

LEGISLATIVE SUMMARY

VICTORIA 1963

Administration of Justice

Foreign Judgments (Amendment) Act 1963 (No. 7041)

An Act passed uniformly by all State Parliaments as a consequence of prior agreement is likely to be followed by an amending Bill as the result of criticism in six legislative assemblies. The Foreign Judgments Act 1962 was designed to permit reciprocal arrangements to be made, for the enforcement of judgments, between Victoria and foreign jurisdictions. The principal Act has now been amended to include provisions for the recovery of costs when an appeal has been made to a superior Court in the foreign jurisdiction. A foreign judgment, which has been formally recorded in Victoria, now may be set aside not only at the suit of a defendant who was not present but also at the suit of any other person interested in the judgment. The final section of the Act amends the Supreme Court Act 1958 to include a provision to the effect that when a question of foreign law is to be determined in an action before a judge and jury, the question is to be determined by the judge alone and not submitted to the jury as a matter of fact. Victorian law is now assimilated to English law in this respect.

Fraudulent Debtors Commitment Act 1963 (No. 7043)

A person who has the means to pay a debt but who nevertheless disregards an order to do so is a fraudulent debtor. Such wilful disobedience can be punished by a term of imprisonment. A person sentenced by a Court of Petty Sessions has been able to reduce any sentence imposed by making a payment *pro rata*, as provided by the Justices Act¹ but no such concession has been available to a person sentenced by a County Court or the Supreme Court. A fraudulent debtor will now have to serve the sentence imposed irrespective of payments made, thus correcting this anomaly. An exception to this rule has been introduced to meet the case of a person who has failed to comply with a maintenance order for the support of his wife. Such a person will, regardless of the Court in which the sentence was imposed, be able to reduce his sentence *pro rata* by making payments. Such a provision is in the public interest since deserted wives must be supported and it is better for this to be done by the husband, rather than have the taxpayer put to the expense of supporting both the wife and the husband during the prison term.

¹ S. 123.

Justices (Adjourned Proceedings) Act 1963 (No. 7040)

Acting under the Justices Act 1958² it was possible for a Magistrate or Justice of the Peace sitting in Petty Sessions to adjourn for a period of up to six months a case against a person charged with an offence. If the person charged remains of good behaviour for this period no further steps are taken. Such a procedure has the advantage that a person who is unlikely to offend subsequently can be dealt with without a conviction being recorded; a matter which can be of some importance if the person charged is a casual juvenile offender to whom a recorded conviction could be a considerable handicap in later life. The Justices Act 1958 has now been amended to extend the maximum period for which such an adjournment may be granted to twelve months and to give to the Court power to impose special conditions, at its discretion, as to the behaviour of the person charged during the adjournment. If such special conditions are not observed, or if the person charged has not been of good behaviour, the original charge is proceeded with. If all the justices sitting at the later hearing were present at the earlier hearing the case can be continued; otherwise the Act provides for a complete re-hearing.

Crimes (Aircraft) Act 1963 (No. 7088)

The increasing use of aircraft for passenger transport has led to the discovery of a number of deficiencies in the criminal law with respect to acts which can be done on or in relation to aircraft. The present Act amends the Crimes Act 1958 in an attempt to remedy some of the deficiencies. Penalties are now specifically provided for persons who destroy an aircraft with the intent to injure some person on the aircraft and for a person who, by force or threat, interferes with a member of the crew of an aircraft performing his duties. The Act then makes provision for the crimes of larceny and illegal use of aircraft and a distinction is drawn between (i) illegal use by the person charged and his companions (ii) illegal use by the person charged when other persons, not his associates, are on board the aircraft and (iii) illegal use by force or threat of force when other persons are on board the aircraft. Penalties increase in severity for each offence as listed. A penalty is now provided for a person who, without the knowledge and consent of the owner or operator, places dangerous goods, as widely defined in the Act, on board an aircraft.

It is now an offence to make any statement to the effect that some action is to be taken to damage an aircraft or injure its passengers or take control of it, either personally by the maker of the statement or by others. If, however, the statement is that others intend such action, a belief in its truth is a defence to a charge under these

² S. 92.

sections. Further provisions are included to make it an offence under the Act to do any act which endangers an aircraft or to set fire to or destroy any aircraft.

In order to further the implementation of the provisions relating to offences on aircraft, the person in charge of the aircraft is given wide powers of arrest without warrant and power to place any person in custody whilst the aircraft is in flight or to remove a person from the aircraft whilst it is on the ground.

Evidence (Affidavits) Act 1963 (No. 7039)

Notaries public are now added to those personages enumerated in the Evidence Act 1958³ before whom affidavits may be sworn and taken for use in domestic tribunals.

Supreme Court (Vexatious Litigants) Act 1963 (No. 7042)

A person so addicted to litigation as to be declared a vexatious litigant is now, as well as being unable to commence any new action without leave of the Court,⁴ obliged to obtain such leave before continuing any action in progress at the time of the declaration.

Justices (Jurisdiction) Act 1963 (No. 7086)

The amount which could be claimed in a Court of Petty Sessions, exercising its special jurisdiction, was limited by the Justices Act 1958.⁵ This Act has now been amended to allow amounts up to five hundred pounds to be claimed in actions in Tort arising out of accidents in which vehicles are involved and three hundred pounds in all other cases.

Default summons procedure may now be used in all claims within the special jurisdiction of the Court, provided that they are for liquidated amounts, not exceeding three hundred pounds.

A county court judge now has power to order any action brought in the special jurisdiction of a Court of Petty Sessions to be tried in a County Court, after an application has been made to him by either of the parties.

The position with regard to actions brought in a Court of Petty Sessions in which there is some interstate element has been clarified. The Court is to have jurisdiction if a material part of the cause of action arose in Victoria, or if the defendant resided in Victoria at the time the summons was served upon him.

Transport

Motor Car (Roadworthiness) Act 1963 (No. 7021)

This Act adds a number of provisions to the Motor Car Act 1958 relating to the sale of registered motor cars and trailers. The intention

³ S. 121.

⁴ Supreme Court Act 1958 s. 33.

⁵ S. 68.

is to include all such vehicles which have been in use on the roads, but to exclude transactions in the way of trade before new vehicles reach the hands of the user. An obligation is imposed on the vendor of a registered vehicle to give the purchaser a 'certificate of road-worthiness' obtained not more than thirty days before the sale. This certificate is now to be forwarded, with the registration certificate and other necessary information, by the purchaser to the Motor Registration Branch.⁶ Since not all registered vehicles sold are destined for immediate use on the roads the Act provides that if a motor car or trailer is sold for wrecking, for repair by the purchaser or to a licensed second-hand dealer who carries on a business dealing in motor cars no certificate is required. In such cases the Chief Commissioner of Police has power to suspend registration of a vehicle until a roadworthiness certificate can be produced. A procedure has been introduced to allow the purchaser to obtain a *pro rata* refund of the registration fee for the period of such suspension.

Roadworthiness certificates are to be obtained from persons licensed under the Act, who pay a fee for such licence. A supervisor who must be a member of the police force has power to enter the premises of a licensee at any reasonable time to ascertain whether the Act and any regulations made under the Act are being complied with.

A 'Safety Inspection Advisory Committee' is set up, under the chairmanship of the chairman of the Traffic Committee to tender advice to the Minister on the standards which motor cars and trailers should meet before certificates should be issued and of the qualifications which persons who desire to be licensed to issue certificates should possess.

A member of the police force is given power to examine any vehicle and there is an express power to stop any vehicle on a public highway in order to make the examination. If the vehicle examined is not in such a state of repair as to comply with the Act, or Regulations made thereunder, then the use of the vehicle can be prohibited until repairs have been made and a certificate of roadworthiness obtained.

Motor Car Act 1963 (No. 7073)

This Act makes a number of amendments to the Motor Car Act 1958 in relation to licences to drive motor vehicles. The initial licence to be issued to a new driver is a probationary licence⁷ which will be current for a period of three years. The Chief Commissioner of Police may issue a normal licence, however, if the applicant can satisfy him that he has held a licence previously in another state (or country) giving him authority to drive a motor car.

⁶ S. 2 (c), now s. 21 B in the principal Act.

⁷ S. 7 (2), now s. 22 B in the principal Act.

It is mandatory for a court to cancel a probationary licence if the holder is convicted of an offence against certain designated sections of the Crimes Act 1958 or the Motor Car Act 1958 and, if the holder is found guilty of an offence against certain of the Road Traffic Regulations, also designated in the Act,⁸ the licence must be cancelled unless the Court can be convinced that the offence was of such a minor nature that cancellation is not warranted. Before the holder of a cancelled probationary licence can obtain another licence he must wait for the expiration of the period of cancellation, as stipulated by the Court or, if no such period has been set, for three months. He then must undergo a further test and satisfy the Chief Commissioner of Police that he is qualified to hold a licence. If a new licence is issued it will again be a probationary licence.

When an ordinary licence is cancelled it may not now be renewed, or a new licence issued, until the expiration of the time when such licence would normally have expired or a period of twelve months from the date of cancellation, whichever first happens. The Court may, however, prescribe a longer time interval. The penalty for driving a vehicle during the period for which a licence has been cancelled has been substantially increased. A concession has been made, however, in that the provision limiting the right of appeal after the cancellation of a licence by a Court of Petty Sessions has been deleted from the Act.

The holder of a licence to drive a motor car is now not permitted to drive certain specific types of vehicles, as classified in the Act, without the licence being endorsed to this effect. These are (i) heavy vehicles (ii) large trailer combinations (iii) articulated motor vehicles. To obtain an endorsement to drive such vehicles the applicant must have been the holder of a motor car licence for more than one year, and be over the age of eighteen. The Chief Commissioner is given some discretion in that he can look to the 'age, occupation or any special circumstances' of an applicant.

A person learning to drive a car must have a holder of a driving licence, not being a probationary licence, sitting beside him. A person learning to drive a vehicle in one of the special categories must have a licensed driver whose licence is endorsed for the appropriate category sitting as near to him as practicable. In each case the licensed driver is to be deemed the actual driver of the vehicle.

The Act also includes a provision for the registration of vintage cars in a special category, with some restriction on their use and a provision allowing regulations to be made with respect to a 'portable measuring device for determining the speed at which a motor car travels'.

⁸ S. 7 (3), now the Fourth Schedule to the principal Act.

Commercial Goods Vehicles (Decentralized Industries) Act 1963
(No. 7096)

The Commercial Goods Vehicles Act 1958 is now amended to permit a person carrying on an 'approved decentralized secondary industry' located, with certain exceptions, beyond a radius of fifty miles from Melbourne, to obtain a licence, as of right, to transport goods and materials to his factory and his products away from it. Another amendment requires the Transport Regulation Board to consider certain additional matters, including the relative cost and convenience of available forms of transport, when considering an application for a licence from a person engaged in an industry located more than fifty miles from Melbourne.

Farming and Agriculture

Vegetation and Vine Diseases (Amendment) Act 1963 (No. 7090)

The Vegetation and Vine Diseases Act 1958 is concerned with preventing the importation of plant diseases into Victoria and the control of such diseases as are already present in the State. The present Act makes a large number of amendments to the principal Act in an attempt to obviate difficulties which have become apparent in its operation. In an attempt to avoid conflict with those sections of the constitution relating to interstate trade the absolute prohibition on entry of plants from other states, in some circumstances, has been replaced by provisions which require the inspection, examination and treatment of plants brought into Victoria. This requirement is now also applicable to second-hand packing materials as defined in the Act, since it has been found that such materials may become contaminated from diseased plants with which they may have been in contact. An obligation is imposed on a person bringing such plants or materials into Victoria to present them for such inspection as required and failure to do so permits their seizure and destruction.⁹

A new provision has been introduced into the principal Act by which the Minister, acting on the advice of an inspector, may take action to have plants destroyed which have been neglected and which are likely to cause the spread of plant diseases. The power to take action is subject to a right of appeal to a Court of Petty Sessions. A further innovation is a power given to the Minister to establish plant certification schemes, for the testing of plants in relation to their freedom from disease, and an absolute prohibition is placed on the use of the words 'certified' or 'disease free' except in relation to plants so tested or approved.¹⁰

⁹ S. 4.

¹⁰ S. 14.

Fertilizers (Amendment) Act 1963 (No. 7045)

This Act makes a number of amendments to the Fertilizers Act 1958. The principal Act is designed to ensure that fertilizers offered for sale are in accordance with their description by the vendor. Protection to the purchaser is afforded now by a provision making it compulsory to attach a printed label to each parcel of fertilizer giving particulars of the manufacturer and an analysis of the contents. The Act expressly states that such a label is to constitute a warranty of the accuracy of the information contained in it by the vendor.

An interesting variation of the rules of evidence for the purpose of the Act is a provision which makes admissible any statement by a managing director or member of the governing body of a body corporate, or by any officer or employee with respect to any operation which he supervises or over which he has control, as evidence against the body corporate.

The Act is not intended to apply to fertilizers sold in small packets and this is now made clear.

Sheep Branding Fluids Act 1963 (No. 7001)

It is now an offence to use for branding sheep any substance which has not been approved by the Minister. Only substances which can be removed from the wool by the scouring normal in manufacture will be approved.

Conveyancing and Real Property*Estate Agents (Amendment) Act 1963 (No. 7012)*

The Estate Agent's Committee has now been given power to hold an enquiry into any allegation of a breach of the rules made by it, in pursuance of the powers given to it by the Act, by an estate agent. An estate agent appearing before the Committee in such investigation has the right to be represented by his solicitors, and to appeal against any decision reached to a Court of Petty Sessions. Such an appeal is to be by way of a re-hearing of the allegations.¹¹

A person seeking to become an estate agent could previously obtain a licence after holding a sub-agent's licence for five years. An applicant must now first satisfy the educational standards set by the committee and in addition have held a sub-agent's licence for the preceding four years and worked full time as a sub-agent for the preceding three years. A corporation may now become an estate agent provided that more than half the directors and the officer in charge of the estate agency section hold licences. An exception is made to meet the case of a corporation in which the estate agent business represents

¹¹ S. 4.

merely a small part of its activities, as in a pastoral company, but such a corporation must first seek permission from the Minister to hold a licence.

Before any licence is issued there is provision for objections to the applicant to be heard. Certain specific grounds upon which such objections may be sustained, in the case both of individuals and corporations, are set out in the Act¹² and when a licence has been refused a two year interval is stipulated before any fresh application can be made.

Advertisements sponsored by estate agents have never in the past been remarkable either for reticence or veracity. An estate agent who now is associated with an advertisement containing false or misleading information concerning any property represented as being for sale is guilty of an offence against the Act. An advertisement is misleading if it (i) speaks of the 'gross profit' or 'clear profit' of a business or (ii) if it names an amount as being the profit of a business which is not the net weekly average profit for the preceding three years, or such other shorter time as the vendor has been the proprietor of the business. An advertisement in which the name of an estate agent is specified is to be prima facie evidence that the estate agent authorized the advertisement.

A vendor of a small business, which is a business in which the goodwill, plant, equipment and fittings are offered for sale for less than £15,000, or an estate agent acting for him, now must furnish the purchaser with a statement setting out details of the business as specifically required by the Act. These particulars include not only financial details but particulars of the hours during which the business operates, terms of any relevant tenancy agreement, details of hire purchase agreements or bills of sale over any fixtures or fittings included *etc.* Failure to give such a statement or the giving of a statement which contains inaccurate information permits a purchaser to take action to set the transaction aside any time within three months of the contract.

An estate agent who sells a business could probably not accept a commission from a third party to whom he introduces the purchaser in order that the third party should advance money to him on loan, to complete the transaction, since any such commission to the agent would probably be held to be a secret commission. The Act now forbids any such payment.

An estate agent who is appointed sole agent has the right to a commission on a sale made during the period for which he is so acting regardless of whether the purchaser was introduced by him or not. The maximum time for which a sole agency can subsist is now

¹² S. 15.

to be thirty days, in the case of a residential property or a small business. If the sale is to be by auction this is extended to seventy-five days and if the agency is given under the 'multiple listing' scheme sixty days.

The Act also provides that a sub-agent cannot now be employed other than full time and that a person who builds or sub-divides land for the purpose of selling is obliged to give a statement to the purchaser under section 34 of the principal Act.

Sale of Land (Amendment) Act 1963 (No. 7052)

The definition of a mortgage in the principal Act, the Sale of Land Act 1962 includes 'any charge or lien on any land for securing money or money's worth'.¹³ The present Act excludes from this definition three specific situations, viz (i) a charge or lien created by Statute over the land to secure payment of rates or other charges (ii) charges or liens created by the proprietor of a stratum estate in favour of a service company under an agreement with such company to allow enforcement of his obligations and (iii) a floating charge over the whole or part of the property of a corporation.¹⁴

The definition of a 'terms contract' has also been amended. The original definition was framed in such a manner as to include many contracts which provided for payment over a period, but which would not generally be considered as terms contracts, such as a contract in which a deposit is to be paid in two instalments. Payments now made on or before the execution of the contract and payments made giving the right to a conveyance or transfer are not to be taken into account when applying the formula supplied by the principal Act.

The whole purpose of the original Act was to ensure that the purchaser of land under a terms contract gained a good title on performance of his obligations. It has been suggested that the words of section 3 (a) (1) forbidding the sale of land under a terms contract would not exclude a sale by a person with only a possessory title. It is now made clear that a title derived from adverse possession is not sufficient. A vendor must have a 'good safe holding and marketable' title at the time of sale.

Provided that the conditions laid down in the Act are satisfied a purchaser can call upon the vendor to execute a transfer or conveyance of the land to him and give a first mortgage to the vendor to secure the money outstanding. The covenants in such a mortgage were expressed to be those 'usual in mortgages'. An attempt to clarify the meaning of these words has been made by introducing the qualification that the covenants must be those usual in mortgages relating to

¹³ S. 2 (1).

¹⁴ S. 2 (a).

land similar to that covered by the contract. Once the vendor and purchaser have agreed on the terms of such a mortgage it is to be a 'proper mortgage' as required by the Act and hence cannot later be questioned on the ground that it does not contain some 'usual' term. In addition, should the parties be unable to agree, any question as to the sufficiency of terms in any instrument relative to the transaction of transfer or conveyance and mortgage may be referred to the arbitrator.

The vendor is given the right to require the purchaser to take a transfer of land being sold to him and execute a mortgage in his favour. Penalties are now provided for a purchaser who fails to accept such a transfer and execute the mortgage. He is deemed to have broken a condition of his contract and the vendor is to have the appropriate civil remedies. A penalty is also provided for breach of the provisions of the Act.

The principal Act imposed an absolute prohibition on the sale of land, which was subject to a mortgage, on terms. Such a transaction is now permitted provided that the procedure laid down in the Act is carried out. The purchaser must be in a position to pay, as deposit and otherwise, sufficient money to discharge the mortgage. The amount necessary to do this is to be paid, not to the vendor, but to a legal practitioner or a registered estate agent. The recipient must use the money to discharge the mortgage before the purchaser becomes entitled to possession and the mortgage must be discharged within ninety days of the contract otherwise it is voidable at the option of the purchaser.

When a contract is entered into contrary to the Act it is voidable at any time before completion, at the option of the purchaser, and any money paid under the contract could be recovered. This meant, in effect, that a purchaser could, knowing of a breach of the Act, remain in possession until just before the contract was due for completion and then avoid the contract and recover all moneys paid. If the contract was for a long term he could thus have possession of premises free of rent for some years. To avoid this undesirable situation a purchaser who avoids a contract is now liable to pay an occupation rent for such time as he has been in possession or in receipt of the rents and profits of the land.

Section nine of the principal Act provides that, with limited exceptions, land may not be sold before sub-division. A 'sale' of land for the purposes of the Act includes an agreement to sell and the granting of an option to purchase. The combined effect of section nine and the definition was to place considerable difficulties in the way of a proprietor of land wishing to comply with a request to sell a portion to another. Since no agreement could be made, such a

person could be put to the expense of a sub-division for some special purpose, and then find the other party would not proceed in the matter. Section nine has now been amended to limit its application to subdivisions of three or more allotments. The Local Government Act 1958, as amended by the principal Act, has also been amended¹⁵ to remove the penalties applicable to a person who sells land before a plan of subdivision is sealed, in the case of a subdivision into two allotments, but an additional requirement has been introduced making it an offence to transfer or convey either part, or sell either part, except as one parcel and forbidding the purchaser to enter into possession or re-sell either part until the plan of subdivision has been sealed and, if the land is under the Transfer of Land Act 1958, approved by the Registrar of Titles.

The Registrar of Titles, before giving his approval to a subdivision must satisfy himself that there has been no breach of Section 9 of the principal Act, relating to sales before subdivision. If there had been a breach the Registrar of Titles formerly was specifically forbidden to approve the plan. He now has been given a discretion to grant his approval¹⁶ despite a breach of section nine provided that he is satisfied that such breach was due to inadvertence and that neither party has been prejudiced thereby.

Local Government

Local Government Act 1963 (No. 7013)

This Act has introduced a number of amendements into the Local Government Act 1958. The most important are as follows:

Any person employed by a returning officer to assist in a municipal election is to be deemed an employee of the Council, for the purposes of the Workers Compensation Act 1958, and the returning officer is to be under no personal obligation. Premises used in an election are to be deemed to be occupied by the Council.

If a candidate in a municipal election should die after nominations have closed, but before the poll, further nominations are to be called and a fresh election held.

A municipal council is now given power to make by-laws with regard to the use of premises to prevent 'objectionable noises at unreasonable times' quite distinct from its power to make by-laws for the suppression of nuisances.

If rates have not been paid on vacant and unoccupied land for a period of seven years, and the Council is of the opinion that the land is unsaleable, then if it is offered at public auction without a sale taking place an application may be made to the Minister who may, if

¹⁵ S. 3.

¹⁶ S. 4 (b).

satisfied as to the non-payment of rates and also that the land has been vacant and unoccupied for five years, declare the land to be vested in the Crown or the municipality.

The consent of the Governor-in-Council will now not be necessary for contracts which are entered into by a municipal council with other municipal councils or with other public bodies. A municipal council now is given an express power to make instalment payments on contracts entered into and to pay interest on money outstanding.

When a plan of sub-division has been lodged with the Registrar of Titles any reservation shown on such a plan may be transferred to the municipal council by an order made by the Governor in Council. The council may, if the land is not required for the purpose for which it has been reserved, by following the procedure as to notices *etc.* set out in the Act, subject to objections, acquire the land for some other purpose or sell it.

Local Government (Amendment) Act 1963 (No. 7038)

The seemingly most important amendments made to the Local Government Act 1958 by this measure are:

Various municipal boundaries are defined with reference to the sea coast. All such descriptions are now to be taken as having reference to the high water mark. This will incorporate any land reclaimed by a municipality in that municipality without further action.

Councillors and municipal officers may now serve as office bearers in charitable, philanthropic, recreational and other such bodies, even although these bodies may enter into contractual relations with the Council.

It is now possible for a Council to use its powers of compulsory acquisition to obtain land for an aerodrome.

Commerce

Door to Door Sales Act 1963 (No. 7091)

The door-to-door salesman has attracted the attention of the legislature in numerous contexts over the years. This Act is designed to give a purchaser of goods under a hire-purchase agreement from such a salesman a time interval during which the purchaser can decide, in the absence of the persuasive clamour of the salesman, whether, in fact, he wishes to enter into the contract or not. The Act applies to all contracts made at the residence of the purchaser, unless the purchaser is in business buying and selling goods of the nature described in the contract, or is a body corporate. Hiring agreements, as distinct from hire-purchase agreements, are specifically excluded from the Act. No contract is to be binding unless a copy is given to the purchaser at the time the agreement or offer is made, together with

a statement as set out in the third schedule to the Act, which enumerates the rights of the purchaser. These are, in effect, that the purchaser may disclaim the contract by a notice, either given or sent by post, to the vendor, provided that such posting or delivery takes place within five days of the initial contract. The effect of such a notice is to dissolve the contract as if by mutual consent. An obligation is imposed upon the vendor to refund all moneys paid to him and to restore any goods he may have acquired in consideration of the contract. The purchaser, for his part, must return the goods he has obtained and must make good any damage suffered by them other than that caused by normal use.

An important exception to these provisions is made in the case in which a purchaser specifically requests the vendor to attend at his residence to negotiate a particular agreement. It may well be that this exception will provide the means whereby the less scrupulous salesmen will circumvent the Act.

Police Offences (Amendment) Act 1963 (No. 7058)

The artful dissemination of misleading information appears, in many ways, to be synonymous with advertising. On the other hand it has been recognized that some exaggeration or 'puffing' is permissible—provided that no-one is misled thereby. Since any such assessment must be made on a subjective basis it would seem that there is no real distinction between misleading advertising and 'puffing'. This Act amends the Police Offences Act 1958 by the deletion of section 57 (1) and the substitution of a series of provisions which impose a penalty on a person who publishes an advertisement, calculated to provide some financial or other material benefit for himself, which is, to his knowledge, false in some material particular. It is suggested that very many statements hitherto regarded as 'puffing' would fall within the ambit of this section. A further provision now makes it an offence to mention any Commonwealth or State government department or statutory authority in order to imply that it has approved or commended any statement in an advertisement. It is surprising to find, however, that 'publish' as defined in the principal Act¹⁷ refers only to statements written or otherwise presented in visual form, but not to those broadcast or displayed on television. Action in this area may have been delayed pending clearer resolution of constitutional issues which may be involved.

Goods (Title on Execution) Act 1963 (No. 7006)

Section 83 (1) of the Goods Act 1958 makes it clear that when goods have been stolen, no matter what subsequent dealings have taken

¹⁷ S. 57 (2).

place, whether by way of sale in market overt or otherwise, the title to such goods reverts in the true owner if the thief is prosecuted to conviction. An exception is now introduced to this rule to operate when goods are sold under an order of a Court. In such a case a buyer in good faith and without notice will take an indefeasible title, regardless of any defect in the title of the judgment debtor. A person executing a warrant against such goods is now not liable at the suit of the true owner, provided that he has no notice and could not have discovered, by making 'reasonable enquiry', that the goods were not the property of the judgment debtor. It is expressly provided, however, that these alterations to the Act are not to affect the rights of the true owner save only against the goods themselves and the person executing the court order.

Companies

Companies Act 1963 (No. 6985)

This Act amends the Companies Act 1958 to, *inter alia*, widen the grounds upon which the Court has power to order a company to be wound up to allow such action to be taken on the report of an inspector after a special investigation. Some implications of this alteration have already been raised in the recent case of *Testro v. Tait*.¹⁸

Companies (Public Borrowings) Act 1963 (No. 7089)

Recent events have shown the inadequacy of provisions in the Companies Act 1961 to protect those members of the public who invest in notes or debentures issued by companies or lend money to them on deposit. These provisions have now been extensively amended. To prevent persons lending money being misled as to the type of security offered the documents issued by the borrowing company are to be divided into three categories, viz: 'mortgage debentures', 'debentures' and 'unsecured notes' (as defined in the Act) and each category must be referred to by its correct name in advertisements, prospectuses *etc.*¹⁹ The provisions of the Companies (Trustees for Debenture Holders) Act 1963 are also included and have been further extended in certain respects. Under the Companies Act 1961 a company borrowing money from the public must appoint another company as trustee for the debenture holders. It was found that some companies which had been appointed had been formed for the sole purpose of fulfilling the requirements of the Act and were lacking in both capacity and facilities necessary for them to perform any useful function. The only companies which can now act as trustee for debenture holders are (i) Trustee Companies, that is, companies to which probate or letters of administration may be granted in their

¹⁸ 37 A.L.J.R. 100.

¹⁹ S. 2 (c).

own name under legislation of any State or Territory of the Commonwealth (ii) A company registered under any Commonwealth legislation relating to life insurance and (iii) a banking corporation. Wholly owned subsidiary companies of any of these may also act. Any other company must first seek the approval of the Attorney-General before it can be appointed.²⁰

The duties of a company acting as a trustee are delineated in some detail in connection with a number of separate provisions in the Act. There is now power for such a company to make an application to the Minister to restrict activities of a borrowing company which could prejudice the security given to the debenture holders. The Minister may refer such application to the Court and must so refer it if the borrowing company requests this be done. An opportunity is, however, afforded to the company acting as trustee to take action without making an application in open court, which could prejudice the interests of the debenture holders more than the actions of the borrowing company against which the order is sought.

The borrowing company is now required to furnish the company acting as trustee with quarterly reports containing information specified in the Act. In addition the auditor of a borrowing company is required to give to the trustee copies of all documents required by the Act, or by trust deeds, as well as advise the company acting as trustee of any matters which may come to his notice whilst he is carrying out his duties as auditor and which are relevant to the performance of its duties under the Act or any trust deed. An auditor who omits to give this information has committed an offence against the Act and a penalty is provided.

A company which raises money for a particular purpose or project is now restricted in its use of the money so raised and the company acting as trustee has the right, in certain circumstances, to require the money to be refunded to the lenders.

At present a director who permits a company to contract debts which it has no prospect of paying may be held to commit an offence against the Act and penalties are provided. In addition, the present Act gives a discretion to the Court, on the application of the liquidator of the company, a creditor or a contributory, to declare a person convicted of such offence personally responsible for the debt. This may not fully accord with some theories of corporate personality but it would seem to be a much needed provision in practice.

Public Welfare

Cultural and Recreational Lands Act 1963 (No. 7101)

This measure seeks to preserve land used for public recreational

²⁰ S. 3, now s. 74 (1) in the principal Act.

purposes. Such land is widely defined²¹ to include land used for outdoor activities of a cultural, recreational, sporting or similar nature and held in fee simple, or under lease or licence from the Crown or a Municipality, by an association existing for the purpose of promoting such activities. The council of the municipality in which such land is situated must consider the services rendered to the public by the user of the land in assessing the rates to be paid on it and the body owning the land is given a right of appeal to the Minister if it is dissatisfied with the assessment made. If a determination has been made and a low rate paid on land which subsequently ceases to be recreational land then the municipal council can claim an amount equal to the difference between the rates paid and the amount which would have been payable, but for the classification of the land as recreational land, for the preceding ten years. The question of whether any particular land is recreational land or not may be referred to the Minister for determination.

Miscellaneous

Underseas Mineral Resources Act 1963 (No. 7095)

This Act is intended to clarify the area of operation of the Mines Act 1958 and the Petroleum Act 1958 by a declaration that it includes, and has included always, the sea bed and its sub-soil within the territorial limits of Victoria and also such parts of the sea bed and its sub-soil, outside the territorial limits of Victoria, to which the jurisdiction and legislative power of Victoria extend. No attempt is made to specify the meaning of this last extension and an interesting problem is posed for future resolution. The Act then states that all gold, silver, uranium, thorium, petroleum and other minerals on, in or under such sea bed or sub-soil are to be deemed the property of the Crown, and extends the regulation making power of the Governor in Council, under both the Mines Act 1958 and the Petroleum Act 1958, to such areas both prospectively and retrospectively.

Housing (Contracts with Minors) Act 1963 (No. 7010)

The present Act introduces a provision into the Housing Act 1958 to allow a minor over the age of eighteen years to enter into a contract with the Housing Commission for the purchase of a house and section 69 of the Supreme Court Act 1958, so far as it could affect such a contract, is expressly set aside.

Inflammable Liquids Act 1963 (No. 6990)

This is a new measure intended to regulate the transportation and storage of inflammable liquids, as defined in the Act. An organization

²¹ S. 2.

is set up, under the control of a Chief Inspector, to ensure that the provisions of the Act and of the regulations are carried out. The Chief Inspector is given very wide powers. Every bulk storage, as defined,²² is to be licensed and no person is to keep inflammable liquid in quantities in excess of ten thousand gallons save in such a licensed bulk storage. An obligation is imposed on the occupier of any bulk storage to report any accident, explosion or escape of liquid to an inspector. Regulations as to the conduct of the bulk storage may be made by the Governor in Council.

Transportation of inflammable liquids is now to be subject to the Act, except when such transportation is on a railway, in a ship (except barges and lighters), in an aircraft, in the pipe lines of a Port Authority, in containers of less than ninety gallons or as fuel in fuel tanks. A vehicle or boat in which inflammable liquid is to be transported must be licensed but no licence is required for a pipe line. Pipe lines are, however, specifically dealt with by a number of provisions and in general the approval of the Chief Inspector must be obtained before a pipe line is laid, renewed or repaired.

L. R. NAYLER

²² S. 2.