

## LEGISLATION, 1957-58

### THE CORONERS ACT

This Act was a consolidating measure but at the same time it made several important substantive amendments. It came into force on May 1, 1958.

Under the repealed Act a Coroner was obliged to hold an inquest into a fire no matter how small the amount of damage caused by the fire, so that in the majority of cases the inquest was a needless waste of time and money. Now the Act stipulates that a Coroner hold an inquest into a fire only when the Attorney-General so directs or when the owner of the property or the insurer requests and the Attorney-General approves, or the Fire Brigades Commission or the Rural Fires Board submits a request to a Coroner. But the new Act does not go so far as to equate the law with that in England where a Coroner has no jurisdiction to enquire into a fire.

However, the new Act adopts the English procedure whereby a Coroner is prevented from proceeding with an inquest touching a death (or a fire) if a person has been charged before examining justices with a crime in respect of that death (or fire). The system whereby persons were committed for trial by a coronial inquisition had been the subject of criticism for many years. A Coroner is not bound by the rules of evidence, and frequently evidence was given at an inquest which would not be admitted in a hearing before examining justices. All the hearsay evidence was made public and could be read and possibly believed by persons who might be jurors in the subsequent trial.

### THE CRIMINAL CODE

The crime of defilement of a mental defective is rationalised and brought into line with the law in England and in some of the other Australian States. Previously the Code provided that it was a crime if a person had unlawful carnal knowledge of a female who was a defective within the meaning of the Mental Deficiency Act and who was under care or treatment in, or on leave from, an institution if the accused knew the woman to be a defective. The Tasmanian Court of Criminal Appeal held in 1954 that this offence was not committed if intercourse took place with a female defective who had *escaped* from an institution. The new section makes it a crime for any person to have unlawful carnal knowledge of a mental defective in any circumstance if he is aware that she is a defective. But the onus is cast on the Crown of establishing knowledge; it is not left to the defence to prove lack of knowledge as was the position previously.

The crime of attempting to commit suicide is abolished.

Any number of persons may now be charged in the same indictment even where it is alleged they have committed *different* crimes so long as these crimes have arisen substantially out of the same facts or closely related facts. Further, the Crown may now join two or more persons in the one indictment for perjury or false swearing if the statements said to be false are alleged to have been committed in the same proceedings and before the same tribunal.

Except in the case of a crime punishable with death the jury may under the new legislation be permitted to separate during protracted legal arguments on the admissibility of evidence, notwithstanding that the trial has not been adjourned.

### THE DEFAMATION ACT

The new legislation consolidates and amends the law relating to defamation. One important achievement of the legislation was to remove the distinction between libel and slander.

With regard to unintentional defamation the Act gives effect to the recommendation of the Porter Committee in England, that where good faith can be shown a person who innocently makes a statement that proves to be defamatory can make amends by offering to publish an amendment or apology and if that offer is accepted and carried out, or even if it is rejected by the person aggrieved, no damages are to be awarded if the Court is satisfied that that person acted with genuine innocence.

An important alteration is also made with respect to the defence of justification. It is no longer necessary to prove the complete truth of the statement, and moreover the defence that the statement was true and for the public benefit will now succeed even if the words are not proved to be true if they did not materially injure the complainant's reputation, provided the statement was also made for the public benefit. A similar amendment has been made in the case of the defence of fair comment.

It is a known practice for publishers to insure against actions for libel, the general view being that these agreements of insurance are lawful. The Porter Committee thought that they should not be lawful where it is known at the time of publication that the matter published is defamatory and there is no defence. The Act gives effect to the Committee's recommendation.

The protection of absolute privilege is extended to the proceedings of a *joint* committee of both the State and Federal Parliaments and to persons concerned in an appeal or hearing before a statutory authority authorised or required by law to hear or determine the appeal or matter.

### THE INDETERMINATE SENTENCES ACT

The amendment effected by this Act provides that the offence of unlawfully using a motor vehicle created by section 37 of the Traffic Act 1925 shall be one of the offences the commission of which shall render

a person liable (in appropriate circumstances) to be sentenced to a reformatory prison during Her Majesty's pleasure.

### THE JURY ACT

The main effect of the Act is twofold:

Firstly, it facilitates the enrolment of persons liable to serve as jurors by deleting any reference to property and income qualifications, and by making a person's enrolment on the State House of Assembly roll sufficient qualification, subject to a minimum age limit of 25 and a maximum of 65. Women are similarly qualified but will not be liable for jury service unless they notify the Sheriff of their desire to serve.

Secondly, State public servants, with a few minor exceptions, have been made liable for jury service. (Commonwealth public servants are exempt under Commonwealth legislation).

### THE LANDS RESUMPTION ACT

### THE REAL PROPERTY ACT (No. 2)

### THE ROADS AND JETTIES ACT

The *Lands Resumption Act 1957* replaces the *Lands Resumption Act 1910*. Many of the features of the *State Public Authorities Land Acquisition Act 1949* are introduced, among them the requirement that proceedings for compulsory acquisition must commence with a notice to treat and also that an owner's title is divested only on registration and not on gazettal.

There had been doubt whether the old Act allowed the acquisition of anything but a fee simple absolute; the new Act is expressly drawn to provide for the acquisition of any estate or interest in land.

The *Roads and Jetties Act 1957* affects real property in four ways. Under section 9A, inserted in the principal Act, intended changes in the road system can be proclaimed, binding lands over which a road is intended to run as from the time of registration of the proclamation. Any owner injuriously affected can obtain compensation; moreover, if the land becomes vacant he can call on the Minister to acquire it forthwith, but the Minister can avoid paying in full at once by taking a lease for 21 years.

Under section 9B the Minister may, on payment of compensation, build a highway on any land without prior acquisition or dedication. If the owner is not content with the Minister's offer of compensation he can require him "to purchase or take" the land.

Under section 9D, if the realignment of a road affects a number of pieces of land one proclamation can be used to readjust all land boundaries affected without any other conveyances or transfers.

The Act also provides for the proclamation of "limited access roads." Where a limited access road is proclaimed it will be unlawful to take vehicles across the boundary of the road and the adjoining lands except

at proclaimed places of access. This means that for many purposes a limited access road will not serve as a street frontage for a building. There is to be compensation to the landowners.

### THE MAINTENANCE ACT

Procedural difficulties are dealt with which had been encountered in respect of the registration, confirmation, and enforcement of orders transferred from a Court in England and other British possessions. Previously grave doubt existed, having regard to the terminology of previous Tasmanian legislation, whether orders received from overseas for registration or confirmation in Tasmanian Courts could be transmitted to another State to which the defendant had gone to live before the orders were received here. Amendments smooth out these procedural difficulties.

An interstate destitute persons relief system has always provided a simple and effective means of enforcement of interstate maintenance orders, but while some States provide that orders made by or registered in Supreme Courts of those States may be enforceable through the system, others do not. The Act puts the position beyond doubt so far as Tasmania is concerned.

Orders made by the Supreme Court can now be enforced through the machinery of Courts of summary jurisdiction, a procedure much more effective and less costly. The section, however, extends only to enforcement; it does not deal with applications for variation or discharge as is the case, for instance, under New Zealand legislation.

### THE POLICE OFFENCES ACT

One important amendment made by the Act relates to the extension of provisions relating to bogus advertisements. Previously offences related only to bogus advertisements of births, deaths or marriages. Now they include advertisements relating to employment or with respect to any matter relating to any person or to the property of any person, other than the advertiser himself.

### THE TESTATOR'S FAMILY MAINTENANCE ACT

The provisions of the principal Act are extended to intestacies but without disturbing the provisions of the Administration and Probate Act relating to the distribution of an estate on an intestacy.

Any doubt that a Court may order a lump sum payment is removed.

That an adopted child can benefit under the legislation is made clear, and "adopted child" is defined to include persons adopted under the laws of another country. The legislation is also extended to include step-children (as defined), parents of a deceased person if he died without leaving a wife or children living, and a divorced wife if at the date of

the deceased person's death she has not remarried and is receiving or entitled to receive maintenance from him by virtue of a Court order or an agreement between them in writing.

### THE TRAFFIC ACT (No. 1)

This Act reflects Parliament's endeavour to frame an effective offence to deal with the case of a person who drives a motor vehicle recklessly or at a speed or in a manner dangerous to the public, thereby causing the death of, or serious injury to, an innocent road user.

The offence of reckless or dangerous driving is created. It is in essence a summary one involving a maximum penalty of two years' imprisonment or a fine of £200, or both, but the person charged may elect to be tried by jury and the adjudicating Magistrate may himself decide, even if there has been no election, that the nature of the offence is so serious that it should be tried on indictment.

It remains open to the authorities, in proper cases, to charge the reckless driver with manslaughter and the Criminal Code has been amended to provide that where this is done the jury may bring in an alternative verdict of reckless driving.

### THE TRAFFIC ACT (No. 2)

The amendments fall into distinct categories:—

#### *Unauthorised Use of Motor Vehicles*

Minimum and maximum penalties are prescribed for this offence, distinction being drawn between the first offence, for which monetary penalties are provided, and the second or subsequent offence, where the minimum penalty is six months' imprisonment and the maximum two years. However, the Magistrate is empowered to impose a fine in the case of a second or subsequent offence if he thinks on consideration of specific matters that a fine would be a more just or reasonable penalty.

Where a person is convicted of this offence the presiding Magistrate, on the complaint of the complainant, may award damages not exceeding £250; such an award is not a bar to civil proceedings but the amount of damages thus awarded is taken into account in the civil proceedings.

#### *Driving Under the Influence of Intoxicating Liquor*

Greater protection is given to the person alleged to have been "in charge" of a motor vehicle while under the influence of intoxicating liquor. Before convicting on this charge a Court must now be satisfied that the person charged exhibited a manifest intention or disposition to operate or drive a vehicle.

The legislation also adopts with modifications the New Zealand legislation whereby a police officer may take steps to prevent a person apparently incapable of exercising proper control of a motor vehicle of which

he is in charge from driving that vehicle. The officer may direct that person to deliver up all keys of the vehicle and may render the vehicle immobile until such time as that person is adjudged to be capable of having proper control of the vehicle. There are safeguards to the extent that the person concerned may require that his capacity to drive a vehicle be tested by a senior police officer or a medical practitioner.

#### *Third Party Insurance*

In this particular respect the Act provides—

- (i) A Third Party Policy shall be available to meet a claim for damages no matter who was the driver of the vehicle.
- (ii) Where the identity of a vehicle cannot be established then a person injured, or in the case of his death his estate, may recover damages by suing the "nominal defendant."

In these circumstances any damages awarded, together with the costs, will be met by insurance companies conducting this class of business in proportion to the premium income received during the previous financial year.

- (iii) Where the owner of an uninsured motor vehicle cannot be found, an injured party may recover damages in an action against the nominal defendant.
- (iv) Where there is a change in ownership of the motor vehicle any Third Party Policy of insurance in respect of that vehicle shall inure in favour of the new owner but will cease to be operative when a fresh policy of insurance is taken out.
- (v) It is expressly provided that where a policy of insurance is in force then the insurer must pay the amount of the judgment obtained against the driver or owner of the vehicle and cannot escape this liability by technical contracting out clauses.

Nevertheless, the insurer may, in proper circumstances, take action to recover from the owner or driver the amount so paid.

23/5/58.