

LEGISLATIVE SUMMARY

VICTORIA 1962

Constitutional Amendment

Statute Law Revision Committee

The Constitution Act Amendment (Statute Law Revision Committee) Act 1962 (No. 6960) is intended first to make it quite clear that the Committee if it so desires may undertake investigations into statute law in connexion with matters referred to it directly by the Attorney General¹ and secondly it is intended to enable a Committee which is appointed at the commencement of a new session to take over the evidence and unfinished work of its predecessor.²

Electoral Practice

The Constitution Act Amendment (Postal Voting) Act 1962 (No. 6875) permits electors voting in person at a returning officer's headquarters prior to an election to hand the ballot paper to that official personally, whereas previously all such votes had to reach the returning officer through the post. It also allows any postal voter instead of returning the ballot paper by post, to deliver it or cause it to be delivered by hand.

Health

Food Vending Machines

The Health (Amendment) Act 1962 (No. 6967) provides, *inter alia*, for some control over the operation of food vending machines as defined by the Act.³ This is done by introducing a new division, Division 7, to Part XII of the Health Act 1958.⁴ This division requires the registration of food vending machines⁵ and sets out the rules under which such machines are to be operated. The Milk Board (Amendment) Act 1962 (No. 6965) besides removing some unnecessary restrictions contained in the principal Act, empowers the Board at its discretion to issue licences for vending machines selling plain milk, subject to such conditions as the Board thinks fit.

Poisons Control

The Poisons Act 1962 (No. 6889) brings up to date the control of the sale of poisons and deleterious substances in Victoria. Under the new Act the Chief Health Officer of the Department of Health⁶ advised by the Poisons Advisory Committee is to exercise the executive authority previously exercised by the Pharmacy Board of Victoria.

¹ S. 2 (b). ² S. 2 (c). ³ S. 227A. ⁴ S. 5. ⁵ S. 227B. ⁶ S. 6.

The manufacturers and wholesale dealers of all poisons and deleterious substances listed in the various schedules are required to take out licences.⁷ Any person selling wholesale is required to ensure that the person to whom he sells is authorized to have the substance in his possession⁸ and the manufacturers of any poisonous substance are required to advise the Chief Health Officer of the name of the product and the nature and percentage of the toxic ingredients.⁹ The Governor in Council is authorized to make regulations for the purpose of protecting persons engaged in the manufacture of special poisons.¹⁰ The application of certain of the provisions relating to drugs of addiction is extended to any substance listed in the 4th schedule.¹¹

Smoking is given a new definition being defined as the inhalation of fumes caused by heating and burning,¹² and penalties imposed for offences under Part III, dealing with drugs of addiction are increased. The illegal manufacture, preparation, sale or dealing in any drug of addiction or specified drug is declared a misdemeanour punishable with imprisonment of up to two years or a penalty of £2,000 or both.¹³ Forgery or fraudulently altering a prescription to obtain a drug of addiction or a specified drug is also made a misdemeanour.¹⁴ Misdemeanours under Part III may be dealt with by Courts of Petty Sessions, in special circumstances.¹⁵

Part IV of the Act is a re-enactment of Part IV of the 1958 Act and relates to the control of the sale of methylated spirits. A provision is included imposing a term of imprisonment and a fine for failure to comply with Part IV.

Parts V and VI include new provisions prohibiting the sale of poisons from door to door¹⁶ and enabling police officers to arrest without warrant any person found offending.¹⁷

Fiscal

Land Tax

The Land Tax (Exemptions and Rates) Act 1962 (No. 6929) fixes the rates of land tax for 1963. Secondly it provides for an increase of three hundred pounds in the flat exemption from land tax, and for a diminishing scale of exemption between £1,750 and £2,000. Also, whereas previously land owned by an absentee owner attracted the ordinary rates of tax plus twenty *per cent*, under the Act as amended land owned by an absentee owner and being used for primary production or industrial purposes does not attract the additional twenty *per cent*.

Thirdly there are some minor amendments to section 9 of the Land Tax Act 1958. Section 9 sets out the various types of holdings which do not attract land tax. Prior to the new Act there had been some

⁷ Division 3 ss 9-12. ⁸ S. 16. ⁹ S. 13. ¹⁰ S. 25. ¹¹ S. 26.
¹² S. 31 (2). ¹³ S. 32. ¹⁴ S. 33. ¹⁵ S. 33. ¹⁶ S. 48. ¹⁷ S. 50.

difficulty in respect of land belonging to charities but vested in trustees. The amended Act makes it clear that to qualify for exemption the land need not be vested in a charity, it being sufficient if the land is held in trust for charity.¹⁸ The exemption previously granted to the University of Melbourne is extended to any university or college in Victoria.¹⁹ Land owned by ex-service organizations is made exempt also.²⁰ Finally, persons acquiring land as well as persons disposing of land must notify the Commissioner of the change in ownership.²¹

Entertainments Tax

The Entertainments Tax (Partial Abolition) Act 1962 (No. 6903) implements the Budget proposal with respect to partial abolition of entertainments tax. It came into force on 29 December 1962. By this Act entertainments tax on all entertainments except racing and trotting is abolished.

Stamp Duty

The Stamps (Amendment) Act 1962 (No. 6910) frees municipalities from the payment of Stamp duty.²² Other amendments of interest not affecting the principles of the Stamps Act 1958 are as follows: a cash register may be used for the purpose of denoting the duty paid on documents;²³ transfers of securities from a nominee by direction to a third party are now dutiable,²⁴ the transferee being responsible for payment of duty;²⁵ and assignments of leases at an annual rental below £65 are no longer dutiable.²⁶

Probate Duty

The Probate Duty Act 1962 (No. 6890) is mainly intended to protect the revenue against the many and varied techniques that have been devised over the past few years to enable people to avoid the payment of death duties. In particular the Act is designed to put an end to the following: large transfers of value by the use of company legislation through the medium of private investment companies—sections 7 and 8; extravagant provisions under superannuation schemes—section 9; the provision of large death benefits by means of agreements in regard to employment or by means of the rules of association, or by the transfer of interests in the business to surviving partners—section 7; benefits under insurance policies which as between the insured and the beneficiary pass to the survivor—section 8. All these devices were used to avoid to some extent the payment of death duty under the provisions in force before 1 July 1962, the date the Probate Duty Act came into force.

¹⁸ S. 4 (a). ¹⁹ S. 4 (b). ²⁰ S. 4 (c). ²¹ S. 5. ²² S. 7. ²³ S. 2.
²⁴ S. 3. ²⁵ S. 4. ²⁶ S. 7 (1) (e).

However, apart from the revision of the sections dealing with what forms or is deemed to form part of the estate of a deceased person the Act revises and simplifies the administration of the Act, and brings the appeal provisions into line with the well tried procedures under the Commonwealth taxation legislation.²⁷

Furthermore, it provides concessions in relation to land used for primary production,²⁸ in relation to estates of soldiers who have died as a result of war service,²⁹ and in relation to charities.³⁰ Also probate duty may now be pre-paid.³¹

Finally the following points relating to procedure under the Act are worthy of notice. Provision is made for the issue of interim assessments by the Commissioner.³² The provision relating to the registration of settlements formerly contained in section 132 of the Administration and Probate Act 1958 is omitted, whilst there is provision to enable assessments to be re-opened if for any reason they are found to be inaccurate. The restriction formerly placed on the tax payer preventing him from recovering overpaid duty if more than six years has elapsed has been omitted. There is also the omission of provisions formerly contained in section 123 of the Administration and Probate Act 1958, which prevented probate or letters of administration from being issued from the office of the master until the duty had been paid. There is a provision that if the deceased has assets outside Victoria, the Commissioner may adopt the values placed on them by the taxing authority where the assets are situated.³³

The Probate Duty (Reduction) Act 1962 (No. 6970) makes two small changes in the law effected by the Probate Duty Act 1962. First, it raises to £6,000 the general exemption for estates passing to widows, widowers, children under twenty one years of age, wholly dependent adult children, and wholly dependent widowed mothers. In addition the scale of duty between £6,000 and £25,000 is lowered.³⁴ Secondly, land owned for primary production passing to certain specified people and having been owned for a specified time, whether it is owned by a company, in partnership or individually is now entitled to a flat reduction of 30 *per cent.*³⁵

Road Traffic

Administration of Justice

The Road Traffic (Recovery of Penalties) Act 1962 (No. 6950) provides that where a fine is determined by the court under the Road Traffic Act 1958, the clerk of courts shall send a notice through the post to the defendant stating the amount of the fine and the costs and asking for payment. The defendant then has twenty one days within which he may pay the fine.

²⁷ S. 19.

²⁸ S. 24.

²⁹ S. 23.

³⁰ S. 21.

³¹ S. 35.

³² S. 11 (5).

³³ S. 33.

³⁴ S. 3.

³⁵ S. 2.

If at the end of twenty one days the defendant has not complied with this request, a warrant of distress may be issued. The Act further provides that if no payment is received within the twenty one days the warrant carries a £2 fine. Before the passing of this Act instead of the notice to the defendant a distress warrant was issued which was executed by the police.

Foreign Judgments

The Foreign Judgments Act 1962 (No. 6916) is another of the growing number of measures which have emerged from conferences between the Attorneys-General of the States. It replaces division 11 of Part VII of the Supreme Court Act 1958.

The previous legislation made no provision for extension of reciprocity outside the British Commonwealth. The new Act permits reciprocity to be extended by Order in Council to any foreign country.³⁶ Under the old legislation once a foreign judgment was registered in Victoria, there was no means by which a Victorian citizen could have it set aside. Under the new Act a judgment may be set aside under certain conditions.³⁷ The new legislation further provides that Victorians who obtain judgment in the Supreme Court may obtain certificates by the Court, which certificates may then be registered in a foreign court for the purposes of recovery against a foreign national.³⁸ Generally speaking judgments affecting a person's status do not come under this Act.³⁹

Petty Sessions

The Justices (Amendment) Act 1962 (No. 6958) by section 2 makes it an offence to impersonate a justice of the peace. By section 10 it provides for summonses to be served by registered post in cases of offences under the Acts listed in the Fifth Schedule to the Act.⁴⁰ Previously summonses could only be served thus in cases under the Motor Car Act 1958 or infringements arising under the Road Traffic Act 1958. Section 4 of the new Act is intended to overcome the effect of the decision of the Full Court in *Claude Neon Lights (Vic.) Ltd v. Gerham*.⁴¹ The decision indicated that if a case could be brought under section 67 of the Justices Act 1958—the section lays down the jurisdiction of petty sessions—it could not be brought under section 68—this section deals with the jurisdiction of a court of petty sessions consisting of a Stipendiary Magistrate sitting alone. This was not the intention of Parliament and the redrafting of part of section 68 makes the position clear. If an action can be brought under section 67

³⁶ S. 4 (2).

³⁷ S. 7.

³⁸ S. 12.

³⁹ S. 3 (2).

⁴⁰ These acts are: The Country Roads Act 1958, The Local Government Act 1958, The Motor Car Act 1958, The Education Act 1958, The Labour and Industry Act 1958, The Railways Act 1958, and The Transport Regulation Act 1958.

⁴¹ [1962] V.R. 463.

this does not necessarily mean that it cannot also be brought under section 68.

Section 5 inserts a new section 69. Under the unamended section if a judgment or order was obtained against a person who had not appeared in court that person might apply to the court which then without any further notice to the plaintiff might set a date for a re-hearing of the matter. Under section 69 as amended a person desiring to make an application for a re-hearing must give the other party notice in reasonable time of his application. The notice may be served personally or by registered post.⁴²

Under section 74 of the Justices Act 1958, magistrates are given power to impose a fine in any case where the Act which establishes the offence provides for imprisonment. However, if the person who is fined does not pay his fine he cannot be imprisoned for his default.

Under section 74 as amended a term of imprisonment may be imposed as a penalty if the fine is not paid.⁴³

A most important change of policy is contained in section 7. Previously default summonses had to be served personally on the defendant. Section 7 provides for default summonses to be served in the same manner as ordinary summonses, that is they may be left at the defendant's home or place of business with any person apparently over the age of 16 years.

Section 8 enlarges the jurisdiction of courts of petty sessions by incorporating in the Justices Act a number of provisions which previously appeared in the Crimes Act and some other Acts.⁴⁴ Thus for the first time courts of petty sessions may deal summarily with offences such as wounding, assault, occasioning bodily harm, and indecent assault. Courts of petty sessions may now also deal with cases of false pretences when the value of the goods alleged to have been obtained does not exceed £500. The consent of the accused is required.⁴⁵

In transferring sections from the Crimes Act, section 77, which gave wide powers to justices with the accused's consent, has been omitted. Thus there is an over-all limit to what justices can deal with.

Finally by section 9 the chairman is given a casting vote on questions of penalty where the bench is evenly divided. Previously such cases had to be reheard.

County Court

The County Court (Amendment) Act 1962 (No. 6951) introduces a most important change in County Court procedure. Whereas previously both ordinary and special summonses named a particular

⁴² S. 69 (2) as amended.

⁴³ S. 6.

⁴⁴ E.g. s. 75 of the Crimes Act 1958.

⁴⁵ S. 102A (d).

date on which the case was to be heard, the new Act provides for a procedure whereby no particular date is named on the summons. Cases are to be put on the list and to come on to be heard when their turn comes.

This major change in procedure brings with it a number of consequential amendments. These are found in sections 4 and 5.

In addition some other matters are dealt with by this Act. By section 6 the time for giving notice of appeal to the Supreme Court is extended from 14 days to 28 days. By section 7 the rule making powers of the judges are widened and by section 8 rules of court previously in existence about which the judges felt some doubt are incorporated into the Act. This is done by introducing a number of new sections—sections 84-86.

The County Court (Judges) Act 1962 (No. 6891) removes the restriction on the number of County Court judges under sub-section 2 of section 8 of the County Court Act 1958. It also makes provision for an acting judge to continue in office for a period of one month in the event of the death of a judge in whose place he is acting.

Judges' Pensions

The Judges' Pensions Act 1962 (No. 6901) amends the Supreme Court Act 1958 and the County Court Act 1958 so as to shorten from fifteen to twelve years the period of judicial service necessary before a judge of either court becomes eligible for a pension on his retirement from office.

Detention of Persons

The Crimes (Detention) Act 1962 (No. 6884) provides for some changes in the law relating to persons kept in safe custody during the Governor's pleasure pursuant to orders made by the Governor under the Crimes Act.

By amendment to sections 393, 420 and 473 of the Crimes Act 1958 it is no longer necessary for the Governor in Council to make a fresh order each time a person detained under these sections is to be transferred from one place of detention to another. Instead the Governor in his original order for detention leaves a designated officer or authority the power to determine subsequent changes in the place of detention. These amendments operate retrospectively.

Under the old legislation people detained under the above sections could be released on certain conditions. If it was proved before a court of petty sessions that a condition had been broken the court might order the person to be kept in custody until the Governor's pleasure was known.

Under the new Act one of the conditions for release may be that the person released is to place himself under the supervision of a

parole officer for a certain period of time. During that period the Parole Board has power to order the person to be returned to custody. It is felt that this less cumbersome procedure will enable more people to be released.

Interest on Judgments

The measures contained in the Supreme Court (Interest on Judgments) Act 1962 (No. 6874) were recommended by both the Chief Justice's Law Reform Committee and by the Statute Law Reform Committee.

Under the legislation in force previously it was possible for a judge or a jury to allow interest on judgments.⁴⁶ However judges and juries were most reluctant to make such awards. The new Act is intended to overcome that reluctance by replacing the word 'may' in the previous legislation with the words 'shall unless there is good reason to the contrary'. The discretion which was previously given to both judge and jury is under the new Act given to the judge alone. Interest on judgments dates back to the commencement of the action. The last section of the Act makes it quite clear that not all judgments attract interest. The most important exception being exemplary or punitive damages.

Family Provision

The Administration and Probate (Family Provision) Act 1962 (No. 6920) makes three important changes in the law affecting 'Testator's Family Maintenance'. Whereas previously the Family Maintenance provisions of the Administration and Probate Act 1958 applied only in cases where the deceased had left a will, under the Act as amended the widow or widower and children of an intestate deceased may apply to the Court for an order to modify the statutory distribution of the deceased's estate.⁴⁷ The new Act also extends the meaning of 'children' to illegitimate children and the meaning of 'widow' to any former wife who at the death of the deceased was entitled to receive payments of maintenance or alimony from the deceased.

Administration and Probate

The Administration and Probate (Amendment) Act 1962 (No. 6866) inserts a new section 86 in the Administration and Probate Act 1958. Under the old section doubts had arisen whether the word 'realized' as used in paragraph (b) meant 'convert into money' or 'ascertain the nature of'. The former meaning was more probable especially as elsewhere in the section the words 'pay over' appeared. However the latter meaning was intended, and the new section is redrafted to make it quite clear that the assets need not be converted into money.⁴⁸

⁴⁶ Ss 78 & 79 of the Supreme Court Act 1958.

⁴⁷ S. 5.

⁴⁸ S. 86 (c).

Another change enables the attorney under power to transfer under the direction of the principal executor, directly to the beneficiary.⁴⁹ Previously the attorney under power was required to make over to the executor, who would then transfer to the beneficiary.

Matrimonial Property

The Marriage (Property) Act 1962 (No. 6924) makes some important changes in the law affecting matrimonial property by enacting a new section 161 of the Marriage Act. The old section 161 was enacted in 1882. It purported to give the Court the widest discretion in deciding a question between husband and wife as to their property, but in fact its application was very narrow because courts tended to resort to fixed and artificial presumptions to assist them.

In 1956, when many changes in the law in this field were made, section 161 was not amended. The Chief Justice's Law Reform Committee recommended against change on the ground that decision in England had shown that the interpretation of the section had undergone a change and that the real intention of the section was gradually coming to the forefront. The Committee referred to *Rimmer v. Rimmer*.⁵⁰

However shortly afterwards the High Court in *Wirth v. Wirth*⁵¹ put an end to any development along the lines suggested in *Rimmer v. Rimmer*. The decision of the High Court led to further consideration of this matter by the Chief Justice's Law Reform Committee and the Statute Law Reform Committee. The new section 161 contains the recommendations made by these bodies.

The section is now as follows. Sub-section 1 remains as it was. Sub-section 2 is rather complicated. It gives the court unfettered discretion to make whatever order it thinks fit, but in the case of a matrimonial home acquired after marriage the court is to presume that the home was jointly owned unless the parties had obviously intended otherwise. However, the court need not apply that presumption if for some reason it thinks that it would not be proper to do so.

Sub-section 3 begins with the words 'Subject to the next succeeding sub-section but notwithstanding any other act or law to the contrary'. The words are intended to negative the restrictive judgment in *Wirth v. Wirth*. Just in case the words conferring the judge's discretion were considered weak, this section confers that discretion in the strongest terms again.

Under paragraph (a) of sub-section 4 if the spouses do direct their minds to the question and arrive at some conclusion as to how their property is to be held, the judge must take account of their common intention. Paragraph (b) introduces a new presumption of equality

⁴⁹ S. 8 (c). ⁵⁰ [1953] 1 Q.B. 63. ⁵¹ (1956) 98 C.L.R. 228.

in the matrimonial home. The presumption may be excluded by sufficient evidence to the contrary and by the further qualification of the existence of some special circumstances which appear to the judge to render it unjust to apply it.

Adopted Children

Under the Adoption of Children Act 1958 an adopted child was to a large extent placed in the same position as a natural child of the adopting parents, but with regard to the relationship between an adopted child and persons other than the adopting parents—for instance the grandparents—the assimilation was not complete. In respect of instruments relating to the property of such persons a reference to children of their children only included such adopted children as had been adopted before the date of the instrument.⁵² By the Adoption of Children (Property) Act 1962 (No. 6971) the assimilation of adopted children is taken a step further. Under the provisions of the new Act a person making a settlement for the benefit of his children's children is presumed to include adopted children as well as natural children, unless he indicates to the contrary. The new Act, however, does provide for the person who has made an irrevocable settlement on the assumption that adopted children would not benefit, by allowing such a person to make a new instrument making it clear that adopted children are not to benefit.

Sale of Land

The Sale of Land Act 1962 (No. 6975) is probably the most important piece of legislation passed in 1962. The general plan of the Act as outlined by Mr Rylah in his second reading speech is as follows:

1. A person is not to sell land under a terms contract unless he is the registered proprietor or presently entitled to become the registered proprietor of the land.⁵³ In the case of land not under the Transfer of Land Act he may not sell under a terms contract unless he is seised of the fee simple or unless he is entitled to dispose of the fee simple.⁵⁴
2. When a person buys land under a terms contract he is entitled to call at any time for a transfer on his giving a mortgage back.⁵⁵
3. A person is not to sell land on terms if the land is subject to a mortgage unless he sells only his interest and transfers the mortgage liabilities to the purchaser. Furthermore, where the land is mortgaged the contract must set out full particulars of the mortgage.⁵⁶
4. After land has been sold under a terms contract the vendor is not to mortgage the land.⁵⁷

⁵² S. 8 (1) of the Adoption of Children Act 1958.

⁵³ S. 3 (3). ⁵⁴ S. 3. ⁵⁵ S. 4. ⁵⁶ S. 6.

⁵⁷ S. 7.

5. Where there is a mortgage over land which is subdivided the mortgagor is entitled to have the mortgage apportioned over the various allotments so that each allotment can be sold subject to a separate mortgage.⁵⁸

6. Subdivided land is not to be sold until a plan of subdivision has been registered by the Registrar of Titles.⁵⁹

7. A subdivider in certain limited circumstances is authorized to compulsorily acquire rights of way over existing roads or drainage easements over lands in the vicinity. Before a subdivider can exercise these powers he must satisfy the council of the municipality concerned and an arbitrator that it is necessary for him to have that power to allow the economical and efficient subdivision of the land. Likewise, any inconsistent prior easements may be removed if they are standing in the way of a new subdivision.⁶⁰

8. A plan of subdivision must be sealed or rejected by a council within 100 days of its submission to the council.⁶¹

A council is no longer permitted to hold up the sealing of the plan until roads are made but the power to require full or part construction of roads is continued. However, the plan must be sealed before the requirement is carried out so that the subdivider can proceed with his application to have the plan registered by the Registrar of Titles.

The council's position is protected by providing that the Registrar of Titles is not to register the plan until the requirement has been carried out.⁶²

9. When complex problems have arisen under the existing laws which cannot be solved by application of the Act provision is made for the parties to apply to an arbitrator who may make whatever orders he thinks necessary to sort out the complications.⁶³

10. Provision is made for County Court judges, or persons qualified to be appointed County Court judges, to act as arbitrators for the purposes of the Act.⁶⁴

Local Government

It is not intended to list all the changes in the law made by the Local Government (Amendment) Act 1962 (No. 6888) as many of these changes are of very little general interest. The following seem to be the most important. By section 3 councillors who are members of a company owing or occupying land which may be increased in value by the granting of a building permit, or by the approval of a planning scheme or zoning by-law are precluded from voting on the matter at council meetings.

By section 15 it is provided that all plans of subdivision must show

⁵⁸ S. 8. ⁵⁹ S. 9. ⁶⁰ S. 10. ⁶¹ S. 23. ⁶² S. 27. ⁶³ S. 5. ⁶⁴ S. 21.

every registered easement appurtenant to or encumbering the land to be subdivided. Sub-section (2) makes it mandatory for a council to refuse to seal a plan of subdivision when the land in the subdivision is subject to an Interim Development Order and any necessary permit has not been granted by the responsible authority. Sub-section 3 requires all metropolitan plans of subdivision to be referred to the Melbourne and Metropolitan Board of Works and sub-section 4 requires all drainage and sewerage easements to be shown separately on plans of subdivision.

The form of notice which the vendor of land in any municipal district is required to give to the municipal clerk is varied by section 20. Previously the notice had to contain the Crown description. Now it is sufficient to describe the property by the street and house number. When this is impossible the lot and lodged plan number are sufficient. The area and dimensions of the land must also be given.

Many requests have been made by municipalities for inclusion in the Uniform Building Regulations of provisions governing the siting and construction of private swimming pools. Until now there was no control over these matters. The request is complied with by paragraph (b) of section 22.

Under the Thirty-third Schedule to the Act, the Building Regulations Committee, or a quorum thereof, or with consent of the parties one or several members of the committee may act as referees and in this capacity may, on application being made in any particular case, dispense with, or modify, any Uniform Building Regulations made under Part XLIX of the Act or any building by-law of a council under any other Part of the Act. However, the referees had no power to modify by-laws made under the Uniform Building Regulations themselves. They are now given this power by sub-section (2) of section 23 which provides that by-laws made by councils under Uniform Building Regulations are to be deemed to form part of the regulations and the referees are thereby enabled to dispense with or modify any of the provisions of the by-laws.

The Local Government (Further Amendment) Act 1962 by section 2 provides for a modified procedure with respect to the compulsory acquisition of land by municipal councils. Under the new Act land may be taken by the council whether the works for which it is required are to be carried out at once or at some future date. The requirement of very detailed specifications and plans of the land and the nature of the works is abolished, municipalities being required instead to give a general description of the work for which the land is to be used.

Further, mortgagees must now be given notice of a proposed acquisition and the Act makes it plain that councils' powers under these

sections are for the taking of land and not for the execution of the works for which the land is required.

Finally section 4 adds the words 'or are likely to constitute' to section 695 of the Local Government Act 1958. The section empowers councils in the metropolitan fire district to order owners or occupiers of land to remove from their properties vegetation which constitutes a fire menace to neighbouring property.

Business Names

Commerce

The Business Names Act 1962 (No. 6853) like the Companies Act is the result of a conference between the Attorneys-General of the States and the Commonwealth. It is substantially a re-enactment of the previous legislation. The following are the most important changes effected by the Act.

First where a business name is registered in Victoria by persons who reside outside the State they must appoint a resident agent.⁶⁵ Secondly whereas previously a name once registered remained on the register indefinitely, under the new Act names must be re-registered every three years.⁶⁶ Thirdly the registrar may require verification of a statement required to be lodged with him by a statutory declaration made by the person signing the statement⁶⁷ and he may destroy documents after a certain period of time.⁶⁸ Finally in any proceedings for an offence against the Act if proof is given that a business name has been displayed on any premises and evidence is given from which the court may infer that the business name has reference to any business carried on at the premises, the persons carrying on the business are in the absence of proof to the contrary deemed to be carrying on the business under that name.⁶⁹

Second Hand Dealers

The Second-hand Dealers (Amendment) Act 1962 (No. 6913) brings corporations dealing in second-hand goods within the scope of the Second-hand Dealers Act 1958. This is done by inserting a new section, section 8A in the latter Act.⁷⁰ The new section provides for the licensing of a body corporate in the name of a person nominated by the body corporate to hold a licence on its behalf, and for enquiries to be made by a court of petty sessions before a licence is issued to ensure that an applicant is a suitable person to hold a licence. By section 3, which amends section 22 of the principal Act, the new Act enables dealers to trade away from their premises. By section 4 which inserts a new section 26A in the principal Act a corporation is made liable for offences as if it were a private person. The section also extends liability for offences under the Act to directors, managers and others employed by the corporation.

⁶⁵ S. 8.

⁶⁶ S. 11.

⁶⁷ S. 16.

⁶⁸ S. 25.

⁶⁹ S. 30.

⁷⁰ S. 2.

Housing and Development

The Home Finance Act (1962) (No. 6933) is a re-enactment of the previous Home Finance Act with some significant amendments. The most important amendment enables people to obtain a loan from the Home Finance Trust on the security of a second mortgage under conditions set out in section 11 of the Act.

Other important amendments are found in section 23 which prohibits charging procurement fees for arranging loans from the Trust, in the second provision to sub-section 2 of section 8 which enables the Trust to make an advance to trustees endeavouring to purchase a home for a medical practitioner or a dentist at a place more than 30 miles from the General Post Office, and in section 9 which enables the Trust after receiving instructions to make regular payments towards a mortgage insurance protection scheme.

The Housing Advances and Loans (Procurement Fees) Act 1962 (No. 6927) prohibits estate agents and solicitors to charge fees for 'procuring' housing advances and loans from co-operative housing societies, the Home Finance Trust or approved institutions under the Home Finance Act 1958.

The Housing Advances and Loans (Improper Commissions) Act 1962 (No. 6928) is intended to fill the gap left open by Act No. 6927 which applies only to estate agents and solicitors. Under the Act it is an offence to demand or receive any fee not authorized under the Building Societies Act or the rules of any society or any fee in excess of an authorized fee.⁷¹ By section 3 of the Act section 94 of the Co-operative Housing Societies Act 1958 is amended making it an offence to accept money not authorized by the Co-operative Housing Societies Act 1958.

Friendly Societies and Co-operative Societies

The Friendly Societies Act 1958 is amended by the Friendly Societies (Amendment) Act 1962 (No. 6939). Under the Act as amended voluntary subscriptions may be made to friendly societies on behalf of members;⁷² the minimum age at which a person may become a member is now 14 years;⁷³ friendly societies may invest non-benefit funds in shares in and loans to co-operative societies registered under the Co-operation Act 1958 and the Industrial and Provident Act 1958; funeral expenses on the death of children under 10 are increased;⁷⁴ and clubs such as football clubs which provide benefits similar to those provided by friendly societies may be registered as 'shop clubs' under the Act.⁷⁵

The Co-operative Housing Societies Act 1962 (No. 6909) enables

⁷¹ S. 2.

⁷² S. 3.

⁷³ S. 5.

⁷⁴ S. 7.

⁷⁵ S. 8.

persons aged between 16 and 18 years to become members of a co-operative housing society. However members cannot obtain a loan from a society until they reach the age of 18 years.⁷⁶ The Act also raises the maximum limit for loans to £3,000 and £3,300 depending upon the value of the security. If the loan—after deducting the amount contributed by the member—does not exceed ninety *per cent* of the security the maximum is £3,300. If it exceeds ninety *per cent* but does not exceed ninety-five *per cent*—after deducting the amount contributed by the member—then the maximum is £3,000.

The Trustee (Mortgages) Act 1962 (No. 6963) permits Trustees to lend amounts not exceeding two thirds of the value of the property on the security of a first mortgage. Previously the maximum amount was three fifths of the value of the land.

Miscellaneous

Under the Forests (Amendment) Act 1962 (No. 6870) it is no longer necessary for forest-officers to make reports to the Forests Commission before orders under section 65 of the Forests Act 1958 requiring owners or occupiers to clear land from fire hazards can be made. The Act confers power on the Commission to delegate to its officers the authority to make orders under the section. Furthermore the Act introduces the procedure contained in the Country Fire Authority Act to prove the identity of an alleged owner of land—it is sufficient, until disproved by that person, to show that he is the person rated in respect of that land by the municipality.

The Country Fire Authority (Amendment) Act 1962 (No. 6887) was passed mainly to aid municipalities in the enforcement of section 41 of the Country Fire Authority Act 1958. Under section 41 the appropriate officer of any municipality has power to direct the owner or occupier of any land within the municipal district to remove fire-hazards or to clear firebreaks. If the owner or occupier fails to comply he is liable to a penalty and the required work may be done by the municipality at the expense of the owner or occupier. Municipalities were experiencing considerable difficulty in the enforcement of section 41 mainly because it was difficult to prove who the owner or occupier was, particularly in those municipalities where there are large subdivisions of land under contracts of sale. Accordingly it is now provided that for the purpose of the section, it is sufficient—until the contrary is shown—to prove the identity of the owner or occupier of the land by showing that the person proceeded against is the person rated by the municipality for the purpose of the general rate.⁷⁷ Also under the Act as amended the section is made to apply to the whole of Victoria. The only land in the country outside the section is land

⁷⁶ S. 2.

⁷⁷ S. 2 (g).

vested in the Melbourne and Metropolitan Board of Works. The expense of removing a fire hazard is made a charge upon notification by the municipality to the Registrar of Titles or the Registrar General. If they continue to be unpaid the County Court may order the sale of the whole or of part of the land. For the purpose of facilitating any sale a County Court may exercise the powers of the Supreme Court in relation to the appointment of a trustee for the purpose of executing the transfer.⁷⁸

A most important change effected by this Act relates to the sealing of plans of subdivision. Until now the Country Fire Authority had no power regarding plans of subdivision. By this Act in areas declared the Authority has to consent to any proposed plan of subdivision before the municipality may proceed to seal it.⁷⁹

The Education (School Committees) Act 1962 (No. 6930) removes the restriction on the duration of the term of appointment of school committee members, and it allows the Minister to nominate persons for appointment to school committees by the Governor in Council where an extraordinary vacancy occurs and the unfinished term does not warrant the holding of an election. It permits a newly elected member to assume the duties of his office before the Order in Council making the actual appointment is obtained.

⁷⁸ S. 2 (6).

⁷⁹ S. 3.