provisions" (sec. 65E (2) (c)).

Incidentally the practice of including a new division in an Act covering secs. 65A-65Y and extending for eleven pages is to be deprecated from a drafting view point. There must be a more satisfactory way of doing it.[82]

The Rural and Industries Bank Act sec. 58 (c) prohibited loans on land the subject of a prior encumbrance, except in limited cases. The range of exceptions has been extended to provide for loans where it is agreed between the prior encumbrancer and the Bank that the prior encumbrance "shall be deemed to rank in order of priority after

[79] Rural and Industries Bank Act Amendment Act (No. 2), No. 31 of 1956.

[80] Mr. Court, Member for Nedlands, (1956) 144 PARL. DEB. 2167.

[81] See *infra,* at p. 120.

[82] See remarks by Hon. Sir Charles Latham, (1956) 145 PARL. DEB. 2506.

the encumbrance . . . to be given in favour of the Bank" (sec. 58 (c)). This is to be accomplished by a 'letter of postponement' from the first encumbrancer and is designed to avoid discharge and re-registration in those cases where the first encumbrancer has no objection to losing his priority.

Trustee investments.

In consequence of the amendment to the Rural and Industries Bank Act 1944-54[83] the list of authorised trustee investments has now been extended to (a) deposits in the Savings Bank Division of the Rural and Industries Bank; (b) deposits in authorised savings banks.[84]

The desirability of this extension may be questioned. The security of the investment is beyond doubt but it will enable trustees to satisfy their obligations by an investment bearing a low interest rate which will not secure to the beneficiary a return even commensurate with the degree of safety he is entitled to demand.

Trout acclimatisation societies.

The Fisheries Act Amendment Act (No. 64 of 1956) permits a local authority to apply for registration as a trout acclimatisation society, and thus acquire the "powers, rights and authorities" conferred by the Fisheries Act 1905-51 sec. 31. Previously applications could only be made by a "society consisting of not less than ten members" (sec. 31 (1)). Consequential amendments were made to the Municipal Corporations Act 1906-54[85] and the Road Districts Act 1904-55[86] to enable a local authority to undertake the control and management of any acclimatisation district in respect of which it is a registered society and for that purpose to make all necessary by-laws.

Statistics.

There was general agreement with the provisions of the Statistics Act Amendment Act (No. 62 of 1956), particularly when the Minister for Works, in moving the second reading, assured the House that it would result in an annual saving to the State of £80,000.[87] The amendment authorises the State to enter into an agreement with the Commonwealth (contained in a schedule to the amendment) so that

[83] *Supra,* at p. 119.
[84] Trustees Act Amendment Act, No. 39 of 1956.
[85] Municipal Corporations Act Amendment Act, No. 67 of 1956.
[86] Road Districts Act Amendment Act, No. 68 of 1956.
[87] (1956) 145 PARL. DEB. 3391.

the statistical services throughout Australia should be integrated nder Commonwealth control."[88] This service will be operated and aid for by the Commonwealth under a statistician who will be both tate Government Statistician and Deputy Commonwealth Statistician or Western Australia. The State employees will be transferred to the Commonwealth Public Service; those who do not wish to transfer will be given other work in the State service. The State Statistics Act 907 will continue in force for use if and when necessary, perhaps for nstance on some special project of State interest only.

Liquor licencing.

The Licencing Act 1911-55 was the subject of three amending Acts. Two other Bills failed.

The first amendment[89] introduced a new type of licence, the anteen licence, which can only be granted in certain districts and nly on behalf of a company "exploring, prospecting or mining for etroleum" (sec. 44E). The problem of providing liquor in areas where club, hotel and other forms of licence are not practicable had een raised by West Australian Petroleum Pty. Ltd., a company ngaged in the work of oil exploration in Western Australia. A canteen licence which authorises the sale or disposal of liquor by bottle or glass to persons "engaged in the work of exploring prospecting or mining for petroleum" (sec. 44F) was felt to provide the solution.

The second amendment[90] provides for increases in the rates of percentages used in assessing the annual fees payable by licensees and also "provides for the percentage rates to follow the practice in other States of having a uniform basis of taxation for all classes of licence."[91]

The scope of canteen licences was extended by the Licencing Act Amendment Act (No. 4) (No. 42 of 1956) which authorises the Licensing Court to grant such a licence if the company, whatever its business, "is one which for the purposes of its business, is operating in an isolated area" (sec. 44E (a) (ii)).

Brands.

The Brands Act Amendment Act (No. 44 of 1956), which excited ittle comment, permits the branding of numerals denoting the age

88 *Ibid.*

89 Licensing Act Amendment Act, No. 7 of 1956.

90 Licensing Act Amendment Act (No. 3), No. 24 of 1956.

91 Second Reading Speech by the Minister for Justice, (1956) 144 PARL. DEB. 1280.

of a horse or head of cattle on the off shoulder of the animal provided it does not interfere with the registered brand. Previously such numerals could only be imprinted on the cheek or near thigh. The amendment was the result of a request by the Western Australian Turf Club to the Department of Agriculture to bring the practice of identifying race horses in this State into line with the other Australian States.

Associations.

The simplicity and adequacy of the Freemasons' Property Act (No. 53 of 1956) might well serve as a model for associations which acquire and deal in property. It constitutes a masonic lodge which adopts the Act a body corporate with perpetual succession and enables the trustees to deal in property as a corporate body. This overcomes the difficulty that has arisen from time to time with trustees of diocesan property where one or more of the trustees has died or moved elsewhere.

Water restrictions.

Invariably each year at the peak of summer water restrictions are imposed in the metropolitan area. This has been done, pursuant to By-law No. 283A of the Metropolitan Water Supply, Sewerage and Drainage Act 1909-55, by publication in a daily newspaper of the order imposing the restrictions. The legality of this had been a matter of doubt for "as the Act stands at present there is no clear power for a regulation to be made authorising the Minister to make laws by publication of orders in the daily newspapers."[92]

A further doubt as to the legality of charges brought for breach of the restrictions had arisen out of the fact that by the time offenders were charged the restrictions in many cases had been lifted. In this connection sec. 11 of the Criminal Code provides:—

"A person cannot be punished for doing or omitting to do an act, unless the act or omission constituted an offence under the law in force when it occurred, nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when he is charged with the offence."

To overcome these difficulties an amendment[93] was made to the principal Act empowering the Minister to exercise his authority under

[92] Second Reading Speech by the Chief Secretary, (1956) 144 PARL. DEB. 2202.
[93] Metropolitan Water Supply, Sewerage and Drainage Act Amendment Act, No. 27 of 1956.

the by-law to impose restrictions on the use or consumption of water. Sec. 147A (5) specifically ensures that the cancellation or variation of an order does not effect the liability to be penalised, despite sec. 11 of the Criminal Code.

Workers' compensation.

Inevitably the Workers' Compensation Act Amendment Act (No. 80 of 1956) was the subject of long and often bitter debate, with messages passing between the two Houses and managers of both Houses meeting in conference; inevitably too, the result was that a compromise measure became law.

On the negative side, the Council as on previous occasions refused to accept a "to-and-from" clause.[94] Such a clause would have provided an insurance cover "for workers travelling to and from their place of employment, or from the technical school to their homes, or vice versa, or from their place of employment to the technical school."[95] The amendment effects overall rises in the amount of compensation payable, both in regard to weekly and lump sum payments. Of these the most important increase the amount payable to dependants on death to £3000 plus £75 for each dependent child and increase the maximum for permanent total incapacity to £2750. The Second Schedule figures however are left virtually untouched. In 1954 an amendment was made to the original Act gearing weekly payments to increases in the basic wage.[96] The amounts payable on death, for permanent total incapacity and to dependents in respect of total or partial incapacity have now been placed on a similar footing. Increased protection is given to injured workers who enter into an agreement for compensation, for no agreement is valid which exempts the employer for compensation to which the worker is or may later become entitled. The provision has no application to redemption agreements.

In *T. G. Brown v. Gold Mines of Australia*[97] the Full Court, on a case stated by the Workers' Compensation Board, held that sec. 8 (13) of the principal Act must be construed to mean that an incapacitated worker suffering from a non-industrial disease *and* from one of the specified industrial diseases is entitled by way of weekly payments

94 The expression was used by a number of members including the Minister for Labour in his Second Reading Speech, (1956) 144 PARL. DEB. 1720.

95 *Ibid.*

96 Workers' Compensation Act Amendment Act, No. 74 of 1956. See 3 U. WESTERN AUST. ANN. L. REV. 358.

97 Workers' Compensation Board Decisions (West. Aust.) 131.

to the maximum commensurate with the percentage of his disability having regard to the industrial disease from which he is suffering. This overruled the decision of the Board that the rate of weekly payments is not affected and that it is only the total liability of an employer which must be apportioned. Sec. 8 (13) has now been amended but despite the comment of the Minister for Labour in his Second Reading Speech that "there is an amendment in the Bill which will make it conform to the Full Court decision,"[98] the amendment clearly seeks to give effect to the decision not of the Full Court but of the Board.

The Workers' Compensation Act with its division into sections and schedules, its multiple sub-sections and sub-paragraphs must now rank as one of the most difficult pieces of legislation on the statute book to follow. Bearing in mind the nature of the Act, that is no mean achievement. Just one small illustration is provided by sec. 12 (e) of the amending Act which provides:—

"Clause one of the First Schedule to the principal Act is amended—(e) by adding after the word 'child' in line six of the paragraph following sub-paragraph (iii) of paragraph (c) the words 'or step-child'."

The time is ripe for a further reprint of the Act, based at least on a general tidying up and if possible on a substantial redrafting to make it more easily intelligible to those who have to use it.[99]

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98 (1956) 144 PARL. DEB. 1721.

99 That this is not purely a local phenomenon is suggested by the following comment in (1957) 1 U. ILL. L.F. 253: "Sir John Salmond described case-law as 'gold in the mine' and statute-law as 'coin of the realm ready for use . . . brief, clear, easily accessible and knowable . . . ' He had never read the Illinois Workmen's Compensation Act."

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