REVIEW OF LEGISLATION.

I. Western Australia.

Introductory.

The second session of the twenty-third Parliament opened on 28th July 1960, and closed, almost four months later, on 25th November. As a result of the labours of this session the annual statutes occupy two volumes instead of the customary one, the second volume being entirely devoted to the new Local Government Act, and the indices and tables which usually occupy the final pages of the annual statute book are relegated to a third volume.[1] Eighty-four Bills survived the rigours of the legislative process to reach the statute-book; only three Acts were amended twice during the session, a pleasing contrast with the record of earlier sessions whose output has been reviewed in these pages. Fourteen Bills were discarded, the smallest number since 1948. Strange to say, no attempt was made during the session to enlarge the franchise for elections to the Legislative Council, a break with tradition which suggests that, for the time being at any rate, the Labour Party has learnt the lesson of Saul of Tarsus.[2] For its lost cause the Labour Party chose instead to re-introduce, this time in the Legislative Council, a State Concerns (Prevention of Disposal) Bill along the lines of that introduced in and defeated by the Assembly in the previous session.[3] This Bill, strange to say, passed the Legislative Council by a majority of three, three members of the Country Party[4] voting with the Labour members, but received its quietus on the second reading in the Legislative Assembly. Of the other Bills three were defeated at the second reading stage in the Legislative Assembly, one (the Licensing Act Amendment Bill [No. 2]) was dropped two weeks after its introduction, no doubt to enable the introduction of a different Bill, more apt to achieve the end desired by the member introducing the first,[5] and the rest were not proceeded with. Included in these discards was a curious attempt (the Property in Bottles Bill) to "break" the monopoly which,

1 Unfortunately, something seems to have gone wrong at some stage of the printing of this, and the Government Printer has been reduced to the expedient of gumming sheets together, presumably in order that the pagination should be correct. The final result looks disgracefully "tatty" for an official publication, but as the tables will be superseded in the 1961 volume it may be justifiable in the interests of economy.

2 See Acts 9, 5 *in finem*.

3 *Supra*, at 104, note 5.

4 The Hons. N. E. Baxter, A. R. Jones, and A. L. Loton.

5 The second Bill was among those defeated in the second reading stage in the Assembly.

it was alleged, a certain firm had over the collection and disposal of bottles the property of the Branded Bottles Association. The members of the Association, who retain the property in the bottles in which their product is sold, had been refusing to receive their bottles back except through the firm in question. The rather naîve belief of the sponsor of the Bill was that if the property in the bottle passed to the purchaser of the contents he could then sell it to the bottle collector, who would then be at liberty, without having to take the bottle to a further middleman, to resell it directly to the original bottler, whose name the bottle would bear. Since the sponsor did not, according to his second reading speech,[6] contemplate that the bottles would be available for sale to any firm other than that whose name the bottle bore,[7] there would have been nothing to prevent the original owner of the bottle from refusing to repurchase his bottle except through the firm. Opposition was, however, expressed to the Bill, partly on the grounds that there would be nothing to prevent bottles originally containing one product being sold to another firm and re-used for a different product, thus introducing the risk of contamination or pollution, and also on the grounds that a system under which title to the bottle passed along with title to the contents would greatly increase the cost of bottled goods.

Of rather more potential importance was the Bill introduced by the Hon. H. E. Graham with the object of abolishing the death penalty. Unfortunately, perhaps, honesty compelled Mr. Graham to admit that this object was part of the Labour Party's official policy, and the Attorney-General in his turn characterised his opposition to the provisions of the Bill as "the Government's view". This appeared to foreshadow an eventual division along party lines. Whether because of this, or because of a prospective Government amendment to the Criminal Code, to be introduced in the next session, modifying the application of, if not abolishing, the death penalty, the Bill was not proceeded with after the adjournment of the second reading debate on 19th October.

A Uniform Companies Bill was introduced and the second reading moved, but in order that various bodies and organizations concerned with its provisions might be able to consider them and make representations concerning them for consideration by a further conference of State and Commonwealth Ministers in February 1961, the

[6] (1960) 156 PARLIAMENTARY DEBATES (Western Australia) (hereinafter referred to as PARL. DEB.) 1975, at 1977.

[7] Indeed, he appears to have thought that if this did happen it would probably give rise to an action for passing off—*ibid.*

debate was adjourned to a date beyond the currency of the session. An attempt to introduce legislative certainty into a somewhat uncertain branch of the law by specifically casting the shield of Crown immunity over certain agencies of the State, and providing for the extension of such immunity by proclamation to any other statutory corporation not expressly declared an agency of the Crown by the statute creating it, if the Governor were satisfied that the body was carrying out an executive activity of the State, was made when the Hon. A. F. Griffith introduced into the Legislative Council the Crown Agencies Bill.[8] No doubt as a result of the strong opposition expressed by the Hon. H. K. Watson to the actual and potential conferment of such immunity, without any qualification whatever, on State Trading Concerns the Bill was discreetly dropped during the committee stage. One

8 "Of late", said the Hon. the Minister, introducing the Bill, "there have been several conflicting decisions and some criticisms by writers on legal matters"—(1960) 155 PARL. DEB. 828. Professor Friedmann has been the foremost critic in Australia; although his criticisms are over ten years old, they are still pertinent—see *Legal Status of Incorporated Public Authorities* (1948) 22 AUST. L.J. 7, and *The Shield of the Crown,* (1950) 24 *id.* 275. The latter article referred specifically to the conflict between Victorian Railways Commissioners v. Herbert, [1941] Victorian L.R. 21, in which it was held that the Commissioners did not represent the Crown in so far as they owned property and let it to tenants, and thus were bound by the Victorian Landlord and Tenant Act, and Electricity Trust of South Australia v. Linterns Ltd., [1950] State R. (South Aust.) 133, in which it was held that the Trust was a Government instrumentality not bound by the South Australian Landlord and Tenant Act. Since then it has been held that, although the Rural Bank of New South Wales is bound by the Landlord and Tenant Act (Rural Bank of N.S.W. v. Hayes, (1951) 84 Commonwealth L.R. 140) the Commissioner for Railways, N.S.W., is not (Wynyard Investments Pty. Ltd. v. Commissioner for Railways (N.S.W.), (1955) 93 Commonwealth L.R. 376); that the Electricity Commission of New South Wales is not bound by the Landlord and Tenant Act (Electricity Commission of N.S.W. v. Australian United Press Ltd., (1954) 55 State R. (N.S.W.) 118), but the Tasmanian Hydro-Electric Commission is obliged to pay rates on land vested in it and also on Crown land occupied by it (Launceston Corporation v. Hydro-Electric Commission, (1959) 32 Aust. L.J.R. 443); that the Queensland Housing Commission is only a convenient instrument for the administration of a department of the Government of Queensland, and has no independent status (Deputy Commissioner of Taxation v. Etablissements Lecorche Frères, [1954] State R. (Queensland) 314); but Commonwealth Hostels Ltd., a company formed to take over and manage immigrant hostels, is not an agent of the Commonwealth and is bound by the Prices Regulation Acts of Victoria, New South Wales, and South Australia (Commonwealth v. Bogle, [1953] Argus L.R. 229, noted with approval in 6 RES JUDICATAE 387). The Bill proposed to avoid any difficulties in respect of the Rural and Industries Bank, the State Electricity Commission, the State Government Insurance Office and the Western Australian Government Railways Commission by expressly declaring that each was and had always been for the purposes of any Act an agent or servant of the Crown in right of the State.

wonders whether those who recommended the legislation in the interests of legal efficiency quite appreciated all of its political implications.

Among other discarded legislative suggestions were an attempt to provide minimum penalties for second (and subsequent) offences under the Industrial Arbitration Act, and an attempt to reduce the age at which horses and cattle should be branded, both made in Bills which passed the Legislative Council but were not proceeded with in the Legislative Assembly. An attempt to make the Metropolitan Region Improvement Tax permanent, which passed the Legislative Assembly, was defeated at the second reading stage in the Legislative Council.

I. CONSTITUTIONAL.

No legislation falling under this heading was enacted during the session.

II. ADMINISTRATION OF JUSTICE.

The two important pieces of new legislation in this category were, first, the Simultaneous Deaths Act (No. 60 of 1960) and second, the Married Persons (Summary Relief) Act (No. 80 of 1960). In addition, several amendments of some importance were made to existing legislation.

Simultaneous deaths.

The Simultaneous Deaths Act, which owes its presence on the statute book to the interest in matters of law reform of the present Attorney-General, the Hon. A. F. Watts, effects a reform which has been sought by the legal profession for some time. At common law, where two persons die in the same accident or catastrophe, and one would have succeeded to the whole or part of the other's property as devisee or legatee had he survived that other, the burden of proof of that survivorship was imposed on persons seeking to establish the succession. If the burden were not discharged, the devise or bequest would lapse. The leading case on the topic, arising out of the wreck off Beachy Head, on 13th October 1853, of the immigrant ship "Dalhousie", bound for Australia, is *Wing v. Angrave*.[9] John Underwood, emigrating to Australia with his wife and three children, had devised the whole of his estate to William Wing upon trust for his (Underwood's) wife, but should she predecease him then in trust for his three children in equal shares; in the event of their death under

[9] (1860) 8 H.L.C. 183.

the age of twenty-one there was a gift over to Wing himself. The wife's will similarly appointed certain property, over which she had a power of appointment under her father's will, to her husband, but, should he predecease her, to Wing. According to the evidence of the sole survivor of the wreck, the husband and wife, with two of the three children, were all swept off the quarter gallery by the same wave. Wing's claim was that if Underwood survived his wife, he was entitled as Underwood's personal representative under his will to the property appointed to him under his wife's will; alternatively, if the wife survived the husband, the property in question should come to him as appointee under her will. Such medical evidence as was available having been found insufficient to establish that either of the two survived the other, and there being then available no presumption to aid the Court, such as that enacted in articles 720 to 723 of the French Civil Code,[10] the condition under which Mr. Wing was to benefit under either will was not fulfilled, and his claim failed.

Admittedly *Wing v. Angrave* was on the facts a somewhat unusual case, and its effects could be averted by simply altering the wording of the condition on which the gift over was to take effect, to provide for the destination of the property in case devisor and devisee should perish in the same catastrophe. In 1925, however, the (English) Law of Property Act, by section 184, established a presumption that, in such circumstances as those in *Wing v. Angrave,* in which it was uncertain which of the parties survived the other, the younger survived the elder. This reform itself did not do away with all possible anomalous or inconvenient results; among others, it could lead to double successions and consequent double payment of duties,[12] a

10 The effect of these presumptions appears to have been stated rather too broadly in the second reading speech of the Attorney-General, the Hon. A. F. Watts [(1960) 157 PARL. DEB. 2348]: "In many countries on the continent of Europe, which work under the code known as the Code Napoléon, there is a presumption that the physically stronger survives the physically weaker." The statement no doubt is based on 4 PLANIOL ET RIPERT, TRAITE PRATIQUE DE DROIT CIVIL FRANCAIS (2nd ed., Paris, 1956), 65, "La loi présume toujours que la plus forte des personnes a survécu â l'autre, en se réglant à la fois sur l'âge et sur le sexe (art. 720)"—but, as the learned authors go on to point out (at 66) there are specific presumptions enacted in Articles 721 and 722, which do not always correspond in their effect to this presumed theoretical foundation. Incidentally, not many countries in Europe do now "work under the Code Napoléon"; it is confined to France itself, Belgium, Luxemburg, and Monaco, though it is said to have influenced the Codes of the Netherlands, Italy, Portugal, and Spain, and (certainly until the last war) Roumania.

11 *Cf.* sec. 136 of the Administration Act 1903.

12 *Cf.* also the difficulty hinted at in Re Bate, Chillingworth v. Bate, [1947] 2 All E.R. 418.

situation eased by the provision of section 29 of the (English) Finance Act 1958, and in cases in which husband and wife died together it could have the effect that property which had come to the husband from his family ended up in the possession of the wife's family or *vice versa,* a situation dealt with (in cases of intestacy) by section 1 (4) of the (English) Intestates' Estates Act, 1952.

New Zealand, which itself enacted a similar presumption to that in section 184 in 1927,[13] enacted in 1958 a Simultaneous Deaths Act, which, with some noticeable improvements in the drafting,[14] this State (which for some curious reason never adopted the English reform) has taken over almost verbatim.

The principal effect of the Act, which applies in respect of all property of any person that devolves according to the law of Western Australia, wherever the deaths in question occurred (section 3), is that where two or more persons die at the same time,[15] or in circumstances that give rise to reasonable doubt which of them survived the other or others, the property of each devolves, and his will[16] (failing a direction to the contrary therein) takes effect as if he had survived the other or others and died immediately afterwards (section 4 (a)). In many instances, especially those in which the relevant wills have been carefully drawn with an eye to *Wing v. Angrave,*[17] the new legislation will make no difference; in the peculiar facts of *Wing v. Angrave* (should they ever be repeated) the person in the position of Mr. Wing will succeed in his claim. The difference between the present legislation and that currently in force in England may be illustrated by considering the situation in *Re Bate,*[18] in which the husband left a will (no doubt naming the wife as beneficiary) and the wife died intestate; under section (a) the husband's estate will descend to the residuary legatees named by him, or the persons entitled on his intestacy, instead of to the persons entitled on the wife's intestacy. Moreover, since the Act applies where there is reasonable doubt whether either or any of the *commorientes* survived the other or others, cases in which on the evidence the balance of probabilities was that one party survived the

13 Property Law Amendment Act, 1927, sec. 6.

14 For example, New Zealand's tautologous "In any case where" becomes "where", and all clauses beginning "Provided that" are replaced by clauses beginning "but"; on the use of "provided that" see DRIEDGER, THE COMPOSITION OF LEGISLATION, c. xi, 110 *et seq.*

15 A contingency to which the English presumption did not apply.

16 Spelt in the Act with a capital W wherever it occurs; why? New Zealand did not think it necessary. Why not treat "trust" and "disposition" similarly?

17 *Supra,* note 9.

18 *Supra,* note 12.

other will now be dealt with on the footing that neither survived the other. By section 4 (b) a *donatio mortis causa* made by one *commoriens* to another is avoided, whereas in the previous state of the law it would presumably have been effective; thus the donation remains in the estate of and passes to the successors of the donor instead of passing to the estate and successors of the donee. Similarly, by the provisions of section 4 (c) the proceeds of insurance policies on the life of one *commoriens,* which would have passed to one or more of the others had he or they survived, is to be distributed on the footing that the person so insured survived all other *commorientes* and died immediately after them.[19] Property owned jointly by *commorientes* (other than property owned by them as trustees) devolves as if owned by them as tenants in common in equal shares (section 4 (d)); under the previous law it would appear that the property in question would be escheated or become *bona vacantia.*[20] Section 4 (e) provides for the situation in which whether immediately or mediately the destination of property (other than insurance proceeds provided for by section 4 (c)) is in the survivor of two or more persons who in fact perish together;[21] in such a case the property is to devolve as if it had been taken by those persons as tenants in common in equal shares. Similarly, if the survivor would have been able to exercise a power of appointment in respect of property (other than insurance proceeds as above) the power is to be exercisable as if each of the persons in question had the power of appointment in respect of an equal share of the property, and the share over which he is deemed to have power shall devolve, in default of appointment, as the property would have devolved had he been the survivor (section 4 (f)). Where *commorientes* include a testator and one or more of his issue, however remote, the testator is deemed to have survived the issue and died immediately afterwards, so that any devise or bequest to the issue lapses unless saved by the provisions of section 33 of the Wills Act 1837 (section 4 (g)). In all the above cases, other than of *donationes mortis causa* and joint ownership, the statutory disposition of property where there are *commorientes* is to yield to an expression of contrary intention in the will or other operative document. By section 4 (h), for all other purposes affecting the title to property or the appointment of trustees, the deaths are to be presumed to have occurred in order of seniority (the elder before the younger).

19 It is not thought that this makes any change in the previous Western Australian law, except so far as the *quantum* of proof of survival is altered.

20 It is odd that the point never seems to have arisen.

21 *E.g.,* as where it would have descended to them, by the terms of a will or trust or under section 33 of the Wills Act 1837, as joint tenants.

Married Persons Summary Relief.

The Married Persons (Summary Relief) Act (No. 80 of 1960) (which is complementary to the Matrimonial Causes legislation enacted by the Commonwealth in 1959[22]) replaces legislation (the Married Women's Protection Act 1922-1956) under which courts of summary jurisdiction had power in certain circumstances to order summary protection for a married woman by a much more elaborate and closely worked out scheme, which makes explicit provision for a number of situations unprovided for by the earlier legislation but not infrequently dealt with in accordance with court practice which had grown up. The Acts sets up a new Court, the Married Persons Relief Court, constituted (for the purposes of granting the primary relief under section 9) by a stipendiary magistrate and one justice of the peace, except where (a) one party to the proceedings is resident in another State or Territory, (b) no justice capable of acting or willing to act can be found within 10 miles of the place where the Court is sitting, (c) all parties to the proceedings agree that the magistrate may sit alone. Since by section 8 the decision of the magistrate is to prevail if he and the justice disagree, it is not easy to see what useful purpose is served by the inclusion of a justice on the Court. Had the Act expressly required that the justice be a woman (as is believed to be generally the practice) the provision would have been easier to understand. What has been called above primary relief, under section 9, may be granted to a married person (not, as heretofore, to a married woman only) upon a complaint that the other party to the marriage has been guilty of (a) desertion, (b) cruelty to the complainant or to an infant "child of the family",[23] (c) wilful neglect to provide (or in the case of a wife, make a proper contribution towards) reasonable maintenance of the other spouse or of dependant children of the family, (d) habitual drunkenness or drug-addiction (or both successively) for at least 12 months immediately preceding the application,[24]

22 The Matrimonial Causes Act 1959 (No. 104 of 1959), reviewed *supra,* at 212 *et seq.*

23 Defined, in relation to the parties to a marriage as "any child of both parties" and "any other child of either party who has been accepted as one of the family by the other party" (section 5 (1)).

24 The phrasing of this ground of relief, with its careful provision for the person whose spouse is habitually drunk for (say) only six months and then turns to drugs for the other six, is borrowed from the Commonwealth legislation (Matrimonial Causes Act 1959, section 28 (f)). The new English Act (the Matrimonial Proceedings (Magistrates' Courts) Act 1960, section 1 (1) (f)) says "is for the time being an habitual drunkard or drug addict". This, it is submitted, would have been a better model to follow, both for simplicity of wording and on account of the absence of any minimum time of addiction.

(e) commission by the other spouse since the marriage of adultery, sodomy or bestiality provided the application is made within six months of the date when the commission of the offence became known to or might have been inferred by the complainant; the six months' period may be extended if the Court thinks fit.[25] A partial elucidation of the term "desertion" is provided in section 5 (2). Despite the reference in the marginal note to scetion 29 of the Commonwealth Act, the Commonwealth provision that the conduct which may amount to constructive desertion must (*inter alia*) cause the other spouse to live separately *or* apart has become a provision that the conduct must cause the other spouse to live separately *and* apart. Thus, under section 5 (2) (a) there is no constructive desertion if the spouses continue to live in the same house.

The order granting relief may provide for one or more of the following:—(a) maintenance, separate amounts being specified for the complainant and for each child of the family, (b) custody of any child of the family, and in the latter case, (c) access to the child by either party to the marriage or a parent of the child, and (d) maintenance of the child. No order for separation, or for maintenance of the complainant, is to be made if the complainant condoned, or connived at, or conduced "by wilful neglect or conduct"[26] the commission of the marital offence,[27] or if the complainant has committed a marital offence not condoned or connived at or conduced to by the defendant, or if there has been unreasonable delay in making the

25 The Act says: "within such extended time as the Court may, *in proper case,* afford." The italicised phrase, which suffers grammatically from the absence of the indefinite article and substantively from the unfortunate implication that, lacking the legislative warning, the Court may act in an improper case, appears also in section 13 (4). The Bill as originally drafted contained the phrase a good many more times; the blue pencil, which excised the phrase in a number of sections, missed these. Had members of the Legislative Assembly been more wide-awake to the details of legislation, they might have detected these two lingering instances of words which, as the Hon. A. F. Watts said—(1960) 156 PARL. DEB. 2211—"are not well advised" and deleted them.

26 The phrase is the draftsman's; it is difficult to see the reason for the departure from the phrase "wilful neglect, or misconduct" (in which the comma avoids ambiguity) which appears in section 7 of the repealed Married Women's Protection Act 1922, and has been standard form in the English legislation (on which the precursor of the 1922 Act was modelled) since 1895; the current instance is section 2 (3) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960.

27 Section 10 (3) (a) limits this provision to orders sought "on the ground that the defendant has been guilty of a marital offence"; but since under section 9 the sole ground for making an order is the commission of a marital offence (defined in section 5 (1), by reference to section 9 itself) the words quoted are otiose.

application.[28] The Court is given power, by section 11, to bind over any of the parties to the complaint, for a period not exceeding six months, to keep the peace towards any person; in addition, by section 23, if an order for separation has been made, it becomes an offence, punishable by fine or imprisonment,[29] for any party to the marriage to molest or interfere with the other party contrary to that provision, or with a child in respect of whom an order for custody has been made. Such molestation or interference, and (by subsection (2)) refusal to afford access to a child or prevention of or interference with access to a child, where an order for access has been made, amount also to contempt of Court, maximum penalties for which are also prescribed.[30] A person guilty of such an offence or in contempt may also be bound over to obey the order he has disobeyed. Section 12 provides for the making of an interim order (which may contain provision for maintenance or for access to a child of the family) where (a) a matrimonial proceeding is pending and unheard before a superior court, and one of the parties applies to the Married Persons' Relief Court, (b) the hearing on a complaint, or on an application under section 33 to set aside a decision, is adjourned for seven days or longer, or the decision in respect of which the application is made is set aside, or (c) an appeal to the Supreme Court, under section 34 of the Act, is instituted; in the latter case the interim order may be made only by the Supreme Court or a judge thereof. The making or refusal of an interim order may be appealed against, but no appeal lies if it relates only to the terms of the order. An appeal does not operate as a stay of the order, nor may the order be stayed pending the determination of the appeal. Section 13 allows the making of an interim order, on the application of a person obliged to make periodical payments under a provision for maintenance, suspending the operation or enforcement of the provision for a specified period;[31] the order may be given up to one month's retrospective operation, and

28 The Act says "bringing the application", which appears inapt.

29 Maxima are twenty pounds, or one month, with or without hard labour; *cf.* section 16 of the Married Women's Protection Act 1922, under which the maxima were ten pounds and two months respectively.

30 By section 50—three months imprisonment, or a fine not exceeding fifty pounds.

31 Presumably where the operation of the provision is suspended the obligation to pay is discharged during the period of suspension, whereas where the enforcement of the provision is suspended the obligation to pay remains in force and arrears of maintenance may be recovered when the period of suspension expires.

the obligation revives automatically when the specified period expires.[32] Variation of the maintenance, custody or access provisions may be made, under section 14, on complaint by either a party to the marriage or, in relation to a custody provision, by some other person to whom the custody of a child of the family has been committed. The variation may be either for a specified period or permanent.[33] By section 15 a party to a marriage may apply by complaint for an order discharging any order previously made; the Court must discharge the order if it is proved (a) that both parties have consented to the discharge, (b) that the parties have voluntarily resumed cohabitation, or (c) that the party on whose complaint the original order was made has committed adultery, sodomy, or bestiality during the subsistence of the marriage, so long as the other neither condoned, connived at nor conduced or contributed to the commission of that act, and it must also discharge the order upon cause shown, on fresh evidence, to its satisfaction, that the order ought to be discharged.[34] The Court is not required to discharge the whole order, however, and may leave in force provisions for the custody of, access to, or maintenance of a child of the family; thus some of the difficulties which arose under section 13 of the 1922 Act when a married woman was shown to have committed adultery and an order was discharged have been avoided. An order for discharge may be made irrespective of the time of the happening of the event upon which the making of the order is predicated, and notwithstanding that matrimonial procedings have been commenced by one party in a superior court. Subsection (5) contains a curious provision that where the parties reside in the same household for a continuous period of more than a month, and one effectively maintains the other, or they both make an effective contribution to their joint maintenance,[35] that circumstance[36] is *prima facie* evidence

32 Section 13 (3) says that on the expiration of the period "any provision suspended *or varied* by that order shall be of effect to the extent that it would have been had it not been so suspended *or varied*." Since section 13 empowers only the suspension of the operation of enforcement of the provision, and section 14 is that which empowers the variation of orders, the italicised words appear to have crept in *per incuriam*.

33 That is, until the next variation is sought.

34 The subsection in question says that even in this event the Court "shall discharge the order." At first sight, in relation to sufficient cause shown it would seem more appropriate to say "may"; but perhaps it is just as well to inhibit the Court from saying, in effect, "We are satisfied that sufficient cause is shown for the discharge of the order, but we do not propose to discharge it."

35 It is not easy to see the point of the requirement of an "effective" joint contribution to the couple's joint maintenance. At first sight it appears as if what the Legislature means (but has not said) is that each must make

of their intention voluntarily to resume cohabitation. It is difficult to see why it is intention to resume cohabitation, rather than the resumption of cohabitation itself, which is to be presumed, and apart from this it is not altogether easy to see why the legislature should have chosen effective maintenance as the sole index of an intention to resume cohabitation.

Whereas section 15 provides for the discharge of an order only upon the application of a party to the marriage, section 16 empowers the revocation of an order upon the complaint of any person (*semble,* other than a party to the marriage) aggrieved by the making of an order,[37] if cause for revocation is shown upon fresh evidence; and the revocation may be accompanied by the revival of a previous order.

Section 17 gives the Court hearing an application for suspension, variation, discharge or revocation of an order, or an application for punishment of an offender under section 23, power to make, in addition to or in lieu of the order sought, an order of any of the other types referred to; thus if it appears on an application for variation of the custody provisions of an order that the applicant has been guilty of molestation of the child, he may be punished, and *e contra.* Carrying further the extent of the Court's power to deal with the situation as seems fit to it, notwithstanding the nature of the relief applied for, the Court is by section 18 given power on the hearing of an application for primary relief under section 9, or for variation or discharge of an order under sections 14 or 15 to make or vary a final order so that it contains such provisions for custody of or access to a child of the family as the court thinks proper after giving each party to the

an "effective" contribution to the joint maintenance. In that case, what might be an inadequate contribution by the husband towards maintaining the wife might become an "effective" contribution towards joint maintenance if matched by a similar contribution on the part of the wife. But it is equally possible that all that the Legislature means is that the joint contribution must be "effective", so that if Alice and Bill come together again, but rely for 90% of their joint maintenance on generous parents, they will not be presumed to have intended to resume cohabitation, but the complainant must prove the intention.

36 Presumably, the effective maintenance or sharing in joint maintenance.

37 It is presumed that the circumstances in which this section will most frequently be invoked are those in which an order for custody or access is made or, more probably, varied, and circumstances arise in which the interests of the child are likely to be harmed; but the legislation seems unnecessarily restrictive in requiring that the complainant be aggrieved *by the making of the order.* Why must the complainant have a premonition when the order is made that things will go wrong in the future, or on other grounds be dissatisfied with it at that time?

marriage an opportunity of making representations.[38] Section 18 makes it clear that in making any order for custody the Court shall regard the interests of the child as the paramount consideration; it also underlines (it is submitted, unnecessarily) the power of the Court to place the child in the custody of a person other than a party to the marriage, or in the care of the Child Welfare Department.[39]

Section 21 repeats provisions, which in one form or another have been standard for over 100 years, concerning the effect of judicial separation;[40] the immediate source is, according to the marginal note, sections 54 to 56 of the Commonwealth legislation of 1959,[41] but it is noteworthy that section 55 (2) of that legislation, altering the order of intestate succession to a party to a marriage in respect of which a decree of separation is in force, has no place in this legislation.[42]

Enforcement of orders is governed by Parts IV and V of the Act. An order containing provisions for the payment of maintenance or of costs is required by section 22 (1) to contain a direction, in terms of section 155 (1) of the Justices Act 1902, concerning the way in which payment of the provision is to be enforced, i.e., by execution and imprisonment, or by imprisonment alone. The aggregate amount on which the period of imprisonment is calculated is not to be limited to six months' periodical payments, but the maximum period of imprisonment is reduced to three months. Even if the direction is omitted the order is still to be enforceable by imprisonment (subsection (5)).[43] Imprisonment suspends the operation of the maintenance provision while it continues, unless it is imprisonment on remand (under section 26) pending the giving of notice and hearing of an application, as

38 It is not quite clear why this power would be conferred on the Court when hearing an application under section 9; read literally, that section appears to contemplate an application for an order *simpliciter,* and section 10 to confer a power on the Court to make an order containing any one or more of the specified provisions, quite irrespective of the specific nature of the relief (if any) sought in the application. It would have been better if sections 9 and 10 had been more carefully drafted, so that section 18 appeared less of an afterthought.

39 Surely section 10 (1) (c) and (d), read together, confer the necessary power.

40 *Cf.* sections 7, 25, and 26 of the Matrimonial Causes Act 1857 (England).

41 The Matrimonial Causes Act 1959.

42 This deliberate omission appears to be the fruit of a critical comment in a case-note in this periodical: See (1959) 4 WEST AUST. ANN L. REV. 556, and (1960) 156 PARL. DEB. 1657-1658.

43 This subsection also provides that enforcement by imprisonment shall be available in respect of orders registered in the Court under section 105 of the Matrimonial Causes Act 1959 (Commonwealth), which would not contain a direction concerning the manner of their enforcement.

authorised by section 25, for an order suspending the operation of the warrant of arrest in default of maintenance; but it does not operate as a satisfaction or extinction of the amount in default. A person may not be imprisoned twice for the same default. In addition, where there is default in payment the order may be registered in the Local Court for the district where the defaulter resides, and upon proof of the amount in default payment may be enforced under Part VIII of the Local Courts Act 1904. The provisions of section 23 in relation to provisions for separation, custody, and access have already been noted.[44] Part V, as already remarked, makes provision for attachment of earnings; it is not to be proclaimed as coming into operation until 12 months after the coming into operation of the Commonwealth legislation, the reason being that it was desired to take advantage of experience gained in administering the Third Schedule to the Commonwealth Matrimonial Causes Act 1959.[45] Unlike the scheme in the Third Schedule to the Commonwealth Matrimonial Causes Act 1959 it makes the attachment of earnings, even if a person is in default, conditional on that person's consent and mandatorily dischargeable on that person's application. Thus, regarded as a mode of securing enforcement of orders, the local scheme lacks teeth; it is in effect directed rather to compelling employers (including the Crown) to act, at their employees' instance, as agents to disburse maintenance payments. For this service the employer is entitled to deduct from the earnings remaining to the employee one shilling for each payment to the Court. An attachment of earnings order is to specify two rates: A "normal deduction rate" being the rate at which the earnings would need to be applied on any pay-day to secure payment of the maintenance ordered, plus (where applicable) such amount as the Court thinks it reasonable to deduct on account of arrears, and a "protected earnings rate", being the minimum amount which the Court thinks ought to be left to the wage-earner on each pay-day having regard to his needs and the needs of persons for whom he must or reasonably may provide. It is presumed that any attachment of earnings order will in the first instance require payment to the Court of the normal deduction rate to be made at the same intervals as the periodic pay-days, but this is nowhere explicitly stated. The Court is required under section 30 (2) to vary an attachment of earnings order if any maintenance provision of a final order is varied (consent of the wage-earner is required if an increase in the normal deduction rate is necessary) and if the normal deduction rate exceeds the amount re-

[44] *Supra,* notes 29 and 30.

[45] The Attorney-General (the Hon. A. F. Watts), (1960) 156 PARL. DEB. 1662.

quired to meet the maintenance payments;[46] and it is empowered to discharge such an order if for any reason the normal deduction rate becomes inadequate, or the protected earnings rate precludes payment of amounts falling due under a final order.[47] Failure by an employer (other than the Crown) to comply with an attachment of earnings order is punishable by a fine not exceeding £50 for a first conviction and £100 for a second and subsequent convictions; and dismissing or otherwise penalising an employee who, by consenting to an attachment of earnings order, has imposed an additional accounting burden on the employer is an offence punishable by a maximum fine of £100; in addition the employer may be required to reinstate the employee and reimburse him for lost wages. The burden of proof that a dismissed employee who had consented to the making of an attachment of earnings order was not dismissed for that reason lies upon the employer.[48]

Section 33 allows a party dissatisfied with a decision to apply, using the procedure of section 136A of the Justices Act 1902, to have the decision set aside; and section 34 provides for appeals from any order or the refusal of any order by the Court, or by a Court of Petty Sessions where it acts or purports to act under the provisions of the Act. Part VII of the Act, following substantially the provisions of Part XI of the Commonwealth Act, provides a miniature code of evidence in such procedings. The standard of proof is defined by section 35 as "reasonable satisfaction." "Fresh evidence" is defined by section 36 to include not only evidence of events or changes in circumstances occurring since the matter was before the Court, but also evidence which had since then come to the knowledge of a party and could not reasonably have been known before, as well as evidence that material facts were withheld from the Court or that material evidence given before the Court was false. Husbands and wives are competent witnesses in all proceedings under the Act, even though they involve the other spouse, and are compellable, except in cases where one or other (or both) are not parties to proceedings and the evidence is of communications made between them during the mar-

46 This appears most likely to happen when the normal deduction rate has been fixed with reference to arrears of maintenance and these are fully paid.

47 If the normal deduction rate has been properly calculated by reference to the maintenance payments required by the final order, how can it become inadequate for it must be varied if the amount of the maintenance payment is varied?

48 One wonders whether one result of this may not be that when retrenchment is taking place the man most secure in his job will be the man who has (prudently?) consented to the making against him of an attachment of earnings order.

riage (section 37). Evidence of non-access is, by section 38, competent but not compellable if it would tend to bastardize a child born to the wife during the marriage;[49] and the succeeding section makes it compulsory for a party giving evidence on his (or her) own behalf, or a witness called by a party, to answer a question which may show or tend to show adultery by or with him (or her) if proof of that would be material to the decision. Evidence of conviction of a party of a crime or offence in which sexual intercourse is an element, or of sodomy or bestiality, is evidence in proceedings under the Act that that marital offence has been committed (section 41). The Court may by section 42 call evidence on its own motion, and by section 43 may order that affidavit evidence be received to prove any fact or facts or that a witness be examined on commission, except that affidavit evidence may not be received where one party *bona fide* requires to cross-examine a witness.

Where an allegation of adultery is made the adulterer (if known) is to be named and must be cited (section 44 (1)) and other parties interested in applications must be given notice of the complaint. Service of process is to be effected by personal delivery, unless this would involve undue expense, when service by post may be allowed. The jurisdiction of the Court is generally to be exercised in open court (section 46 (1)) unless special circumstances exist which appear to make this undesirable in the interests of the proper administration of justice. Section 47 imposes a restriction on the publication of proceedings similar to that contained in section 123 of the Commonwealth legislation.

Coroners.

Act No. 15 of 1961 (the Coroners Act Amendment Act) makes a few minor changes in the law governing coroners' activities. In the course of his second reading speech the Attorney-General (the Hon. A. F. Watts) cited a report from the Chief Crown Prosecutor to his predecessor in office drawing attention to the danger of prejudice in the trial of an accused who has been indicted as the result of a coroner's inquest when that inquest has received evidence of a kind which cannot be given at a trial, especially when that evidence has been fully reported in the press.[50] The report went on to suggest three

[49] Query, is it compulsory in other circumstances, under the principle "Expressio unius . . . . ?" The operative part of the section says "either party to a marriage *may* give evidence" of non-access. Should it not have read, "Evidence (of non-access) may be given by either party . . . . ?"

[50] (1960) 155 PARL. DEB. 962.

expedients for avoiding this; first, the English practice[51] whereby the coroner adjourns the inquest, if it is likely to result in a verdict against a named person, until that person has been tried; second, the South Australian legislation[52] prohibiting coroners from recording any finding of guilt against a named person, and from committing any person for trial; and third, (and in the opinion of the Chief Crown Prosecutor, preferably) the abolition of the office of coroner. It is perhaps unfortunate, in the light of the widespread dissatisfaction (which is not wholly confined to this State) with the procedure and results of coroners' inquiries, that the Government apparently lacked the courage to adopt the third recommendation. Instead, the legislation contains what appears at first sight an uneasy compromise between the South Australian and the English legislation.[53] It is no longer competent for a coroner or a jury to find a person guilty of and charge him with an offence arising out of the death of a person or a fire; but instead, a new section 12A gives the coroner power to commit a person for trial before a competent court if in his opinion the evidence taken at an inquest on a death or a fire is sufficient to put that person (whose name is to be set forth in the inquisition referred to in section 11 (3)) upon his trial for wilful murder, murder, manslaughter or reckless or dangerous driving, or arson or any other indictable offence in which the question whether he caused the fire will be in issue. Since the evidence on which this is done, and which will no doubt be published in the press, may be largely or substantially of a kind inadmissible in ordinary proceedings, the very situation to which the Chief Crown Prosecutor's report makes reference, the danger of prejudice to which he drew attention remains unmitigated. A new section 13A partially meets the case by providing for adjournment of an inquest of a fire or a death if before a decision or a finding is reached the coroner is informed that some person has been charged with an offence in which the question whether he caused the fire or death is in issue, and prohibiting the commencement of an inquest if the coroner has already been so informed; in either case the Attorney-General may direct

51 If before the coroner's jury has given its verdict the coroner is informed that some person has been charged before examining justices with the murder, manslaughter or infanticide of the deceased, he must by statute adjourn the inquest: Section 20 of the (English) Coroners (Amendment) Act 1926.

52 The Coroners Act Amendment Act 1952 (South Australia), section 7.

53 The Hon. A. F. Watts said—(1960) 155 PARL. DEB. 962—"It is founded on legislation in the Eastern States; and to some extent in England." But the English provision referred to in note 51 above had already been adopted in South Australia (if this is what is meant by "the Eastern States"—see section 20a of the Coroners Act 1935, inserted by section 7 of the 1952 amendment referred to in note 52.

otherwise. The inquest may be resumed after the conclusion of the proceedings, but the inquisition must not contain any finding inconsistent with the determination of the matter in the proceedings. A new subsection (8) to section 43 seeks to restrict the comments which the coroner may make, or the opinions he may express, either during the course of the inquest or on the findings, on matters outside the scope of the inquest; he is limited to expressing such an opinion in a rider if it is designed to prevent the recurrence of a similar happening.[54] Further, by a new subsection (9), he may not frame his decision or finding in such a way as to appear to determine any question of civil liability or suggest that any person is guilty of an indictable or civil offence.

Supreme Court.

In March of 1960 the legal profession was delighted to learn that Mr. John Hale, Q.C., had accepted an appointment as Acting-Judge of the Supreme Court and that his appointment would be made permanent as soon as the legislation necessary to increase the number of puisne judges from four was passed. Section 2 of the Supreme Court Act Amendment Act (No. 5 of 1960) increases the number to six, thus leaving the way clear for the appointment of a further puisne judge as soon as it becomes possible to arrange regular circuit sessions in some of the larger country towns such as Albany, Bunbury, and Geraldton. The new Judge's pension rights as from the date of his appointment as Acting-Judge are safeguarded by the Judges' Salaries and Pensions Act Amendment Act (No. 2 of 1960).

Legal Practitioners.

By section 2 of the Legal Practitioners Act Amendment Act (No. 16 of 1960) the Secretary of the Law Society of Western Australia, if so authorized by resolution of the Council, may make a written complaint to the Barristers' Board concerning the conduct of a member of the profession, and the Society may appear (no doubt by counsel) and be heard on such a complaint. The objects of the legislation are, first, to enable a complaint not initially made in proper form, because the complainant lacked the assistance of counsel, to be put into proper form without the necessity of the Board's instructing its own solicitor to undertake this, and, second, to enable preliminary investigations

54 The subsection says, "a rider which, in the opinion of the Coroner is designed to and may, if given effect to, prevent . . . . " If the phrase, "may, if given effect to", is governed by "the opinion of the Coroner" it is otiose; if not, the Coroner's opinion as to the design of the rider will not save him from transgression if it is erroneous.

into a complaint to be made by an independent body, i.e., the Council of the Law Society, as the Barristers' Board is unwilling to compromise its judicial function by making preliminary inquiries itself. The amendment does not, however, take away the dissatisfied client's power to complain directly to the Board, and the diversion of complaints to the Law Society will no doubt become a matter of administrative arrangement.

Section 3 of the same Act authorizes (or discloses?) a rather surprising piece of Governmental meanness on the part of the State; legal practitioners employed by the Crown in a salaried capacity, while so employed, are deemed to be certificated; thus the State Government is freed from the necessity of paying their practising fees.[55] At the same time, the Crown, or the governmental agency[56] for which any such practitioner acts, is authorized to recover costs in respect of the work performed or services rendered as if the practitioner were a certificated practitioner engaged in private practice.[57]

Absconding Debtors.

An unfortunate incident involving an overseas visitor who left, or was thought to be about to leave, the State owing some £2,000 finally provoked the Legislature into doing something about the fact, known for some time past, that only those who propose to leave the State by ship can be arrested under the Absconding Debtors Act 1877. Section 4 of Act No. 12 of 1960 makes the necessary correction; a

55 Perhaps in complete fairness to the State Government it should be said that the Hon. the Attorney-General's speech does not disclose any consciousness that it might be proper for the Government to pay such fees; at (1960) 155 PARL. DEB. 966, he points out that, as no salaried Crown Law Officer is personally entitled to recover costs in respect of the work he performs, "very few of our salaried officers have ever taken out an annual practising certificate."

56 It would seem, either of this State, or any other State, or the Commonwealth; but the matter is not beyond doubt. The new section 62A (1) speaks simply of a practitioner "employed by the Crown"—query, in right of Western Australia only? Subsection 2 speaks in paragraph (a) of services for "the Crown, whether in right of this State, the Commonwealth, or any other State of the Commonwealth," but in paragraph (b) of "an agent of the Crown" *simpliciter.* Is this another case where *expressio unius est exclusio alterius,* or not?

57 The Hon. the Attorney-General gives a rather surprising justification for the monopoly of Crown business by the Crown Law Office, a monopoly which to this reviewer appears rather unhealthy. To brief private practitioners "would involve the disclosure of Government files to outside practitioners or offices, which is undesirable as many of these files contain confidential information which, normally, it is undesirable for outside people to see, particularly for those generally engaged in practitioners' offices, apart from the practitioners themselves"!—(1960) 155 PARL. DEB. 966.

debtor absconding by any means of transport whatever may be arrested.[58] Apparently, however, it is still possible for the hardy debtor to abscond on foot.[59] Among other minor amendments, the amount of debt for which a warrant for arrest may be issued is increased from £5 to £20,[60] and a new section 5A makes it an offence for a person to quit or make preparation to quit the State, with intent to defraud, after he has been arrested.

Evidence.

Another anomaly, not of such long standing (and perhaps more apparent than real) has been corrected by section 2 of the Evidence Act Amendment Act 1960. When in 1957 Parliament repealed section 4 of the Newspaper Libel and Registration Act 1884 Amendment Act 1888 everyone concerned overlooked the fact that its provisions were duplicated in section 43 of the Evidence Act 1906. No doubt a repeal could have been implied, but the section referred to puts the matter beyond doubt. Opportunity was taken to amend section 92 of the Act to allow evidence that a person has no account at a particular bank, or no funds to the credit of his account, to be given by affidavit in all legal proceedings. Sections 89, 90, 91, and 92 are also extended so as to apply to bankers' books, banks, or branches of banks in any State or Territory of the Commonwealth.

Criminal Law.

The tragedy of the Graeme Thorne kidnapping in Sydney has an echo in the Criminal Code Amendment Act (No. 25 of 1960) by which the offence of unlawfully confining or detaining another against his will (section 333 of the Criminal Code) becomes a crime, punishable by a maximum penalty of 10 years' imprisonment, the offence of

58 The draftsman has, *ex abundanti cautela,* excluded the *ejusdem generis* rule. What common feature constituting a *genus* is possessed by "vessel, aircraft, railway train, and motor vehicle"? Mechanical propulsion?

59 This is perhaps not as fanciful as it sounds. What is to prevent an absconding debtor (if his debts are large enough) from loading his wife, family, and goods into his car, engaging a friend to drive the car across the border, borrowing the friend's car and driving to a point just short of the border, and walking across? He may have other loopholes, too. What is a railway train "about to leave the State"? Not, certainly, the Westland. Is the Trans-continental train "about to leave the State" at Kalgoorlie? Probably. What of the intending trans-continental motorist who leaves from Geraldton? When is he "about to leave the State"? Must his arrest be deferred until he is almost on the State boundary? These questions will of course assume importance only if after arrest and release the debtor in question is to be charged under the new section 5A.

60 The amount originally proposed, in view of the fall in the value of money, was £50; it was reduced to £20 at the committee stage in the Assembly.

child stealing (section 343) is extended to apply to the taking away or detaining of a child under 16 years (the age was previously 14 years) and the maximum penalty therefor is increased to life imprisonment,[61] and a curb is placed on possible press irresponsibility[62] by the insertion in the Code of a new section 343 making the publication, without the approval of the Commissioner of Police, of a report of a child-stealing offence, before either the expiration of seven days from the date of the commission or alleged commission of the offence or the return of the stolen or allegedly stolen child to his parents, an offence punishable by a year's imprisonment or a fine of £500.

Interstate Maintenance Recovery.

The Interstate Maintenance and Recovery Act Amendment Act (No. 26 of 1960) corrects the oversight in the principal Act noted in the review of the 1959 legislation.[63]

III. STATUS.

Section 2 of the Native Welfare Act Amendment Act (No. 3 of 1960), the balance of whose provisions are noted below under the heading "General", amends the definition of "Native" in section 2 of the principal Act by excluding from it all quadroons and persons of less than quadroon blood. Previously quadroons under twenty-one years of age, in order to be exempt from the provisions of the Act, must neither associate with nor live substantially after the manner of natives, and both they and quadroons over twenty-one years of age might be ordered by a magistrate to be classed as native; members of the latter class might also elect to be classed as natives under the Act. A curious anomaly, which has now been removed, also existed, in that only those persons of less than quadroon blood who were born before 31st December 1936 were excluded from the definition of "Native"; obviously such persons born after that date must have been included in the definition. Opportunity has also been taken to phrase the effect of the exemption from the provisions of the Act granted to natives who had performed military service in a positive rather than

61 In addition to this, the curious provision that a person under 16 convicted of child-stealing is liable to whipping is deleted.

62 The Hon. the Attorney-General (the Hon. A. F. Watts), at (1960) 156 PARL. DEB. 117, cited the more sensation-minded of the local newspapers (the "Daily News" of 17th August 1960) as saying, "The Sydney Press in particular must accept responsibility for its reckless behaviour in the first vital 24 hours after Graeme's disappearance when he was probably still alive." It transpires, however, that the Press hullabaloo had apparently no influence on Graeme's fate.

63 *Supra,* at 113, note 29.

a negative way; instead of providing that such a person "shall be deemed to be no longer a native for the purpose of this or any other Act" the legislation now provides that he "has all the rights, privileges and immunities and is subject to the duties and liabilities of a natural born or naturalised subject of Her Majesty who is of the same age."

IV. PUBLIC HEALTH.

The Health Act was amended twice during the session.[64] The purpose of the first amendment, Act No. 23 of 1960, was to revise and improve the scheme, first introduced in 1937 as section 291A (later 336) of the Health Act 1911, for inquiry into deaths resulting from pregnancy and childbirth. The revised scheme, borrowed to a considerable extent from a system operating in the State of Minnesota, substitutes for an inquiry before a magistrate with medical and nursing assessors an investigation by a medical practitioner specialising in obstetrics, to be appointed under a new section 340J. The report of this investigation is then to be considered by a Committee (known as the Maternal Mortality Committee) comprising three permanent members[65] and any two, selected by the Chairman of the Committee,[66] out of six "provisional members."[67] The function of the Committee is to determine whether the death of the subject of the report might in its opinion have been avoided, and also to add such constructive comments as it thinks advisable for the future assistance and guidance of medical practitioners and nurses. The determination and comments are to be notified in writing to the medical practitioner who was attending the woman at the time of death. The Committee may also publish the investigator's report and its determination and comments, taking all reasonable steps to prevent the disclosure of the identity of any person concerned. It is also empowered to impart or cause to be imparted to medical practitioners, medical students, nurses, and

64 The excuse given for the two bites of the cherry in this case was that the subject of the first Bill was of such importance as to merit separate consideration in the Houses: The Hon. R. Hutchinson, (1960) 155 PARL. DEB. 1064. It is encouraging to note that a Minister finds it necessary to apologise for bringing down two amendments to the same Act in the same session when one would do.

65 The Professor of Obstetrics at the University, a medical practitioner specialising in obstetrics nominated by the State Branch of the Royal College of Obstetricians and Gynaecologists, and a medical practitioner nominated by the Commissioner of Public Health.

66 The Professor of Obstetrics.

67 Two general practitioners from the metropolitan area and two general practitioners with not less than five years' practice outside the metropolitan area, nominated by the B.M.A., and two midwifery nurses nominated by the Western Australian Branch of the Royal Australian Nursing Foundation.

trainee nurses such instruction as it thinks advisable from time to time to assist and guide them in preventing maternal morbidity or mortality.

The second amendment (Act No. 38 of 1960) makes six small amendments to the principal Act: Among them are provisions to ensure that where samples of food or drug are procured and sent for analysis, notice of the intended analysis is sent to the manufacturer (if he is other than the seller) if he resides or carries on business within the State and his name and address are known. A new section 348A, modelled on the lines of section 38 of the Interpretation Act 1918, interprets the power given by the Act to make proclamations, orders in council or declarations to include a power to revoke or cancel them in whole or in part or otherwise to vary them,[68] subject to the contrary intention being expressed or implied. The section is retrospective in effect.

Radiation Hazards.

Since 1st March 1961 it has been necessary for any medical practitioner or dentist owning an x-ray machine to register it with the Radiological Advisory Council; the necessary legislation (the Radioactive Substances Act Amendment Act (No. 13 of 1960)) was introduced, at the request of the Commonwealth Health and Medical Research Council, to "close the gap" in the defence of the public against radiation hazards.[69]

Optometrists.

What a distinguished American writer on legislative drafting has described as "the difficult choice between 'and' and 'or'"[70] was thought to have been wrongly made by the draftsman of the Optometrists Act 1940 when he drafted the definition of "optometry"; the intention of section 2 of the Optometrists Act Amendment Act (No. 79 of 1960)

68 The draftsman split his infinitive: ". . . . (b) to otherwise vary . . . ."

69 See the second reading speech of the Hon. the Minister for Health, (1960) 155 PARL. DEB. 963. There seems still to be a slight gap unfilled, something more than a mere inconsistency. Section 13 of the principal Act (as now amended) exempts a medical practitioner, or a dentist, *or a person acting in accordance with his directions,* from holding a licence under the Act if he uses irradiating apparatus for the sole purpose of taking x-ray photographs, but the apparatus must now be registered under the new section 15A. That section, however, imposes the obligation to apply for registration only on a medical practitioner or dentist who owns such apparatus. Is it beyond the bounds of possibility that a medical photographer, working solely in accordance with the directions of medical practitioners or dentists, might acquire his own apparatus?

70 Reed Dickerson, *The Difficult Choice between 'And' and 'Or',* (1960) 46 A.B.A.J. 310.

was to set this right. Accordingly, "optometry" is no longer defined in section 3 as meaning "(a) the employment of methods . . . for the measurement of the powers of vision; and (b) the adaptation of lenses and prisms for the aid of the powers of vision"; 'and' is replaced by 'or', and a further paragraph (c) is added (also prefaced by 'or'): "both such employment and such adaptation."[71]

It is submitted, however, that the 'and' of the original provision appears clearly from the context (including the layout of the two defining phrases in separately lettered paragraphs) to have been what Dickerson[72] calls the several 'and'—that is to say, the 'and' which when used in the phrase "A and B" means "A and B jointly and severally"; this, he says, is the sense in which 'and' is normally used. Unfortunately, the Full Court had said (erroneously, it is submitted with respect) in *Vandervelde v. Aspinall*,[73] that " 'optometry' involves two elements, viz., the measurement of the powers of vision, and adaption (*sic*) of lenses and prisms." The amendment would therefore appear to have been necessary.

One side effect of the amendment was to make it clear that the definition of "optometrist" and "optician" extended to persons who, without measuring the powers of vision, adapted lenses and prisms to their aid and dispensed oculists' prescriptions, going beyond the craft of lens-grinding and spectacle-making. A further amendment, introduced by the Hon. the Minister of Health in the committee stage, inserted into the principal Act a new section 34C to provide that any person over 21, a British subject resident in the Commonwealth for not less than 5 years and in the State at least 2 years, who for the eighteen months immediately before the commencement[74] of the amending Act has been "continuously, solely and *bona fide* engaged[75]

71 Are not the last five words redundant?

72 *Supra*, note 70.

73 (1957) 59 West Aust. L.R. 1, at 6. But this is probably merely dictum, and not part of the *ratio decidendi*, which appears to turn on the definition of "optometrist" in section 3 of the principal Act.

74 Thus the Act; but amending Acts do not "commence"—they come into force.

75 Literally, the first two words require that the person seeking the permission referred to shall have done nothing else whatever for the past 18 months—even eating and sleeping would seem to be excluded. This of course seems absurd; but what if he had been, say, engaging in repertory work (whether paid or unpaid) in his spare time, or giving lectures for the Adult Education Board, or building a boat? A strict construction would certainly require him to be excluded from permission for, even though "continuously" may be liberally interpreted so as to permit of periods of interruption—see, for example, Swymer v. Swymer, [1954] 3 All E.R. 502—"solely" adds a further element of rigidity to the requirements. The third qualification is, of course, a mere incantation, without sense. Presumably the Legislature is contem-

in dispensing oculists' or optometrists' prescriptions" should, on passing a test in the work he has been doing, be entitled to permission to continue such dispensing. The amendment was originally specifically designed to deal with the case of one particular man, a frame-maker with specialised skills,[76] but will no doubt in its final form benefit a number of others.

The amending Act also increases the number of the Optometrists Registration Board from seven to eight; provision is made for the nomination of a practising opthalmologist by the Western Australian Branch of the British Medical Association. Board members may now be remunerated for their services and reimbursed for travelling and other expenses. The number of registered optometrists to be nominated by the Minister is reduced to two, and the Minister's third nominee, who is to be chairman, is to be a layman.[77]

plating the vaguely-thought-out situation in which the dispensing of opticians' or optometrists' prescriptions is merely a front for something else; in that unlikely situation the person concerned would surely not be "continuously and solely engaged" in dispensing—he would also be engaged for at least part of his time in the "something else." It could hardly be contemplating the situation in which the dispensing is done for some ulterior motive; what ulterior motive could there be which would be *mala fide*? It is a pity that this sloppy phrase could not be deleted from the draftsman's vocabulary. There are admittedly a few occasions on which the addition of the words *"bona fide"* is meaningful—see, for example, the statutory provisions interpreted in Baume & Co. Ltd. v. Moore (A.H.) Ltd., [1958] Ch. 907 (*"bona fide* use by a person of his own name"), and *cf.* the interpretation of the phrase *"bona fide* purchaser" in Vane v. Vane, (1873) 8 Ch. App. 383 (in the statute in question in this case the phrase admitted of two possible constructions)—but generally it adds nothing to the words with which it is used, and in the majority of the examples contained s.v. *"bona fide"* in 1 Stroud's Judicial Dictionary 314-318, the phrases in question could have been construed in exactly the same way without the use of these two words. It is suspected that the use of the phrase consoles legislators with the thought that they have done their best to defeat the unimaginable machinations of those persons who seek to obtain some registration as a member of a closed craft or profession, or permission to practise that craft or profession by virtue of their previous practice thereof, persons of whom, as a class, the Legislature always appears to have the deepest distrust. Sometimes, of course, the draftsman or the Legislature is compelled to define what is meant by *"bona fide"*, even if only negatively; *cf.* the provisions of section 24 (f) of the Crimes Act Amendment Act 1960 (Commonwealth), commented on *infra*, at 415 *et seq.*

[76] It would seem to be a nice question whether a person who merely fits lenses into frames is "adapting" the lenses for the aid of the power of vision. *Cf.*, on the use of the words "adapting for sale" in the (English) Factory and Workshop Act 1901, section 149, Hudson's Bay Co. v. Thompson, [1960] A.C. 926, and the cases referred to therein.

[77] *I.e.*, neither an optometrist nor a medical practitioner. This provision was introduced during the committee stage in the Legislative Council by the

V. CONTROL OF PRICES AND COMMODITIES.

Only three Acts falling under this heading, two of them very small, were passed during the session, affecting respectively eggs, onions, and milk. The Egg Marketing Board is empowered by section 2 of the Marketing of Eggs Act Amendment Act (No. 14 of 1960) to make premium payments to producers for "eggs sold to the Board having characteristics or qualities which, in the opinion of the Board, will assist in or improve" the marketability of eggs. The particular quality sought at the moment is richly-coloured yolks. The Marketing of Onions Act Amendment Act (No. 18 of 1960) merely corrects a mistake made in 1945, when section 17 of the principal Act was amended instead of section 19. The Milk Act Amendment Act (No. 62 of 1960) is, however, of slightly more substance. The Milk Board is specifically empowered to fix minimum standards of quality for milk and cream and to prevent the supply of substandard milk or cream, its previous regulations in that behalf having been held *ultra vire*.[78] In lieu of the previous system of providing finance for the board by charging a fixed licence fee and a graded contribution to the Board's expenses, and requiring a further contribution to the Dairy Cattle Compensation Fund, a system of basing licence fees upon the quantity of milk sold or treated during the preceding year is authorized; the Compensation Fund is now to be financed out of licence fees. Finally, the provisions of section 62 of the Act, empowering the preparation of a milk improvement scheme, are given teeth by the empowering of the Board to include in the scheme penalties for contravention of the scheme, and empowering the making of regulations, after the scheme is gazetted, for implementing or enforcing the whole or part thereof.

VI. FISCAL.

Stamp Duty.

Two amendments to the Stamp Act were made during the session. The first (Act No. 22 of 1960) extends to charitable bodies and bodies established for community welfare and patriotic purposes the exemp-

Hon. J. G. Hislop who in explaining his motives made appreciative reference to the work of Mr. F. T. P. Burt, Q.C. (erroneously referred to in *Hansard* as Mr. Burton) as Chairman of the Cancer Council—(1960) 157 PARL. DEB. 2621.

78 Money v. Milk Board of W.A., [1961] West Aust. R. 33, which held that a regulation prescribing the minimum percentages of total solids, solids not fat, and fat was *ultra vires* provisions empowering the making of regulations necessary to ensure a supply of fresh, clean, and wholesome milk to consumers.

tion from stamp duty on cheques already available to friendly societies who bank with a Government savings bank, and allows the exemption to those bodies and to friendly societies irrespective of the bank in which their account is kept;[79] in addition, receipts for withdrawals from savings banks other than the Government Savings Bank are exempt from duty. The second (Act No. 41 of 1960) imposes upon any statement by a dairy factory manager or his agent in respect of the sale of any butter fat a duty of twopence in the pound or part thereof of the purchase money; the duty is to finance the fund set up by the Dairy Cattle Industry Compensation Act (No. 47 of 1960).[80]

Land Tax.

Section 2 of the Land Tax Assessment Act Amendment Act (No. 68 of 1960) provides an example of a trap into which draftsmen not infrequently fall. By section 8 (3) of the principal Act non-resident owners of land in Western Australia are liable to pay land tax at a rate increased by fifty *per cent.* over that payable by resident owners. It was desired to exempt non-resident companies or bodies corporate from this additional impost; there has accordingly been added to the subsection the provision that "no company or body corporate shall be deemed to be absent from the Commonwealth", which would have been appropriate had the preceding provision been one deeming certain persons to be absent from the Commonwealth, but is inappropriate in the context. What should have been said is that "a company or body corporate shall be deemed not to be absent from"[81] the Commonwealth. For the year ending 30th June 1961 and succeeding years, a reduction of ten *per cent.* is made in the land tax otherwise payable on improved land, and a newly drafted definition of "improved land" is enacted, incorporating one or two amendments.

Gambling.

The enactment of legislation setting up a Totalisator Agency Board[82] necessitated the amendment of the Totalisator Duty Act (by Act No. 52 of 1960) to increase the totalisator commission on the

79 The new section 49A contains a completely unnecessary subsection (3); if application may be made to the Commissioner and the Commissioner may do something if he is satisfied that the applicant belongs to one or other of four classes of bodies, it is unnecessary to say that any body of one or other of those classes may make such an application.

80 Noted *infra,* at 376 *et seq.*

81 Or, better, "to be always present in."

82 The Totalisator Agency Board Betting Act (No. 50 of 1960), reviewed *infra* at 381 *et seq.*

on-course totalisator to fifteen *per cent.*,[83] the imposition by Act No. 54 of 1960 of a Totalisator Agency Board betting tax of five *per cent.* of all moneys paid to the Board in respect of bets, and an amendment to the Betting Investment Tax Act 1959 (by Act No. 51 of 1960) to impose that tax on bets made through or with the Board.

VII. BUILDING, HOUSING, AND DEVELOPMENT.

Of principal interest under this head, though economic rather than legal, is the group of five Acts ratifying agreements entered into by the Government with various commercial interests for development works in the State. Two of these agreements contemplate industrial development in the metropolitan area, the Broken Hill Proprietary Company's Integrated Steel Works Agreement Act (No. 67 of 1960) and the Paper Mill Agreement Act (No. 43 of 1960), and two agricultural and pastoral developments, one in the south, the Esperance Lands Agreement Act (No. 36 of 1960) and the other in the North-West, the Northern Developments (Ord River) Pty. Ltd. Agreement Act (No. 32 of 1960). The fifth, which looks at the date of writing as if it is not to produce the contemplated development, is the Chevron-Hilton Hotel Agreement Act (No. 20 of 1960). When the other agreements come to fruition the State will possess an integrated iron and steel industry from the first, and a paper mill producing between one and a half and two million pounds worth of paper and paper board a year from the second; it is hoped that the Esperance Lands Agreement will produce the land development in that part of the State which was originally expected from the agreement made with the Chase interests in 1956, while the fourth agreement looks to the development of rice, cotton, safflower, and linseed production, among others, in the area to be irrigated by the Ord River diversion dam.

Other legislation under this heading is of minor importance. A no doubt unexpected result of the deletion from the Civil Service List of the position of Director of Industrial Development was that the committee appointed under the Industrial Development (Resumption of Land) Act 1945 became unable to function, as the statute required it to include the Director among its members. Act No. 69 of 1960, in effect, substituted for the Director an officer of the Department of Industrial Development nominated by the Minister. The repeal, by Act No. 39 of 1960, of section 46 of the Metropolitan Region Town

83 The same percentage as that to be deducted from bets received through the new Totalisator Agency Board: Section 24 of Act No. 50 of 1960.

Planning Scheme Act has made that Act a permanent one. Finally, the State Housing Act Amendment Act (No. 19 of 1960) increases the "eligibility income" above which a person is not entitled to assistance under the principal Act as a worker, to £1,196.[84]

VIII. GENERAL.

Agriculture and Primary Production.

The purpose of the Agriculture Protection Board Act Amendment Act (No. 70 of 1960) is to replace the two officers of the Department of Agriculture nominated by the Minister, and the Chief Warden of Fauna, by three more representatives of the Road Board Association or its successor.[85] The opportunity was taken to repeal and re-enact section 5 of the principal Act which, in the words of the Hon. the Minister for Agriculture "is virtually unintelligible because it has been amended so many times."[86] It was thought necessary to include in the amendment a section validating all previous Acts of the Board, because ever since 1953, when a Bill to substitute the Director of Agriculture or his deputy for the Chief Vermin Control Officer as a member and chairman of the Board was amended by the Legislative Council so as to add the Director or his deputy to the Board while retaining the membership and chairmanship of the Chief Vermin Control Officer, subsection (2) has set the composition of the Board at one member less than the number the succeeding subsections authorised to be

84 To be more exact, to an income of £451. 10. 8. above the basic wage if the "worker" is a male and lives in the Metropolitan Area; this figure is altered to £459. 19. 8. for the remainder of the South-West Land Division and £462. 11. 8. for the Goldfields Areas and other parts of the State. For females in the Metropolitan Area the figure is £549. 7. 0. Disregard of basic wage adjustments in the future is enjoined by an awkwardly-worded third (!) proviso to the definition. It follows the form of a proviso originally introduced in 1951, by section 3 of Act No. 52 of 1951. Would it not have been simpler to have scrapped the whole of the definition of "worker" in paragraph (b) and to substitute something like this?:

" 'worker' means any person who—

(a) is employed in work of any kind; and

(b) receives an annual sum by way of salary, wages or income, excluding payments for overtime, not exceeding the total of

(i) the annual equivalent of the basic wage determined pursuant the provisions of the Industrial Arbitration Act 1912;

(ii) the sum of £450 if the person is a male or £550 if the person is a female;

(iii) the sum of £25 for each child of that person under the age of 16 years."

85 Road Boards having been replaced, by the new Local Government Act (No. 84 of 1960), by Shire Councils.

86 (1960) 157 PARL. DEB. 2970.

appointed. It is doubtful whether this inconsistency within the section could result in the invalidity of the acts of the Board, as subsection (2) would appear to be impliedly repealed by later inconsistent subsections; but a more serious source of potential invalidity is the fact, disclosed quite without apology by the Hon. the Minister, that despite the clear expression of the legislative will in 1953 that the Chief Vermin Control Officer should be chairman of the Board the Director of Agriculture had ever since then occupied that office.[87]

Validating legislation again became necessary when it was realised that the Fruit Growing Industry Trust Fund Committee had carried on its function between 9th February 1957, when the then term of office of its members expired, and 5th September 1958, when it occurred to the Minister of Agriculture or his advisers that the members whose terms had expired had better be re-appointed. Even then it will be noticed that it took the same advisers another two years to think of validating the acts of the legally non-existent committee, a precaution finally implemented by Act No. 7 of 1960.

The fourth attempt in recent years to extend to cattle of farmers outside the whole-milk scheme compulsory testing for bovine tuberculosis, with the necessary ancillary provisions for destruction of infected beasts and payment of compensation to the owner, bore fruit in the Dairy Cattle Industry Compensation Act (No. 47 of 1960). The Act expressly excludes from its operation owners of dairy cattle who hold dairymen's licences under the Milk Act, 1946. All other owners of dairy cattle[88] are required to submit the cattle for inspection

87 This example of disregard of the legislature by officers of the Department of Agriculture is even more blatant than the other example brought to light during the session; although, as noted above at 372, the Marketing of Onions Act Amendment Act 1945 amended section 17 instead of section 19 of the principal Act, the Board has acted for the last fifteen years as if section 19 were the section amended (the Hon. the Minister for Agriculture, (1960) 155 PARL. DEB. 1067). *Cf.* the conduct of officers of the Metropolitan Water Supply, Sewerage, and Drainage Department adverted to *infra,* at 392.

88 "Dairy cattle" is defined in section 5 as "any bull, cow, ox, steer, heifer or calf kept for dairying purposes." Both in the Legislative Assembly [(1960) 156 PARL. DEB. 1600-1601] and in the Legislative Council (*id.* 2076-2078) the inclusion of "ox, steer" in this definition was attacked; indeed in the Legislative Council the Hon. A. L. Loton attempted to have these words deleted. The amendment was lost, the Hon. L. A. Logan having quoted the Department as explaining that "any ox or steer in contact with a dairy herd must be tested and—if diseased— must be destroyed in order to prevent re-infection of the herd." The policy is clear enough; the definition should have been more exactly framed in order to carry it out. The cat had, however, already been let out of the bag by the Hon. the Minister for Agriculture in the Legislative Assembly; if any difficulty arises in the interpretation of the definition the Chief Inspector of Stock is given by section 23 (3) an

as often as requested by the Chief Inspector of Stock. The cattle are to be tested in the first instance for tuberculosis and actinomycosis (lumpy jaw); other diseases may be proclaimed as coming within the purview of the scheme. An inspector may order any dairy cattle which are diseased, or which are suspected to be suffering from disease, to be destroyed. Alternatively, if the disease from which the cattle are suffering is only a localised form of disease[89] they may be retained by the owner under such conditions as the inspector thinks fit. Compensation for cattle destroyed is to be paid by reference to the value of the cattle as determined by agreement between the owner and the Chief Inspector of Stock, or the inspector who ordered the destruction; in default of agreement the value is to be arrived at by a competent and impartial person, nominated by the Minister, whose decision is to be final and conclusive. The maximum amount of compensation payable in respect of any animal is to be fixed at least once every year by the Minister with the approval of the Governor. The owner of destroyed cattle must make application for compensation within thirty days after the destruction of the animal; otherwise he forfeits his claim for compensation, unless the Minister is satisfied that reasonable grounds exist for the delay. He must also have given the notice required by section 11 of the Stock Diseases Act 1895,[90] and the Chief Inspector must be satisfied that all stamp duty payable in respect of butter-fat sold by that owner has been paid. No compensation is payable in respect of imported cattle which are destroyed within ninety days of arrival in the State unless they became diseased

unchallengeable discretion to determine, when the question arises, whether any particular cattle are dairy cattle or not. This mode of legislation is thoroughly unsatisfactory. The Legislature ought not to compensate for the inability of the draftsman to frame an adequate definition by conferring upon an executive officer of the Government power to make his own definition in doubtful cases. If this task must be left to someone it should be left to the Courts.

89 Localised in the animal, or in a particular geographical area of the State? There is no clue in the Act, but no doubt those who administer it will know what is intended.

90 It is not very easy to see the reason for this, since the Chief Inspector of Stock or member of his staff concerned will already know about the disease or suspected disease. One suspects that the draftsman was thinking vaguely of the situation in which the owner of the stock had discovered or suspected the disease before the inspection under section 8 was made, and did not give the necessary notice but waited to see if he would be caught by a compulsory inspection. If so, he apparently was not prepared to take the trouble to draft the paragraph in question (para. (a) of section 11 (3)) so as to convey what he meant, but preferred to adopt the blunderbuss technique; if not, the requirement is another typical piece of bureaucratic nonsense which will be regarded as such by farmers.

after arrival, or after destruction (on the grounds that they are suspected to be diseased) they are found to be in fact free from disease.

Funds for the payment of compensation are to be obtained, not directly from those engaged in the dairying industry as butter-fat suppliers, but indirectly through the imposition[91] of stamp duty on statements of sales of butter-fat; these statements must now be made by every manager of a dairy factory whenever any butter-fat is sold to or through him, and he is to affix to each statement, as agent for the vendor, the necessary butter-fat duty stamps. This indirection was chosen in the hope that this mode of collection of moneys might not be regarded as an excise duty and thus be invalid by virtue of section 90 of the Commonwealth Constitution.[92]

The foregoing Act has in effect removed from the purview of the Stock Diseases Act 1895, dairy cattle (other than those whose owners are suppliers of whole milk) suffering from tuberculosis or actinomycosis. The Stock Diseases Act itself has been amended only once since it was passed, and the opportunity was taken during the session to bring it up-to-date, first by deleting a certain amount of dead wood,[93] and amending expressions which had become out-of-date since Federation,[94] and second by narrowing its previously very wide ambit, in

91 By Act No. 41 of 1960, noted *supra*, at 372.

92 The Hon. H. K. Watson, though he is not a member of the legal profession, devoted almost the whole of his second reading speech in the Legislative Council to a review of the principal Australian cases and ended with the expression of grave doubts whether the device would withstand a challenge in the courts: (1960) 156 PARL. DEB. 1866-1867. His remarks were taken up by the Hon. G. C. MacKinnon during the debate on the Committee stage of the Stamp Act Amendment Bill (No. 2) and in reply the Hon. L. A. Logan stated that the Hon. Mr. Watson's suggestion was considered by the Under-Treasurer, who reported that he was perfectly satisfied that the provision would stand up to section 90. After reading several of the leading cases on the subject this reviewer, while prepared to concede that the validity of the stamp duty is strongly arguable, is by no means as satisfied as the Under-Treasurer is reported to be. It is not easy to predict confidently that the device of a stamp duty is any more effective than that of a licence fee in taking what might otherwise be an excise tax out of that category (see Dennis Hotels Pty. Ltd. v. State of Victoria, [1960] Aust. Argus L.R. 129); and, though the duty is not *ad valorem* on the price or value of butter-fat but so much per pound of the purchase price, this would not seem to be so dissimilar from the levy of so much per half-acre of chicory as to be clearly distinguishable on that ground (*cf.* Matthews v. Chicory Marketing Board (Victoria), (1938) 60 Commonwealth L.R. 263).

93 Including provisions which are now incorporated in all statutes by virtue of the Interpretation Act 1918.

94 Such as the description of the State as a Colony, and the assumption, for example, in sections 13 and 14, that stock could be conveyed into the State only by ship.

relation to stock brought into the State from elsewhere in the Commonwealth, so as to lessen (it is hoped, to remove) the possibility that restrictions on the bringing in of such stock may be held to conflict with the Commonwealth Constitution. A new section 1A has therefore been inserted, containing the standard form of provision for severing any valid from any invalid part of the enactment, and section 5, which originally empowered the Governor to prohibit the introduction of stock into Western Australia, *simpliciter,* has been repealed and re-enacted in a form which empowers the Governor to prohibit by proclamation the importation of stock from any other State or part of the Commonwealth if he thinks it necessary for the purpose of preventing the introduction of disease into or dissemination of disease in the State. The Scab Acts and their amendments are also repealed by the rather curious device of amending the first Schedule (Schedule A) of the principal Act, which set forth the Acts repealed when the Stock Diseases Act was originally passed in 1895. Perhaps it is intended now to reprint the Act as amended.

In dealing with certain weeds which reach maturity and seed within a very short time the Agriculture Protection Board appears to have found itself somewhat handicapped by the requirement that notices in writing be given individually to owners or occupiers of private land requiring them to take measures to destroy the weed or weeds in question. Section 22 of the Noxious Weeds Act 1950 is therefore amended by Act No. 30 of 1960 to require the Board to give seven days notice to the local authority in whose district the private land infested with weeds is situated, if it intends to serve notices upon the owners or occupiers; having done this the Board is empowered by a new section 22A to publish a notice addressed to any number of owners and occupiers in the Government Gazette and an abstract of the notice in a newspaper circulating generally in the district in question. Failure to comply with the notice is made an offence; and of course the Board will be in a position to take its own steps if the notice is not complied with within a reasonable time.

Two amendments to the Plant Diseases Act 1914, effected by Act No. 34 of 1960, ensure that if a poll of owners and occupiers in a particular district is requested for the purpose of voting whether a fruit fly baiting scheme should be wound up or not, the poll may be taken only during the months of June and July, between the end of one baiting season and the beginning of the next, and that if the scheme is wound up in any district as a result of such a poll, any balance from the sale of vehicles, plant, equipment, and material after payment of debts is to be paid to the Fruit Fly Eradication Fund.

Anzac Day.

The 1919 session of the Parliament of Western Australia passed a very short Act (the Anzac Day Act 1919) declaring the twenty-fifth day of April a public holiday throughout the State. By 1923 the feeling had grown that Anzac Day should be observed, not simply as a holiday, but as a sacred day, and accordingly the Anzac Day Act 1923 prohibited race meetings and the opening of licensed premises on that day. There has been a good deal of controversy in recent years, in this State as elsewhere, over the desirability of observing the whole of Anzac Day as a close holiday, and the matter was brought to a head as the result of the decision of the Returned Servicemen's League at its Annual Conference to hold a referendum on the subject of the observance of Anzac Day, and the subsequent majority vote in favour of commemoration only until 1 p.m., leaving the rest of the day for holiday activities, i.e., racing, drinking, and sporting events. Legislation to authorise the change thus recommended was introduced at rather a late stage in the session, and passed each House by a non-party vote to become the Anzac Day Act (No. 73 of 1960).

The Act sets up a Trust to be known as the Anzac Day Trust, with a Treasury representative as Chairman and three other members, one representing the R.S.L., one representing Legacy, and one representing other bodies of ex-servicemen or dependents who hold licences under the Charitable Collections Act 1946, which is to administer the Anzac Day Trust Fund established by the Act. The repeal of the Anzac Day Act 1923 enables licences to be granted for race meetings on Anzac Day, but by section 4 (1) no licence shall be granted for any meeting before 1 p.m. Any meeting licensed is included in the allocation of meetings under the Racing Restriction Act 1917. The whole of the net proceeds of any race meeting held on Anzac Day are to be paid to the Anzac Day Trust. Section 6 of the Act prohibits the holding of sports on Anzac Day before one o'clock in the afternoon; if any sports are held sixty per cent. of the net proceeds of the meeting are to be paid to the Trust. The Schedule to the Act amends the provisions of the Licensing Act 1911 to authorise the issue of an occasional licence exempting the holder of a publican's general licence, an Australian wine and beer licence, an Australian wine licence, a wayside-house licence, a packet licence or a restaurant licence from the general prohibition in the Licensing Act against the opening of premises on Anzac Day; the premises may be opened under such an occasional licence only after one o'clock in the afternoon. Fees for the granting of such occasional licences are prescribed, and by section 10 (2) (a) of the Act these are to be paid to the Anzac Day Trust Fund. Moneys

in the Fund are to be disbursed by the Trust, with the approval and consent of the Treasurer, for erecting homes for aged ex-servicemen and women and for their maintenance in such homes, and for the relief of widows and children of deceased servicemen, and among institutions, organisations and associations whose principal objects are to provide financial assistance and relief to ex-servicemen of Her Majesty's or Commonwealth forces, or of forces which were allied with them during any war, or the dependents of such ex-servicemen.

Betting and gambling.

The report of Sir George Ligertwood as the Royal Commission on Betting, with its attendant recommendations, sounded the death-knell for that variety of social parasite known as the off-course bookmaker, whose activities for the past five years had been carried on under the cloak of the law. The report was realistic enough to recognise that, whatever the undesirable effects of the provision of off-course betting facilities, the total prohibition of all off-course betting is impracticable, or in other words that the West Australian public, like the public in other parts of Australia and New Zealand, are not lightly to be deprived of their twentieth-century opiate. The corollary of this has been to force the Government itself into the parasite business, through a public agency known as the Totalisator Agency Board, set up by the Totalisator Agency Board Betting Act (No. 50 of 1960), an Act whose style of drafting betrays the prentice hand. The Board, set up in the long-winded way which one fears may become standard form,[95] comprises seven members, a chairman nominated by the Minister, three nominees of the Western Australian Turf Club, one representing country racing associations, and three nominees of the Western Australian Trotting Association, one representing country trotting associations. One member of each of these two groups of three retires each year in rotation, the normal term of office after the first appointments being three years; the Chairman's term of office is three years. Section 20 (1) of the Act makes it lawful for bets to be lodged with the Board and for the Board to receive bets in respect of horse races for transmission to a totalisator on a race course within the State, or to be retained by the Board if they are lodged after the prescribed closing time or if transmission is impracticable. The Board may also receive bets in respect of horse races conducted at prescribed racecourses outside the State, which bets are to be placed by the Board in a totalisator pool conducted by it on the race. The Board is authoris-

95 See the comments in 4 U. WEST. AUST. ANN. L. REV. 467, note 53, and *infra,* note 10.

ed to pay dividends in respect of all bets received by it. Betting by or with the Board is again expressly legalised by subsection (2), and subsection (3) exempts any person doing anything under and in accordance with the Act from prosecution or conviction, or being liable to prosecution or conviction, or being subject to penal consequences under the Criminal Code or the Police Act 1892;[96] both the Code and the Police Act are suitably amended by the Schedule.

All bets received by the Board for transmission to a race-course totalisator before the closing time for the acceptance of bets are to form part of the moneys invested on that totalisator; dividends on bets received by the Board on races run in the State, whether transmitted to the on-course totalisator or not, are to be paid at the rate paid by the on-course totalisator; dividends on bets on out-of-State races are to be paid either in accordance with the totalisator dividends on that race declared at the meeting at which the race was conducted, or, if the Board places the bet in a totalisator pool scheme, at a rate to be declared by the Board.

The Board's profits are to be distributed to the Western Australian Turf Club and the Western Australian Trotting Association for further distribution among racing clubs registered with each body, in accordance with section 28 (4) and (5).

Offences under the Act include acting for reward as an agent to place a bet, or (whether for reward or not) placing bets for persons under 21 or persons prohibited from entering Board premises. Betting by persons under 21 by themselves or through agents, and indeed their presence in any totalisator agency except to deliver mail or goods, carry out repairs, or perform duties on the premises (other than in relation to betting) is an offence; it is also an offence to accept bets from such persons and from those who are apparently drunk. It is of course made an offence to carry on business as a bookmaker, or to bet with a bookmaker, otherwise than on a racecourse, in any totalisator agency region, and it is also an offence to be in or upon any public place for the purpose of betting except in a totalisator agency or upon

96 Since it is by section 20 (1) made lawful, notwithstanding any Act to the contrary, for bettors to bet with the Board and the Board to receive such bets, betting with the Board cannot be an offence (so subsection (2) (a) is superfluous) nor could a person be prosecuted or convicted for such betting (so most of subsection (3) is superfluous). The Bellman has been at work again (see the comments referred to in note 95 *supra*). Another example of unnecessary duplication of provisions occurs in section 46; see *infra,* note 97.

a racecourse by the totalisator or a licensed on-course bookmaker.[97] Minimum penalties for second and subsequent offences of this kind are periods of imprisonment, irreducible in mitigation, for which fines cannot be substituted.[98]

The burden of proof in relation to illegal bookmaking offences remains on the prosecution but the standard of proof necessary to establish a prima facie case is reduced to such proof as engenders in the mind of the person hearing the charge a reasonable suspicion of guilt. For some curious reason it is an offence knowingly to loiter in front of any totalisator agency open for receiving bets; husbands waiting in town for their wives to finish shopping must be careful where they stand. Persons reasonably suspected of loitering in any street or public place for the purpose of unlawful betting may be "moved on" by the police; and persons reasonably suspected of unlawful betting on any particular day upon sports grounds or licensed premises may be arrested without warrant and removed from the grounds or premises, to which they may not return for the remainder of the day. Penalties are also provided for being in or near to any place to warn of the presence or approach of the police or to prevent the detection of any offence.

Companies.

Although, as noted above, a major revision of the Companies Act is under way, the existing Companies Act was amended by Act No. 78 of 1960 to make provision for the better protection of persons investing in "interests" in any commercial enterprise which are neither shares nor debentures.[99] The new provisions (Part IIIA, sections 98A to 98N) are said to be on the lines of legislation current in all other States. Up to the date of writing, however, they have not been brought into effect by the necessary proclamation of the coming into force of the amending Act. The primary operative provisions (which one

97 Qualifications which are provided twice over in section 46; once in subsection (1) and again, in greater but unnecessary detail, in subsection (3).

98 It is not quite clear why in subsection 46 (2) the draftsman thought it necessary to spell this out *in extenso,* using the opening words, "Notwithstanding the provisions of the Justices Act 1902, or any other enactment", when in section 38 he thought it sufficient to say "imprisonment for six months without the option of a pecuniary penalty." If draftsmen must be long-winded why can they not be consistent about it? See, further, note 15 *infra.*

99 Interests in a partnership agreement, and interests in or arising out of life assurance policies, are also excluded from the definition. The types of interests principally contemplated are (a) interests of the type exemplified by investments in vending machine companies and (b) holdings in unit trusts.

would expect to follow immediately upon the definition section, section 98A) are sections 98F, 98G, and 98H.[100] If "interests" as defined are to be issued for subscription or purchase they may be issued only by companies. Before any "interests" are issued or offered a statement (which is treated as if it were a prospectus and is generally speaking required to contain the information which would be in a prospectus) is to be issued by the company. No issue or offer of "interests" is to be made unless there is in force a deed (which by necessary implication, though not by express statement, must be executed by the company and by the trustee or representative referred to) approved by the Registrar of Companies, making provision for the appointment of a person, approved by the Minister or the Registrar,[1] as trustee for or as representative of the holders of "interests." The deed must contain covenants specified in section 98E and such other matters or things as the Registrar considers desirable. The principal required covenants on the company's part are to bind it to carry on its business, or the undertaking scheme or enterprise to which the deed relates, in a proper and efficient manner, and to make available to the trustee or representative all the information he requires in order to exercise his functions. The company (and the trustee or representative) must covenant also not to exercise the right to vote for directors of a company as holder of any shares held by it or him relating to any such "interests" without the consent of a majority of interest-holders at a specially-summoned meeting, and that it will whenever required summon a meeting of holders of interests for the purpose of laying before them the last statement of accounts and balance sheet of the company, and then giving them an opportunity to give directions to the trustee or representative. The company is also under a statutory obligation (by section 98J) to supply the Registrar of Companies annually with lists of interest-holders showing the extent of the interest of each, and, if so requested by any interest-holder, to furnish him with the balance sheet, profit and loss account, directors' report, and other specified information. Penalties are provided for failure to comply with any provision of Part IIIA, or any covenant in a deed, and in addition a

100 Sections 98B to 98E are taken up with prescribing what is an approved deed and what it must contain, and how trustees are to be approved, before we are told what purposes approved deeds and trustees are to serve. The same awkward arrangement is followed in Part IV, Division 5, of the new Companies Bill.

1 The power to grant such approval is by section 98D (1) reserved to the Minister, unless the company has already obtained approval under the corresponding legislation of another State of a person as a trustee or representative, in which case the Registrar may approve that person's acting in this State.

trustee or representative may be liable for breach of trust if he fails to show the degree of diligence and care required of him, having regard to the provisions of the deed conferring on him any powers, authorities or discretions.

Section 98I contains special provisions applicable to companies which have issued, before the coming into force of the amending legislation, "interests" to which the legislation would have applied had they been issued after its commencing date. If at the end of three months from that date there is not in force an approved deed in relation to such "interests", then (unless the company has applied for approval of a deed within one month from that date and the approval has not been granted) the company is required within fourteen days to send to interest-holders and the Registrar a notice in writing "in the prescribed form." Presumably the prescribed form will contain a warning to holders of such "interests" that they lack the protection intended to be furnished by an approved deed, but, since no form has yet been prescribed as the Act has not yet been brought into force (as noted above), speculation is academic.

Dogs.

The Dog Act 1903-1948, as reprinted in Volume 14 of the Reprinted Acts, contains a section 6 (a), a section 17 (a), a section 22 (a), a section 23 (a), and a section 34 (a); it also contains for some reason a section 35A, and section 36 refers to sections "six A, twenty-two A, twenty-three A, and thirty-four A." The Dog Act Amendment Act (No. 42 of 1960) amends "section six a" to allow refusal of registration of a dog on the ground that it is suffering from any infectious or contagious disease;[2] it repeals and re-enacts section 19 to make specific provision for the fate of dogs seized and kept by the police otherwise than in a pound; formerly the dog was required to be "held and disposed of in manner prescribed", now it is to be held for forty-eight hours after seizure or after service of notice on the registered owner if the dog is wearing its collar and registration label, and if then unclaimed the dog is to be destroyed; it then adds to the Act a new section 21A and a new section 29A. The first makes it an offence on the part of the owner for a dog to be in any shop or school grounds within any city, town or townsite, or on any bathing

[2] Previously, registration could be refused on the ground that the dog "is, in the opinion of the local authority, of a destructive nature." The amendment adds, after the word "nature", "or is suffering from an infectious or contagious disease"; "in the opinion of the local authority" will not qualify this second ground.

beach specified for the purposes of the section by order of the local authority (unless it is there being used for droving stock), unless it is on a leash. The second provides for the isolation or destruction of dogs suffering from any contagious or infectious disease.[3] Section 29 of the principal Act (which allows any adult male aboriginal native to register one male dog free of charge) is amended so as no longer to apply to the South-West Land Division. Registration fees are increased, but may be reduced to five shillings if the dog (of either sex) has been sterilised. Finally, the privilege of freedom from registration fees extended to guide dogs for the blind is extended to those being trained as guide dogs.[4]

Education.

The principal object of the Education Act Amendment Act (No. 57 of 1960) is to establish a Government School Teachers' Tribunal, which is to take over the appellate functions of the Public Service Appeal Board and the Promotions Appeal Board so far as they are available to the teaching staff of the Education Department;[5] the new Tribunal is also given jurisdiction to hear an application by the State School Teachers' Union for a review of the salary and allowances of teachers, an appeal by a teacher against an assessment of efficiency, and appeals and applications, by either the teacher or the Union, in respect of certain allowances, including travelling and transfer allowances and relieving teacher allowances payable to teachers in "remote areas."[6] Consequential amendments are made to the Government Em-

3 Subsection (1) requires the dog to be examined by a registered veterinary surgeon, or in his absence a medical practitioner or health inspector, and isolated or destroyed "in such manner as that official may require." But surely neither a veterinary surgeon nor a medical practitioner is an "official"?

4 Section 30 speaks of "any dog *bona fide* kept and used" as a guide dog. To this is added "or being *bona fide* kept and being trained" as a guide dog. In the first instance both keeping and using must be *bona fide*; but in the second the vigilance of the Legislature has wavered for a moment, and the training need not be *bona fide*.

5 According to the second reading speech of the Hon. the Minister for Education [(1960) 157 PARL. DEB. 2573, at 2576] the new Tribunal is also to take over the functions of certain intra-Departmental appeal boards; the necessary jurisdiction to hear matters formerly referred to such tribunals is conferred by paragraphs (h) to (j) of section 37AE.

6 Whether the Tribunal's jurisdiction extends to such allowances if payable to teachers in other than remote areas is not clear, as the paragraph in question either has been carelessly drafted or has suffered mutilation at the hands of the printer. It reads "with respect to the following allowances payable under the regulations to teachers teaching in Government Schools situated in the remote areas of the State as graded in accordance with the regulations, travelling and transfer allowances payable to teachers and allowances payable to teachers where a teacher is relieving another teacher."

ployees (Promotions Appeal Board) Act (by Act No. 58 of 1960) and the Public Service Appeal Board Act (by Act No. 63 of 1960) to remove teachers from the jurisdiction of these two Boards and to take away their representation thereon.

The new Tribunal is composed of a legal practitioner of not less than seven years' practice and standing, who is to be Chairman, a Ministerial nominee, and an elected representative of the Union. The term of office of each of the last two is three years; each of them must retire at age 65, but the Chairman (to whose appointment no term is set) may continue in office until age 70. Its jurisdiction may be invoked by any teacher, by the Union on behalf of any teacher or group of teachers, by the Minister, or by the Minister and the Union jointly. Jurisdiction is to be exercised by the three members of the Tribunal sitting together; if all are not unanimous the decision of the majority prevails. The decision of the Tribunal is to be reported in writing to the Governor and the Minister,[7] and, section 37AH (4) goes on to say, "effect shall be given to the decision according to its tenor."[8] The Tribunal is empowered to refuse at any stage to hear further, and to dismiss, any appeal which it thinks frivolous, unreasonable or vexatious, and to penalise the appellant. It may recommend payment of travelling and accommodation expenses to either the appellant or the respondent or both.[9] The Tribunal is given the powers of a Royal Commission and parties are entitled to summon witnesses

Query, should there be a colon after the word "regulations" instead of a comma? Or should the colon be after the words "the following allowances" and followed by another "allowances"? Or merely after the word "following"? Or should the words "the following" not be there? Somebody has been very careless.

7 Why the both? Cannot the Minister be trusted to bring the decision before the Executive Council if action by the Governor in Council is required? And if no such action is required why report to the Governor?

8 "According to its tenor" is certainly superfluous, but the provision "effect shall be given to the decision" is at first sight probably necessary (though it is not stated who is to give effect to the decision) and avoids spelling out at length what is to happen after a successful appeal in any of the matters referred to in section 37AE (3). But the later section 37AI (1) (e) covers the same ground and probably does the work better. Incidentally, it is not clear what is to happen in the case of a successful appeal under paragraph (d) of that subsection, which provides that where a vacancy has been filled by promotion after recommendation the Tribunal may hear and determine an appeal against the recommendation. If the effect to be given to the decision is only to substitute one recommendation for another, need the substituted recommendation be followed?

9 Section 37AH (6); the marginal note says "Expenses of successful appellant" which is inaccurate on two counts; success is not the necessary criterion, and the respondent's expenses may be paid too.

on the same conditions as if the hearing were before a Court of Petty Sessions. Appeals and applications are to be heard in public, unless otherwise directed by the Tribunal. Legal representation is allowed to a party only by permission of the Tribunal; if such permission is granted each party may be so represented.

In order to cope with the growing problem of providing students at country high schools who come from a distance with hostel accommodation in the town in which the high school is situated, a Country High School Hostels Authority is set up by Act No. 37 of 1960.[10] The Authority, which will include representatives of up to five bodies conducting or willing to undertake the supervision of three or more hostels,[11] is given general power to provide, supervise and maintain hostels, or to arrange for the leasing, or the granting of a licence, of a hostel to a person willing to conduct it. The Board (and this is the core of the Act) is also given power to borrow money upon State guarantee to carry out its powers.

Fisheries.

A somewhat amateurishly-drafted series of amendments to the Fisheries Act 1905, contained in Act No. 46 of 1960, aim at protecting the growing crayfishing industry in the State by reinforcing the existing laws against the taking of undersized crayfish and by prohibiting the taking of female crayfish with eggs or spawn attached. Two problems faced the legislature; the first, that of detection of the offence of taking undersized fish, and the second, that of deterrence. The difficulty of detection arose from the fact that the criterion for the determination of the lawful size of crayfish was the measurement of the carapace, while the edible portion of the fish was the abdomen or "tail"; if this were detached from the fish and the carapace thrown away it then became impossible to determine whether the fish from which the "tail" was taken had been undersized or not. Advantage has been taken of the fact that there is a close relationship between the size of the crayfish, measured in the hitherto accepted way, and the length and weight of the "tail", in making it an offence for a

10 It is pleasing to note that the subsection constituting the authority (section 4 (1)) is sensibly worded, without the tautology of earlier statutes; see the criticism in (1959) 4 U. WEST. AUST. ANN. L. REV. 467, note 83. *Cf.* also section 4 (1) of the Veterinary Surgeons Act 1960. Unfortunately a uniform style has not yet been established; section 5 (1) and (2) of the Totalisator Agency Board Betting Act 1960 follows in part the old, bad style—see note 95, *supra.*

11 *E.g.,* the Church of England, which at present maintains four hostels, and the Country Women's Association, which maintains five.

person to have in his possession or control, or to have in his premises, or to have in any boat, vehicle or aircraft, not only undersized fish (including, of course, undersized crayfish), and female crayfish having, or having had when captured, eggs or spawn beneath the body, but also undersized or underweight crayfish tails, whether the fish or crayfish was taken in Western Australia or elsewhere.[12] "Vehicle" is defined, in somewhat clumsy phraseology, as including everything defined as a vehicle under the Traffic Act 1919, and in addition a railway locomotive[13] or a railway waggon or carriage.

At first sight the new legislation would seem to impose an almost intolerable burden on crayfishermen, by requiring them in effect to estimate the length and weight of the "tail" of every crayfish caught so that the fish whose yield of edible meat would be inadequate might be thrown back at once. The reviewer is assured by an expert[14] that such is the skill and judgment of experienced crayfishermen that it is possible for them to tell almost at a glance whether a crayfish (or its tail) is likely to be above the legal limits or not. Nevertheless the

12 The sections whose words are thus paraphrased present fine series of potential problems. First, what are "his premises"? Only premises of which he is owner? Section 33 of the Gold Buyers Act 1921 uses the phrase "premises used or occupied by him"; would this not have been preferable? Next, what is meant by "has" in the phrase "has in his premises" or "has in any boat, vehicle, or aircraft"? At first sight it would seem that the draftsman was contemplating a "having" less exactly defined than "having in possession or control." But in R. v. Hahn, (1901) 3 W.A.L.R. 78, the word "having" in the phrase "having on his person, or in any place" in section 69 of the Police Act 1892 was held to mean no more than "having in his possession", and though a Full Court of three, in Kavanagh v. Claudius, (1907) 9 W.A.L.R. 55, overruled R. v. Hahn it was apparently on another point, and the opinion on the meaning of "having" appears to have been unaffected. In Treacy v. O'Brien, (1921) 23 W.A.L.R. 34, however, Northmore J. held that "having" in the same phrase meant having *actual* and not merely *constructive* possession. If this interpretation is followed in the new Act it will turn out that the draftsman's attempt at extensive prescripion has in fact been restrictive. Quite apart from this, however, if fish are in fact in premises, or in a boat, vehicle, or aircraft, who "has" them? The owner, the user for the time being, the captain of the aircraft or vessel? If a passenger in a vehicle has brought on to the vehicle a parcel of undersized crayfish tails, would the driver be held to "have" them in the vehicle; or, perhaps more important, will the Department, armed with this ill-defined provision, seek to contend that he has?

13 Was this definition inserted for the sake of completeness, so that the locomotives of the Western Australian Government Railways might not become a species of Alsatia for undersized crayfish tails, or because it is uncertain whether a rail-motor or rail-car is a locomotive or a carriage?

14 Dr. K. Sheard, of the C.S.I.R.O., to whom the reviewer is indebted for a lengthy and illuminating discussion on the problems of the crayfishing industry and its control.

doubt remains to the layman (and it is reinforced by the expert) whether the crayfish is likely to be returned to the water in such time and in such condition as to ensure its survival to grow into a more adequate source of food, and one wonders why the authorities do not prescribe a design of craypot in which the spacing of the laths, wires or canes ensures that undersized crayfish have a very substantial chance of escape and are not subjected to the ordeal of being hauled to the surface, kept for a greater or lesser time on board the fishing vessel, and then thrown back to find their own way to a suitable "residence." It is believed that craypots, or lobster pots, of this type are already successfully used in countries so diverse as Canada and Portugal, and legislation to compel their use here would from a juristic point of view be infinitely preferable to the savagely repressive provisions with which the present Act seeks to enforce the conservation of crayfish.

Possession of undersized fish, female crayfish as specified, or undersized or underweight crayfish tails is penalised by fairly severe monetary penalties, with irreducible minima,[15] and these penalties are supplemented, in the case of possession of undersized or underweight crayfish tails, by a penalty of between one shilling and five shillings for each such tail. They are further reinforced by a provision for forfeiture of all fish, crayfish, or crayfish tails contained in any boat, vehicle or aircraft, or in any receptacle for fish,[16] if five per cent. of

15 The provisions that the minima shall be irreducible are as usual extremely and, it is submitted, unnecessarily verbose. The provisions of section 166 of the Justices Act 1902 are admittedly curiously worded, but they are an exact copy of section 4 of the (English) Summary Jurisdiction Act 1892, and in Osborn v. Wood Brothers, [1897] 1 Q.B. 197, the simple words "a penalty of not less than five pounds" were held to be a sufficient expression of contrary intention, without any unnecessary verbiage. The draftsman of section 29 of the Traffic Act 1919 (as amended by section 9 of the Act No. 48 of 1956) does not appear to have thought elaboration necessary; why can a uniform style not be settled? See also note 98, *supra*.

Incidentally, the supercautious draftsman of section 5 (2) (a) of the Traffic Act 1919 (inserted by section 3 of Act No. 24 of 1950) has made specific reference not only to section 166 of the Justices Act 1902, but also to sections 19 and 669 of the Criminal Code. Section 19 begins, "In the construction of this Code"; could it possibly apply to the Traffic Act? But it may not be altogether clear whether the simple words "not less than three months" are inconsistent with section 669 of the Code, and perhaps even the addition of the words "irreducible in mitigation" may not be thought sufficient to exclude this provision, though it can certainly be said to deal with mitigation of punishment.

16 What is a "receptacle for fish"? In the new section 24B the word "receptacle" is used without qualification, other than such as may be imported by the application of the *ejusdem generis* rule: "the bag, basket, box or receptacle containing the fish." There seems to be room for argument that "receptacle

the crayfish are females captured with eggs and spawn attached or five per cent. of the tails are undersized or underweight.[17] In addition to this, if a licensed fisherman is in possession of or sells female crayfish in defiance of the prohibition, he is to be deprived of his licence for three months for a first offence[18] and six months for a second or subsequent offence.

The problem of detecting the source of a consignment of forbidden fish is dealt with by making it compulsory, under pain of a fine with an irreducible minimum of ten pounds, to label with the consignor's name and address any bag, basket, box or other receptacle containing fish;[19] the label is *prima facie* evidence that the fish was consigned by the person named thereon.

Local Government.

The new legislation regarding local government, which has been on the stocks for some little time, finally became law as Act No. 84 of 1960. It is hoped that a separate review of this Act will appear in a subsequent number of the Law Review.

Licensing.

In addition to the amendments to the Licensing Act 1911 effected by the Schedule to the Anzac Day Act 1960, Act No. 17 of 1960 amended section 205 of the principal Act to enable members of

for fish" means a receptacle specially designed or intended for fish. At the moment the reviewer can think only of a creel and a frying-pan as being within the category, though no doubt there are specially-made boxes for packing fish. But what of a suitcase, a haversack, an enamel or plastic bucket, a wheat-sack?

Unfortunately, the subsections in question do not say to whom the fish are to be forfeited, and it has been necessary to introduce amending provisions (referred to in note 17 below).

17 The effect of the subsections would seem to be that if twenty fishermen ship fish by aircraft or boat, or if fish caught by twenty fishermen are loaded into one railway wagon, and one man's fish (being five per cent. of the whole) are undersized, the whole of the fish are liable to confiscation. Thus it would appear that fishermen will be compelled to police each other's catches or consignments if they are to be shipped together. One is reluctant to attribute such an intention to the Legislature, but the re-enactment of the subsections in question in the 1961 legislation (Fisheries Act Amendment Act 1961, sections 5 and 6 (b)) without any change in this effect, suggests that it is present.

18 "Licence" is of course misspelt with an "s"; but not so "offence". Since Webster's Dictionary gives "offense" as the preferred spelling of the substantive, why is drafting practice not consistent?

19 No member of the Legislature appears to have noticed the point, which might have been taken, that such a provision in effect requires the shipper of undersized crayfish to incriminate himself.

licensed clubs in the Goldfields district to have the same privilege of buying two bottles of liquor from their clubs on Sunday as the general public has of buying two bottles of liquor from hotels on that day.

Metropolitan Water Supply.

Another example of disregard for statutory obligations in the interests of administrative convenience is disclosed in the second reading speech of the Minister for Water Supplies on the Bill which became the Metropolitan Water Supply, Sewerage, and Drainage Act Amendment Act (No. 71 of 1960). Under section 74 of the principal Act the net annual value of any property for rating purposes was to be arrived at by deducting from the gross rental value the actual amount of all rates and taxes paid in respect of each individual piece of land, plus a further twenty per cent. for repairs and other outgoings. "This," the Hon. the Minister said, "is an onerous, cumbersome, and unnecessarily expensive method that is practically unworkable";[20] he had already told the House that the Crown Law Department had advised that the method of rating used in recent years was *ultra vires* the Act as departmental officials (whether with or without Ministerial concurrence is not clear) had replaced the method prescribed by statute by a simpler one of their own devising without bothering to seek legislative sanction for the change.[21] One can almost hear the administrators saying to one another, "She'll be right, mate!" It is little wonder that a bland disregard for law is one of the most obvious elements in the Australian *volksgeist*.[22]

What is said to have been the method of valuation in recent years is now given statutory authority by amendments to the principal Act which replace the estimated net value of land, as a basis of assessment, with an assessed annual value arrived at by deducting from the gross annual value forty per cent. for all outgoings. The making and levying of rates on the basis of the invalid valuation is retrospectively validated. The Act also substitutes for the appeal to the Minister against the valuation of any property an appeal to a three-member Appeal Board, comprising a Ministerial nominee as Chairman, an

20 (1960) 157 PARL. DEB. 2517.

21 (1960) 156 PARL. DEB. 1593-1594.

22 It is a little surprising that no-one takes the point on such disclosures being made that Departmental action of this sort is a clear instance, practically if not legally, of contempt of Parliament, for the Department is deliberately flouting Parliament's will. No doubt, however, the situation arose because the "unworkable" scheme was devised and put up to Parliament by Departmental officers who were then unwilling to come back and in effect confess that they had made a mistake.

officer of the Department, and a ratepayer who is not a public servant, all appointed by the Governor for three-year terms. The decision of any two is the decision of the Board. Notice of appeal against any valuation must be given within thirty days of receipt of the rate notice showing the valuation, and deposit with the Minister of the amount of rates then due is a condition precedent to the hearing of the appeal.

Marine.

The principal amendment to the existing law, in point of bulk, effected by the Western Australian Marine Act Amendment Act (No. 74 of 1960) is the insertion of a new Division 3a, sections 120A to 120G, in Part VII of the Act, which deals with intra-State shipping. It extends to such shipping provisions, similar to those in the Commonwealth Navigation Act 1952, requiring the engagement of any seaman on such a ship to be approved by the shipping master at the port in the State at which the seaman is engaged, and setting out the conditions in which such approval may be refused. Provision is made for appeal against such refusal to a court of petty sessions composed of a stipendiary magistrate. Of more importance in point of content are the other provisions of the amending Act; first, a series of amendments making it clear that the obligation to have vessels surveyed extends not only to vessels which are actually licensed as fishing, pearling or whaling vessels but also to vessels which ought under the relevant statutory provision to be so licensed, and second, an addition to the regulation-making powers under section 207 to empower the Governor to make regulations empowering the Department to regulate "times, places and conditions in respect of any matter or thing" for which regulations may be made under paragraphs (a) to (i) of the section in question. The intention of the Government in moving this amendment was said to be to make it possible to pass regulations to control abuses of the river by speed-boats and water-skiers;[23] why

23 *Per* the Hon. C. W. M. Court, (1960) 157 PARL. DEB. 3089, and the Hon L. A. Logan (*id.*, 3147). One feels that both the hon. gentlemen might well have been more explicit as to the precise way in which the amendment was expected to assist the Government in making suitable regulations. But their bland statement as to the effect of the clause in the Bill which became section 8 of the amending Act was accepted quite uncritically by all other speakers on the Bill; indeed, in the Legislative Council the Hon. F. R. H. Lavery said (*id.*, 3165), "Clause 8 provides that the department will be committed to promulgate regulations to control the use of [pleasure and motor] boats on the river," whereas Clause 8 provided nothing of the kind. It is fairly apparent from the comments on the wording of the clause in question by the Hon. L. F. Kelly in the Legislative Assembly (*id.*, 3204) that he too had no idea how the new provision would operate to effectuate the change desired.

these abuses could not be just as effectively controlled by regulations made by the Governor in Council under the existing regulation-making powers is a mystery.

The Prevention of Pollution of Waters by Oil Act (No. 33 of 1960) was passed in order to give effect within Western Australia to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, and complements the Commonwealth legislation reviewed *infra* at page 440. The legislation, which contains the usual provision for severance of anything which exceeds the legislative power of the State, and expressly provides that it is to be read and construed so as to give effect to the Convention, and that it is to be in addition to and in no way in derogation from existing legislation concerning the prevention of pollution of waters, makes it an offence, punishable by a maximum penalty of £1000, if a discharge of oil or any mixture containing oil from a ship, or from a place on land, or from apparatus used for transferring oil from or to a ship takes place into any waters other than those defined in section 4 of the Swan River Conservation Act 1958. Defences include both that the discharge was a reasonable step to take for securing the safety of the ship, preventing damage to ship or cargo or saving life, and inevitable accident. If the discharge takes place from a shore installation the act of a trespassing stranger is also a defence. If the oil was contained in an effluent from an oil refinery the fact that all reasonable practical steps had been taken to eliminate oil from the effluent is a defence. Whether or not a good defence exists to the charge of committing an offence, the cost of removal of the oil from the waters affected is at the charge of the owner or master of the vessel, the occupier of the place on land, or the person in charge of the apparatus, from which the discharge occurred. Such persons are to report the occurrence of a discharge immediately to the appropriate harbour authority, under pain of a penalty of not more than £200, and the harbour-master or officer authorised in writing by the harbour authority is given extensive powers of and ancillary to an investigation of the discharge. Extensive regulation-making powers are given to the Governor for carrying into effect the provisions of the Act. These powers include powers to prescribe the fitting to intra-State ships of equipment necessary to prevent the discharge of oil and mixtures containing oil. As a further preventive measure, harbour authorities are authorised to provide facilities for enabling ships to dispose of oil residues. There is no time limitation in respect of the prosecution for any offence under the Act, but proceedings may not be brought by anyone other than a harbour authority without the consent of the Attorney-General.

Native welfare.

The provisions of section 2 of the Native Welfare Act, so far as they affect status, have already been noted under that heading. The principal Act is also amended by inserting into section 6A a new subsection (4) providing that the powers of the Minister in the acquisition of land and its disposal to natives, under that section, may be exercised for any purpose whatever.[24] The Governor is given power to appoint a Deputy Commissioner of Native Welfare. A new section 7A exempts the Minister, the Commissioner, the Deputy Commissioner, and all officers of the Department from personal liability in respect of anything done in good faith in the carrying out or purported carrying out of any power under the Act. Section 36 of the principal Act, which deals with the disposal of the property of natives who die intestate, is amended to provide that where there is no person entitled to succeed to the property under regulations made under the Act, the moneys paid to the special trust account referred to in that section shall be kept for twelve months; if within that time no valid claim is made to the proceeds, the Governor may, if application is made, order the money to be paid to any person or persons having a moral put not a legal or equitable claim thereto;[25] only if such order is not made

24 The draftsman has gone about this in a back-handed way. He began by reciting that the powers in question might be exercised "for or in respect of agricultural, pastoral, industrial, commercial or domestic purposes". He then decided to add "or in respect of such other purposes as the Minister thinks fit", but, mindful of the *ejusdem generis* rule, qualified "purposes" by the phrase "whether of the same kind as, or a different kind from, those here specified." After all that he might just as well have said, "The powers conferred on the Minister by this section may be exercised by him for or in respect of" (but do the words "in respect of" add anything useful?) "any purposes he thinks fit." Once this has been said, one wonders whether it was ever necessary; if certain powers are conferred upon the Minister, *simpliciter,* is it not implicit that they may be exercised for any purpose at all? Apparently, however, the interpretation placed upon the original section by the Treasury, presumably by reference to the wording of the power to effect improvements upon the land, was that it applied only to land to be used for agricultural or pastoral development (see the Hon. Mr. Perkins (Minister for Native Welfare) — (1960) 155 PARL. DEB. 799), and no doubt the amendment was necessary to loosen the purse-strings.

25 The intention of this amendment was to extend the benefit of the provisions of section 9 (1) of the Escheat (Procedure) Act 1940, to persons—specifically, the parents of an illegitimate intestate native—who might have a moral claim but not a legal claim to the property of the intestate. The draftsman has, however, rather uncritically tacked the operative provisions of section 9 (1), suitably amended, onto the existing provisions of section 36 (2), and has produced what appears an inelegant result. Under section 36 (2) the property of the intestate is first of all to go (after payment of just debts) to the widow or husband of the deceased and the next-of-kin, if they or any of them can be ascertained (failing widow or husband the

may the proceeds be used for the benefit of natives generally. The making of any such order bars all claims which might otherwise subsist against the moneys.

Railways.

A variety of amendments are made to the Government Railways Act 1904 by Act No. 55 of 1960. The maximum monetary penalties prescribed for various offences under the Act, as well as the maximum of the monetary penalties which may be imposed by by-law, are doubled; and as a further recognition of the depreciation of the currency, the value above which the Commission is not to be liable for the loss of or injury to certain goods is increased from £10 to £25. Certain amendments are made to section 74 and to the by-law making powers in section 23 to facilitate the appointment of special constables; though the power to do this has existed for some time advantage has not been taken of it. The powers of the Commission to fix scales of charges in respect of demurrage are amended to make it clear that such a charge may be made payable either by consignor or by consignee. The Commission is given express power to make special contracts with any person in relation to fares, charges, and conditions for the carriage of any passengers, goods or livestock. The offence of driving or attempting to drive across a level crossing when an engine, carriage or wagon is approaching and is within a quarter of a mile

next-of-kin take); then (if there is no widow or husband or next-of-kin or none can be ascertained) it is to be distributed in accordance with Regulation 106 of the Native Welfare Regulations (Government Gazette No. 60, 26th June 19557, 2116-2117); only if there is no person entitled under these Regulations does the new provision operate. In these circumstances, why wait a further twelve months for any claims to be made? The only claim which could be envisaged is that of a widow, a husband, or some next-of-kin who suddenly appear, despite earlier failure to ascertain them; but had there been persons entitled under Regulation 106, the claim of wife, husband or next-of-kin would immediately be barred. Why revive it in the absence of such persons? There could not be any claim by persons under Regulation 106, because a certificate under the hand of the Commissioner to the effect that there was no such claimant is conclusive evidence of that fact.

Incidentally, the provision inserted goes on to reproduce the wording of the Escheat (Procedure) Act 1940 but omits certain important words—the provision copied from empowers the granting of property to claimants "to be held . . . . for his or their own use and for such estate or interest as the Governor may in each case deem advisable"; but in the copy the provision reads "for his or their own use as the Governor may in each case deem advisable." The last nine words are thus rendered meaningless.

The reviewer is surprised to note that the Escheat (Procedure) Act 1940, defines "escheated property" as meaning real or personal property the subject of an order of escheat, and conditions the making of an order of escheat on its appearing that property has escheated to the Crown. When may personal property appear to have escheated to the Crown?

of the crossing becomes, at crossings which are provided with warning devices, the offence of driving or attempting to drive across when the warning devices are operating and an engine or wagon is approaching.[26] It becomes an offence not only to travel without having previously paid or tendered the fare, but also to leave the railway after having travelled without a ticket or free pass without paying or tendering the proper fare. The offence (in a railway employee) of being found drunk while on duty is extended to include being found under the influence of intoxicating liquor or of any drug. Section 73 of the principal Act, dealing with the disciplinary powers of the Commission, is amended to empower the Commission both to reduce to a lower class or grade and transfer without payment of expenses an officer or servant who has been guilty of and punished for an offence under either section 31 or section 32 of the Traffic Act 1919. Finally, officers and servants who join the Railway Service after 2nd December 1960 must join the Death Benefit and Endowment Fund notwithstanding that they also maintain a life insurance policy or policies affording them benefits equal to those to be expected from the Fund.

Superannuation and pensions.

The Acts Amendment (Superannuation and Pensions) Act (No. 61 of 1960) makes a variety of amendments to the superannuation provisions of both the 1871 and the 1938 schemes, most of them expressly designed to remove anomalies. A fresh approach has been adopted to the adjustment of pensions under the 1871 Act so as to give them the equivalent increase in benefits provided by the State for pensioners under the 1938 Act. Female contributors to the 1938 scheme may now elect for retirement at the age of 65 years. The maximum number of units for which a person may contribute under the latter scheme is increased to 42. The pension payable to a widow following the death of her husband has been increased to five-eights of his entitlement. Where a person who has been appointed to a statutory office for a limited period of years was a member of the 1938 pension scheme and was not re-appointed he was entitled to a pension payable *pro rata* from the Fund, in accordance with the amount paid by way of personal contributions, plus the full share which would have been paid by the State had he continued in office until age 60. The amending Act provides that both contributions shall be *pro rata*, and shall be subject to a qualifying period of 10 years service. Stipendiary magistrates, whose retirement age is fixed at 70, are now to receive some benefit from their contributions to the fund

26 Why not also when a carriage is approaching?

for the additional years of service after 65; the portion of pension equivalent to the contributions made by them is to be multiplied by a percentage, according to the age on retirement, ranging from 7 per cent. if that age is 66 to 42 per cent. if he does not retire until age 70. A contributor who becomes incapacitated by an injury arising from his Government employment may receive a pension notwithstanding that his retirement on the ground of incapacity takes place before he has completed three years membership of the Fund. Finally, pensioners employed or re-employed in the State service after their retirement are no longer to be deprived of the State share of their pension during the period of such employment.

In addition to these amendments to the general pension legislation affecting Government servants, the Parliamentary Superannuation Act 1948 was amended by Act No. 77 of 1960 to provide for an increase of £1. 10. 0. a week in the contributions payable by members, and a consequent improvement of benefits to provide for a life pension on retirement[27] of an amount ranging from £11. 10. 0. a week for seven years service to £20 a week for 16 years service and over. Widows of members are to be entitled to three-quarters of the pension which would have been payable to the member at his death.

Traffic.

The Traffic Act was amended only once during the 1960 session of Parliament. Act No. 48 of 1960 made a variety of amendments to the principal legislation. Bicycles need no longer be licensed. Taxi-car licences may be transferred only with the consent of the Minister, which is to be given only on the recommendation of the Commissioner of Police and when in the Minister's opinion exceptional circumstances warrant the transfer.[28] Ancillary provisions define the obligations in respect of the transfer of the licence of those who sell and those who buy taxicars. The appropriation out of licence fees for lights and signs for the direction of traffic is increased to £60,000 a year. The requirement that an applicant for a motor dealer's licence or its renewal furnish a bond of £3,000 is repealed, and the provisions ancillary to the requirement of a bond enacted by section 6 of Act No. 59 of 1958 are also repealed. The registers required to be kept by section 22AF must now be kept at the premises where the transaction registered is entered into. The Commissioner of Police is given power to renew the

27 The pension was previously limited to a period of ten years after retirement.

28 As a result of this amendment section 8 of the principal Act contains what must be the most fearsome collection of provisos ever brought together in any section or subsection; it seems a pity that the opportunity could not have been taken to redraft the section completely.

extraordinary licences issued under section 24A, and power is given to the Governor to make regulations concerning such renewal. Power is also given to the Governor to make regulations requiring the engines and chassis of vehicles to bear prescribed identification marks. A new subsection (2) is inserted in section 69 making any certificate or document, issued under the laws of this or any other State or any Territory of the Commonwealth, which states either that a vehicle was or that it was not registered *prima facie* proof of the matters stated therein. A new subsection (2) to section 71 provides that there is no longer any need for the renewal of a licence or certificate of registration in respect of vehicles owned by the State Government. Finally, the regulation-making powers of the Governor were further extended to permit the making of regulations containing special provisions for the control, operation, and movement of taxi-cars, and particularly prohibiting the carrying or exhibiting of signs, notices or advertisements in taxi-cars, a provision which stirred up legislative controversy out of all proportion to its intrinsic importance.[29]

Veterinary surgeons.

Hitherto the profession of veterinary surgery in this State has been regulated by the Veterinary Act 1911, which set up a five-member Board of Government appointees to administer a register, registration on which was dependent upon professional qualifications which, except in the case of a person who in 1911 and for five years previously had practised veterinary surgery and who was entitled to register as a veterinary practitioner, required the holding of a diploma of competency from a recognised college or institution or the passing of a prescribed examination to the satisfaction of the Board. In practice, especially in recent years, the Act had proved excessively simple and in places rather loose, making it difficult to check the practice of veterinary surgery by unqualified persons. The Veterinary Surgeons Act (No. 64 of 1960) which repeals and replaces the earlier legislation, was introduced at the instance of the Western Australian Division of the Australian Veterinary Association; it retains the framework of the former Act but spells out in a good deal more detail the qualifications required of persons who desire to register as veterinary surgeons, the nature of unprofessional conduct such as to empower

29 An attempt to delete the offending provision from the Bill was defeated at the committee stage in the Assembly, but succeeded at the committee stage in the Legislative Council. The Council's amendment was not agreed to, however, and, upon its being pointed out that the prospective prohibition of advertisements in taxis was actually sought by the taxi-proprietors themselves, the Council did not insist on its amendment.

the de-registration of any registered veterinary surgeon, and the conduct which is an offence against the system of registration set up by the Act. The composition of the Board is specified in greater detail than before and a degree of professional self-government is explicitly allowed for; the Chief Veterinary Surgeon is *ex officio* a member, and one member is nominated by the Minister for Agriculture. Of the other three members two are registered veterinary surgeons elected by persons on the register and the third, also a registered veterinary surgeon, is nominated by the local division of the Australian Veterinary Association. A new register is set up; the qualifications for registration as a veterinary surgeon are, first, the possession of a degree, diploma or licence of competency in veterinary science from the Universities of Sydney, Melbourne or Queensland or some other recognised university, college or institution, or membership of the Royal College of Veterinary Surgeons; or, second, the passing of a regularly graded course of four or more years' duration at some other recognised university, college or institution; or, third, the holding of a degree, diploma or licence of competence in veterinary science from a university, college or institution outside the Commonwealth which was accepted in the country in which it was issued as sufficient to enable the holder to practise in that country, provided that the holder has resided in the Commonwealth for one year or more before making application for registration and that he passes a prescribed examination. Veterinary practitioners, and persons who under section 25 (6) of the 1911 Act[30] held permits to give veterinary service or advice or to perform veterinary operations so long as no registered veterinary surgeon resided within thirty miles, may be placed on the register as veterinary practitioners and veterinary permit-holders respectively. If the Board refuses to register a person for want of suitable qualifications an appeal lies to a Judge of the Supreme Court.[31] Among the matters which may entitle the Board to remove a person's name from the register or to suspend his registration are his becoming permanent-

30 For some strange reason section 20 (3) (a) of the Act speaks of such persons as holding a current permit under the Veterinary Surgeons Act Amendment Act 1923; but that Act merely inserted a new subsection (6) into section 25 of the principal Act.

31 The section in question (section 22) goes on to say that the appeal is to be "in accordance with Rules of Court". So does section 24 (9). Not only is this last provision unnecessary in the light of the provisions of section 21 (3) of the Supreme Court Act 1935, but it appears to invite the interpretation that it excludes the provisions of that subsection, which has at the end a saving clause to deal with the situation in which there is no provision, or no appropriate provision, in the Rules of Court for such proceedings. It would be unfortunate if it turned out that this saving clause had no application to appeals under the Veterinary Surgeons Act.

ly incapable of doing the work of a registered veterinary surgeon, his being convicted of an indictable offence in this State, or its analogue elsewhere, of such a nature or in circumstances which in the opinion of the Board render him unfit to practise veterinary science,[32] or "unprofessional conduct as a veterinary surgeon" which includes habitual drunkenness or drug addiction, advertising himself in a manner contrary to the regulations,[33] or practising veterinary surgery otherwise than under his own name unless he has the Board's consent to this. Any enquiry into a charge of unprofessional conduct is to be an open and public enquiry, at which the person charged has the right to counsel; the Board may exercise the powers of a Royal Commission under the Royal Commissioners' Powers Act 1902. An appeal against de-registration or suspension of registration lies to a Judge of the Supreme Court.

No person other than a registered veterinary surgeon (which for this purpose includes a registered veterinary practitioner) or a permit-holder may take remuneration for veterinary services unless there is no veterinary surgeon or permit-holder residing and practising within thirty miles of the place where the service is rendered; spaying cattle, tailing lambs, dehorning or castration are not reckoned as performing veterinary surgery, nor is the supply of medicines, drugs or medical and surgical appliances[34] by a registered pharmaceutical chemist or the owner of any wholesale druggist or retail business.[35]

32 Section 23 (1) (c) says "performing his duties" which is inept.

33 In addition to this, making known the place or places where and the fact that he is practising veterinary surgery, except in accordance with the regulations (forbidden by section 26 (4)), amounts to unprofessional conduct (section 23 (4) (c)). But surely this is the same thing as advertising otherwise than in accordance with the regulations, specifically described as unprofessional conduct in section 23 (4) (d)? Incidentally, the latter paragraph speaks of advertising in any way "otherwise than in accordance with the regulations" or "in contravention of the regulations." What is the difference? It looks as if an apprentice has been let loose on the drafting; but iti may merely be that the statutes of other States have been copied; the Hon. the Minister stated in his second reading speech [(1960) 156 PARL. DEB. 2011] that the Veterinary Association used the most favourable features of each of the Acts of all the other States in framing its proposals for legislation.

34 This is obviously an example of the several "and" referred to above at 370.

35 This is a piece of loose drafting of the kind the Act was presumably intended to eradicate. Does this mean the owner of a wholesale druggist's business, or of any kind of retail business? If so, why the special provision in relation to pharmaceutical chemists in the previous paragraph (paragraph (a) of section 28)? Or was it intended to say "wholesale or retail druggists' business"? In either case, why may such a person supply vaccines without penalty when a pharmaceutical chemist may not (unless, on the reading first suggested above, he is the owner of a retail business)?

Workers' compensation.

Sooner or later drafting errors (and other legislative errors) have to be corrected, and a crop of corrections appears in the Workers' Compensation Act Amendment Act (No. 81 of 1960).[36] There was much criticism of the general inadequacy of the legislation brought down, especially as it had been made to appear by Government statements that substantial amendments to the Act were likely to be introduced,[37] but it does not appear to have occurred to anyone to ask why there should be so many drafting errors needing correction. The new provisions in the Act include amendments to the conditions under which a worker disabled by silicosis, pneumoconiosis or miner's phthisis, or the dependents of a worker who dies as a result of one of those diseases, may claim compensation; these were introduced because disablement from the diseases in question may occur more than three years after the last contact with silica dust. It must be shown to the satisfaction of the Board that since the worker was last employed in the State in an occupation of a nature to cause him to contract the disease he has not been absent from the State for a period of, or periods aggregating, more than six months, or, if he has been so absent, that he has not during that time been engaged in the occupation in question. Any compensation payable is recoverable from the employer who last employed the workman in that occupation, and contribution is recoverable from any other employer who employed the workman during the three-year period immediately before the date on which the workman ceased his last period of employment in

36 The errors which required correction were, first, the failure to proclaim the coming into force of the Workers' Compensation Act Amendment Act 1959 in sufficient time to make its sole provision effective. (One wonders incidentally why the Act could not have been allowed to come into force automatically upon assent, without the need for any proclamation). Next, a drafting error in section 2 of the amending Act of 1956 (No. 80) whereby reference was made to paragraph (d) of clause one of the First Schedule instead of to paragraph (d) of the proviso to paragraph (c) of clause one. The amendment to section 13, referred to in the text, was made because, according to the Hon. the Minister for Labour [(1960) 157 PARL. DEB. 2608] the section as it stood was meaningless and confusing in a number of respects. Finally, clause 1 (c) (iii) of the First Schedule required amendment because since 1954 the concluding words, prescribing the maximum amount of weekly payments of compensation including payments to dependants, have provided that where a worker's average weekly earnings at the date of the accident were less than the basic wage the weekly payments should be the amount of those earnings; the intention at the time was apparently that they should not exceed the amount of those earnings, though they might be less.

37 See, for example, the second reading speech of Mr. W. Hegney in the Legislative Assembly [(1960) 157 PARL. DEB. 2729 *et seq.*].

the industry in question.[38] New offences under the Act, those of fraudulently attempting to obtain any benefit by malingering or by making any false claim or statement, and of aiding or abetting that attempt, are created by section 5 of the amending Act. The Minister is given power to revoke or suspend the approval of any insurance office which either fails or refuses to comply with the requirement of the Act and its regulations, or which requests that approval be revoked. Subsection (3) of section 13 is amended to give statutory force to the obligation of an insured employer to furnish at the beginning of the period of insurance an estimate of the aggregate amount of wages to be paid to his workers for that period, and at the end of the period a statement of the aggregate amount of wages, including overtime, paid in fact. Subsection (4) is amended to enable an insurance company with the consent of the Board to refuse insurance and the continuance of insurance in respect of any worker, a power hitherto confined to the cases of workers who were members of the employer's family and dwelling in his house, and limited to the refusal of initial insurance. The Board is given power not only to determine whether

38 This appears to be the intention of the amendment; but, whereas the earlier references in the amendment are to the employment to the nature of which the disease is due (the Third Schedule refers to "Mining, or quarrying, or stone crushing or cutting, or stone or metal screening"), the words inserted in paragraph (iii) of the proviso to subsection (5) of section 8 refer only to the mining industry. One assumes that the limitation is unintentional. Incidentally, the information which, under paragraph (i) of that proviso, the worker is to furnish to his last employer, concerning the names and addresses of all other employers who employed him during the three-year period, is, in the case of silicosis, pneumoconiosis or miner's phthisis, to apply to the period of three years "prior to the worker being last employed in the employment to the nature of which the disease is, or was, due." The previous paragraph of the amending section speaks of a period "commencing on the date three years prior to the date on which the worker ceased to be employed in the mining industry." Does the change in wording indicate an intended change in meaning, or is it just another result of the operation of the gremlins which appear to dog the drafting of the workers' compensation legislation? A printers' gremlin has been at work in section 4 of the amending Act, too; superfluous full stops appear between "nature" and the semi-colon at the end of the new subsection 1a, between "due" and the semi-colon at the end of the new first paragraph of subsection (5), and again at the end of subsection 5a, and after "industry" (and within the quotation marks) in the passage inserted into paragraph (iii) of the proviso to subsection (5). The same gremlin was at work in section 6 (c) and in section 8 (a), with the result in the latter case that the deletion of a non-existent full stop has been enacted by Parliament; and a close relative duplicated the semi-colon at the end of the new subparagraph (xiii) of paragraph (a) of subsection (7) of section 29 (see section 9 (a)) of the amending Act.

an insurer may refuse insurance (section 29 (7) (a) (xiii))[39] but also whether an insurer may cancel a policy of insurance, and if so upon what terms, and declare a policy void for non-compliance with the terms thereof. A new subsection (9a) is added to section 29 authorizing the Board, where it has stated a case for the decision of the Full Court, to indemnify the parties or any of them against the whole or part of the costs. Section 16 of the principal Act, which provided that where a principal contracted with a contractor for the execution of certain categories of work both the principal and the contractor were deemed to be employers of any workman employed by the contractor and jointly or severally liable for the payment of compensation to him, has been repealed. Finally, by an amendment to paragraph (c) of the proviso to paragraph (c) of clause one of the First Schedule,[40] the maximum amount payable in respect of medical expenses and prosthetic devices is increased to one hundred and fifty

39 It is not altogether clear whether the Board had this power previously, at any rate in an unqualified form. Section 29 (7), which listed the matters which the Board had jurisdiction to determine, included among these, in paragraph (xiii), "whether an insurer shall be permitted to refuse the insurance of an employer against any liability under this Act." Section 13 (1) also contemplated an unqualified power to permit refusal of insurance, in a phrase added by section 10 (a) of the Workers' Compensation Act Amendment Act 1948. But paragraph (b) of that section added to what is now section 13 a new subsection (4) of which paragraph (a) explicitly imposed upon an approved insurer the liability to insure any employer requesting such insurance, and the only exception to this liability occurred when the Board permitted it to refuse insurance wholly or in part in respect of a worker who was a member of the employer's family and dwelt with him in his house. Which of these inconsistent provisions was to govern was a mystery which has fortunately been cleared up in the process of amending section 13 to remove some of the confusion referred to above in note 36.

40 It is absurd that this method of citation should have to be resorted to. Unfortunately the whole Act is so badly arranged that the need for such references is all too common. This was commented upon four years ago in the pages of this Review [(1957) 4 U. WEST. AUST. ANN. L. REV. 124] and it was then suggested that a substantial redrafting of the Act was needed. Nothing in this direction has however been attempted. It is true that it would be a large task, and, if the inference, which has been drawn in respect of several of the pieces of legislation of the 1960 session, that some of the drafting has been entrusted to untrained persons, is correct, it would seem that the present drafting staff could not be expected to have the time to deal with such a re-drafting. The Government would be well advised in that case to consider strengthening the drafting staff for the express purpose of consolidating this and other Acts which over the years have, to use a colloquialism, "got into a mess"; the ideal appointment would be of a person with considerable drafting experience and some ability in the consolidation of legislation. It should not be impossible to find someone of this calibre, though it might well prove necessary to seek him in England, or in Canada, or in New Zealand.

pounds; it is expressly provided in an amendment to clause three that in assessing weekly payments the potential effect of any basic wage fluctuation or any amendment of a relevant industrial award is to be taken into account.

IX. MISCELLANEOUS.

Among other pieces of legislation during the year:

(1) The Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 31 of 1960) enables an insurance company which on or before June 30th 1959 was a participant in the Motor Vehicle Insurance Trust Fund to transfer its interest in the Fund, or any part of that interest, to any other company carrying on insurance business; the written consent of the Trust is first necessary, and the Trust may impose conditions upon the transfer.

(2) In preparation for what are still referred to as the Empire Games, to be held in Perth in November 1962, the Local Authorities, British Empire and Commonwealth Games Contributions Authorisation Act (No. 27 of 1960) gives power to local authorities, with the approval of the Minister, to spend from ordinary revenue such sums as they think fit upon preliminary arrangements for the Games.

(3) Section 9 of the Firearms and Guns Act 1931 was amended by Act No. 28 of 1960 to allow farmers to lend their employees firearms belonging to them for the purpose of destroying vermin on their land.

(4) The Betting Control Act Amendment Act (No. 2) (No. 66 of 1960) by a very badly drafted amendment[41] empowers the Betting Control Board to grant a bookmaker's licence to the holder or the employee of the holder of a spirit-merchant's licence or a gallon licence if the premises in respect of which that licence is granted are elsewhere than in the South-West Land Division of the State.

41 The bad drafting appears to be the fault of amateur draftsmen who have copied the jargon (and some of the faults) of professionals. In the first place the Hon. H. C. Strickland attempted to move, during the committee stage in the Legislative Council on the Betting Control Act Amendment Bill, an amendment to section 11 (5) (a) of the Act which would have made the section read thus (the words intended to be added are italicized):

"The Board shall not grant a license—

(a) to a person who holds, or to a person who is employed in any capacity by one who holds, a license for the sale of liquor under the Licensing Act 1911, *other than a spirit merchant's license* or a gallon license."

(5) The Lotteries (Control) Act 1954 is amended by Act No. 45 of 1960 to enable the Lotteries Commission to invest moneys in loans raised by governmental or semi-governmental agencies within the State if the loan were backed by Government guarantee, instead of being confined to Commonwealth inscribed stock.

(6) The Fremantle Harbour Trust was given, by Act No. 75 of 1960, the borrowing powers necessary to enable it to borrow money for capital works from sources other than the State Treasury; the new powers are modelled on those already possessed by the State Electricity Commission.

(7) The Church of England in Australia Constitution Act (No. 4 of 1960) gives legal force and effect within the State to the new Constitution of the Church of England in Australia; by section 3 of the Act the articles and provisions of the constitution and the canons and rules made under it are declared binding on bishops, clergy, and laity for all purposes relating to the property of the Church within the State save insofar as they are repugnant to State law, a qualification introduced by section 4.

E.K.B.

There was nothing wrong with this from the point of view of drafting, but it would have enabled the Board to grant off-course as well as on-course bookmakers' licences, and the Hon. Mr. Strickland proposed an amendment to limit it to the latter. The amendment was ruled out of order, however, [(1960) 157 PARL. DEB. 2556-9]. A separate Bill to achieve the same result, containing the limitation referred to above ,which made the drafting more clumsy, was then introduced. In the committee stage it was desired to confine its effect to areas of the State outside the South-West Land Division (see the Hon. A. F. Griffiths, *id.*, 2694), and after an adjournment during which the Hon. Mr. Strickland, with the aid of the Clerk of the Council (as he acknowledged, *id.* at 2705), drafted appropriate amendments, an amendment was brought forward which causes the relevant part of the subsection to read thus:

"The Board shall not grant a license—

(a) to a person who holds, or to a person who is employed in any capacity by one who holds a license for the sale of liquor under the Licensing Act, 1911, *except (in the case of a license under this Act entitling the holder to carry on the business of a bookmaker as mentioned in paragraph (a) of subsection (4) of this section) in the case of a spirit mercant's license or a gallon license which is located in areas of the State other than the South-West Land Division.*"

And laymen complain of the tortuous and involved language of lawyers! How much simpler to substitute for the italicized words: "but the Board may grant to a person who holds a spirit merchant's licence or a gallon licence in respect of premises situated in an area of the State other than the South-West Land Division a licence to carry on the business of a bookmaker in person upon a racecourse in terms of subsection (4) (a) hereof."