

## COMMENT

### SUMMARY OF TASMANIAN LEGISLATION FOR 1961

In 1961 there was little legislative activity. The only controversy of note arose from the alleged ineligibility of certain members of Parliament to hold office on the ground that they had received advances under the State Advances Act 1935 and the Homes Act 1935. The matter was raised by Dr Turnbull, Independent member for Bass, who alleged that the members in question were disqualified under section 33 of the Constitution Act 1934. That section provides that any person interested in contracts or agreements for or on account of the Public Service shall be incapable of being elected to either House or of sitting or voting as a member, and section 35 provides for the imposition of penalties in such event. The question whether those members were eligible to sit was not judicially considered and consequently the Constitution (Disqualification Removal) Act No. 28 was passed as a precautionary measure against possible legal action. However, in introducing the measure, general political opinion regarded it as an exception in respect of the particular members and one which was unlikely to be made again. When the Leader of the Liberal Party later suggested that a newly elected Labor member of the House of Assembly was disqualified from sitting on somewhat similar grounds, no action was taken in the courts, nor was any special act passed. The result is that the position of members having contractual relations with the Crown or its instrumentalities, or holding an office of profit under the Crown, as laid down in the Constitution Act, is extremely obscure. It is suggested that the Act creates a dangerous precedent.

An historic landmark took the form of the Church of England Constitution Act No. 14 which repealed the Church of England Constitution Act 1927 and gave full effect, within the State of Tasmania, to a new Constitution for the Church of England in Australia. This Constitution was drawn up and approved at the Church's Synod in Sydney in 1955. The Act ensures continuity of property rights between the old and the new institutions (ss. 3, 6 and 7). Chapter IX of the Constitution, which is contained in the Schedule to the Act, sets out in some detail the rules which are to govern the jurisdiction and proceedings of the Church tribunals, sections 9-13 of the Act give to the proceedings a degree of legal force, while reserving to the Supreme Court a measure of control. The Church tribunals can administer oaths and *subpoena* members of the Church of England (s. 9) and in certain circumstances the Supreme Court can stay proceedings (s. 11).

The Medical Act No. 12 inserts a new section (36A) in the Medical Act 1959. It is provided that in certain circumstances doctors are permitted to carry out blood transfusions on children without the consent of the parents or guardians. The doctor concerned is deemed for all purposes to be carrying out the transfusion with the consent of the person legally entitled to authorize it. Thus the intervention of a magistrate is no longer necessary.

The Housing Agreement Act No. 18 ratifies the housing agreement made between the Commonwealth and all the States. The actual agreement is contained in the Schedule to the Act. Its main purpose is to amend the 1956 agreement in the matter of percentage of funds to be made available to home builders and of the interest to be charged on long term loans for building.

The Police Offences Act No. 19 creates three disparate offences which may be said to echo recent events. Section 2 has in mind 'peeping toms', section 3 is designed to deter spectators from invading the playing area of a sports field while a game is in progress, and section 4 provides that any person operating a vending machine is deemed to have sold whatever goods are taken from it by the public. The main purpose of the last is to prevent the sale of tobacco and cigarettes to persons under the age of sixteen.

The Traffic Act No. 31 is substantially concerned with the regulation of public transport, including the carrying of passengers and freight on board aircraft as well as by road. Included in it are provisions dealing with public-vehicle licences, tickets to be issued for specific journeys, the duties of licence holders, offences in relation to public vehicles, and appeals from the Transport Commission to the Public Vehicles Licensing Appeal Tribunal. Of particular interest is section 35 (b), providing for the mandatory cancellation of licences, belonging to persons convicted of drunken driving, for a period of one year for the first offence — culminating in cancellation for life on the third conviction. Also of interest is section 47 which renders third-party insurance taken out in Tasmania effective throughout Australia, in addition to extending the cover by way of unlimited liability.

The Wages Board Act No. 33 regulates the position of Chairman of the Boards and the period of office of representative members. Representative members of the boards are to hold office for three years; that period may be extended for another three years providing no objection to the extension is raised either by any employer or by any five employees engaged in the industry in relation to which the board makes awards (s. 5). Section 9 gives the Chairman a considerable security of tenure. He is to be appointed by the Governor and is normally to hold office until the age of sixty-five. The Chairman can be removed by the Governor on the ground of proved incapacity, following an address from both Houses of Parliament in the same session, or by the Governor alone if the Chairman (a) is engaged in other paid employment, (b)

takes advantage of bankruptcy legislation, (c) is convicted of a serious offence, (d) absents himself without leave for longer than three weeks in any twelve month period, or (e) becomes in the opinion of the Governor permanently incapable of carrying out his duties (s. 9 (3)). Thus, it can be seen that the Chairman's independence of action is safeguarded in a striking way; his position in regard to tenure is almost judicial. It may be noted in passing that although the Tasmanian system of Wages Boards for every separate industry with a common chairman does not exist in any other State save Victoria, it has probably proved more successful than its counterparts on the mainland.

The Racing and Gaming Act No. 42 purports to regulate betting shops and those employed in them. An interesting provision is that of section 19 (a), resulting perhaps from the decision of Crawford J. in *Fletcher v. Castrisios* (1959) Tas. S.R. 3, where it was held that unlawful games were confined to those named in section 105 of the principal Act and that 'unlawful gaming' meant playing those games only. In consequence, section 19 (a) has added several games to those listed in section 105 of the principal Act, including 'manilla' the subject of the litigation in question. The powers of the police to search and seize on suspicion unlawful gaming are also extended (s. 20).

The Stamp Duties Act No. 45 deals with the power of the Taxation Commissioner to inspect certain documents, the refund of excess duties, and it also alters the scale of duties payable. Section 4 provides that a person found guilty of an offence under the Act may be ordered by the Court to pay the duty as well as the penalty. Section 6 places on the defence the burden of proving that the instrument which is the subject of the prosecution is not liable to stamp duty.

The Parliamentary Retiring Allowances Act No. 46 gives members of Parliament the right to elect to contribute towards a pension higher than that provided for by the Parliamentary Retiring Allowances Act 1955, namely, the basic wage for the Hobart area. Under section 4 this higher pension may be equal to one and one-third, one and two-thirds, or twice the normal pension. If a member does not exercise his option to contribute towards a higher pension, his rights and obligations remain as if the amending legislation had not been enacted.

The remaining public legislation, of no particular legal interest, may be noted shortly.

Justices Act No. 8 amends the Justices Act 1959 so as to enable a district justice to issue a summons or warrant in respect of an offence committed in any part of the State, whether he is sitting in his own district or not (s. 2).

Oil Pollution Act No. 25 gives legislative effect to the International Convention for the Prevention of Pollution of the Sea by Oil 1954.

Motor Vehicles Tax Act No. 26 amends the Motor Vehicles Tax Act 1917.

Public Service Tribunal Act No. 27 amends the Public Service Tribunal Act 1958. Section 4 (b) entitles a legal practitioner who is a member of a public service organisation to represent such organisation before the tribunal.

Transport Act No. 30 amends the Transport Act 1938.

Sexual Offences Act No. 32 amends the Sexual Offences Act 1951.

Workers' Compensation Act No. 34 defines who shall be regarded as the employer of waterside workers while they are in the process of being transferred between ports.

Statute Law Revision Act No. 41 contains a number of miscellaneous provisions which repeal or amend earlier legislation, but to no great extent.

Rural Fires Act No. 47 amends the Rural Fires Act 1950 with particular reference to the powers of the Rural Fires Board and of rural fire wardens.

Metropolitan Water Act No. 51 sets up a unified board for the metropolitan water supply, covering the municipalities of Hobart, Glenorchy, Clarence and Kingborough.

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