REVIEW OF LEGISLATION, 1950

I. Western Australia

Introductory.

The first session of the Twentieth Parliament opened on 27th July and ended on 7th December 1950. 77 public Acts were passed, none of them of a controversial nature except a Bill to continue for one more year the Increase of Rent (War Restrictions) Act 1939. This Bill met with unexpected opposition in the Legislative Council (although the majority of the Council's members normally support the present government) and was substantially amended; the Assembly not being prepared to agree to all the amendments, and the Council insisting upon them, a conference became necessary during the closing hours of the session. After long discussions between the respective managers (the term used to describe the participants in an inter-House conference) an acceptable compromise was reached; but because a quick decision was necessary if the session was not to be unduly prolonged, it was inevitable that the compromise measure would not always be happily or clearly worded. The Act in its final form has since been criticised very outspokenly by judges and magistrates who have had to interpret and apply it.

I. CONSTITUTIONAL.

Money Bill procedure.

In accordance with the principle of making the government responsible for the expenditure of public money the Constitution prohibits the passing of any "vote, resolution, or Bill for the appropriation of revenue or moneys unless the purpose of the appropriation has in the same session been recommended by message of the Governor to the Legislative Assembly."[1] The Solicitor-General having advised that a number of Acts had in recent years been introduced and passed without any such message although they provided incidentally for some expenditure of public funds, the Constitution Acts Amendment Act (No. 4)[2] validates any such Act which receives the Governor's assent before 31st January 1951.

1 Constitution Acts Amendment Act 1899, sec. 46 (8).
2 No. 63 of 1950. See also 127 Western Australia Parliamentary Debates, 2509-2527.

Offices of profit.

By the Constitution Acts Amendment Act (No. 2)[3] a further inroad is made on the rule that a member forfeits his seat on the acceptance of an office of profit from the Crown. A member is not henceforth to be disqualified if he holds or has held an office of profit certified by the (federal) Minister of State for Defence to be connected with national defence. The words *connected with* are so vague that the new provision may well cover a wide variety of appointments not usually deemed to be related to defence.

Payment of members.

Parliamentary salaries have again been increased by the Acts Amendment (Allowances and Salaries Adjustment) Act.[4] The nominal increase in members' allowances is small, viz., £40 per annum; but sec. 3 (5) of the new Act provides for the automatic addition thereto of all increases in the State basic wage declared by the Industrial Arbitration Court since 23rd July 1947. Since the cost of living has risen substantially since that date, the basic wage going up accordingly, members at present receive an extra allowance of £220 per annum under sec. 3 (5).

A small concession to former members is made by the Parliamentary Superannuation Act Amendment Act.[5] Under the 1948 Act a member who resigned before the normal expiration of his term or who ceased to be a member on such expiration was debarred from receiving any benefits under the Act unless (a) there were good reasons for his not seeking re-election or (b) he did seek re-election and was defeated. Under the amending Act an ex-member who does not satisfy either condition will be entitled to a refund of his contributions to the pension fund with interest at such rate as is determined by the fund trustees.

Increase in number of ministers.

In 1947 the government sponsored a Bill to increase the number of paid ministers from eight to nine but suffered defeat when the motion for the second reading was lost in the Assembly, the whole

3 No. 45 of 1950, amending No. 29 of 1942.

4 No. 16 of 1950. For the previous scale of payment to ministers, members, etc., see *Review of Legislation*, 1 University of Western Australia Annual Law Review 129-130.

5 No. 32 of 1950. For the provisions of the earlier Act which introduced the principle of pensions for ex-members, see *Review of Legislation*, 1 University of Western Australia Annual Law Review 304-305.

of the Labour Opposition and the two independent members voting against the Bill. In 1950 a new measure[6] was introduced with greater success to increase the number to ten; the second reading was carried by 35 to 12, the minority consisting of a mixed bag of government supporters and Opposition members. The practical effect is not to increase the size of the ministry but to put two honorary ministers on the public payroll.

II. ADMINISTRATION OF JUSTICE.

Judicial salaries and pensions.

The salaries of judges of the Supreme Court have also been raised;[7] as from 1st September 1950 the Chief Justice is to be paid £3000 and each of the four puisne judges £2600 per annum in addition to such travelling and other allowances as the Governor may approve. Their pension rates have also been altered (though not so as to affect any judge already appointed unless he opts to come under the new scheme) so as to reduce slightly the pension payable to the judge himself on retirement but at the same time to provide benefits for his widow and for their children up to the age of sixteen. Sections 6-11 and 13 of this Act are identical in terms (though not always in punctuation) with sections 6-11 and 14 of the (federal) Judges' Pensions Act 1948, and section 12 of the former with section 13 of the latter but for the omission of the last subsection; yet one looks in vain for the customary acknowledgment, in the form of a marginal note, of the origin of the adopted provisions.

Magistrates' salaries.

Magistrates' salaries have been increased by the Acts Amendment (Allowances and Salaries Adjustment) Act.[8] The cost-of-living allowance authorised in 1948[9] is discontinued, a new salary range of £1250-£1550 (exclusive of authorised allowances and special remuneration) being substituted. As the previous minimum (inclusive of cost-of living allowance) was approximately £850 and the maximum £1350, all magistrates should benefit substantially.

6 Acts Amendment (Increase in Number of Ministers of the Crown) Act, No. 2 of 1950.
7 By Judges' Salaries and Pensions Act, No. 35 of 1950.
8 No. 16 of 1950.
9 See *Review of Legislation*, 1 University of Western Australia Annual Law Review 307-307.

Industrial arbitration.

The powers of the Court of Arbitration with respect to the declaration of a "basic wage" have been enlarged by the Industrial Arbitration Act Amendment Act (No. 2).[10] Under the principal Act the Court was required, before 14th June in each year, (a) to declare a basic wage for male and female workers and (b) in its discretion to specify differential rates payable in defined areas of the State; under the latter power the Court has usually declared different rates for the Goldfields area. The Court's jurisdiction can now be exercised at any time and must be exercised on application by a majority of the trade unions or by the Employers' Federation, though in this latter case twelve months must have elapsed since the Court's last declaration. In reaching its decision the Court must not only, as in the past, determine what amount is necessary to enable an average worker to live in reasonable comfort; it must also take into consideration the economic capacity of industry and other relevant factors. These latter, however, are all secondary matters; the adequacy of the declared wage is the primary consideration. The Court's power to make quarterly variations of the basic wage in accordance with the rise and fall in the cost of living is unaffected by the new Act.

By another amending Act[11] the Court of Arbitration is made an appellate tribunal from Industrial Magistrates empowered by the Governor (under section 103 of the principal Act) to exercise the Court's power as to the enforcement of industrial awards and agreements and as to the trial of offences against the Act. The Court's new powers in hearing appeals from Industrial Magistrates or from the Conciliation Commissioner[12] are very wide indeed, and in effect enable it to give such decision therein as it thinks just and proper.

The Court's powers as to the salaries and classification of officers of the State public service have also been enlarged. Previously the Court had no jurisdiction over any such officers whose appointment commanded a maximum salary exceeding £699 per annum. Now the words "justiciable salary" are substituted for "salary exceeding £699 per annum", and justiciable salary is defined as the equivalent at any future time (after making allowance for cost-of-living variations) of an annual salary of £1005 as at 1st July 1950. Consequential amend-

10 No. 20 of 1950. The Industrial Arbitration Act 1912, as amended to the end of 1941, is published in Vol. 2 of the Reprinted Acts of the Parliament of Western Australia.

11 Industrial Arbitration Act Amendment Act, No. 56 of 1950.

12 As to his functions see *Review of Legislation*, op. cit., 307-308.

ments are made to other sections which refer to a maximum salary rate of £699 per annum or to a salary less than £700 per annum.

F.R.B.

Children's Court jurisdiction.

The Child Welfare Act Amendment Act (No. 52 of 1950) makes two important amendments to the principal Act (No. 66 of 1947). The latter repealed the Child Welfare Act 1907-1941 and re-enacted it with a number of significant changes. The repealed Act had set up a Children's Court and had transferred to it the jurisdiction formerly exercised by ordinary magistrates' courts in respect of offences committed by children and young persons. The position before the enactment of 1947 was that the Children's Court had jurisdiction to try summarily all offences except treason, wilful murder, murder or manslaughter; these four offences had to be tried on indictment. Further, if the accused was over 12 and had, by reason of his having been previously convicted of an offence, become liable to imprisonment for a longer period than three years in respect of the offence now charged; or if, the accused being over 12, the Children's Court thought the charge to be fit for prosecution on indictment; then the accused had to be sent for trial by jury. Finally the accused (if over 12), or his parent or guardian (if the accused was under 12), could demand trial by jury in respect of an indictable offence.

The 1947 Act swept away all these provisions and provided in section 20 that the Children's Court should exercise jurisdiction in respect of all offences alleged to have been committed by children ("child" being defined in section 4 as "any boy or girl under the age of 18 years"). The result was that a youth of, say, 17 who was accused of wilful murder was deprived of the protection of trial by jury before a Supreme Court judge; he had to be tried by the Children's Court. Fortunately, the defect was realised before this situation arose, and it is accordingly provided by the 1950 Act that the jurisdiction of the Children's Court in relation to treason, wilful murder, murder or manslaughter (and attempts to commit these offences) is limited to a preliminary hearing and committal. It is also provided that a special magistrate of the Court may, if he thinks fit, commit for trial or sentence any child over 14 charged with having committed or attempted to commit an indictable offence.

This amendment has, however, produced a further anomaly. If a boy of 14 is charged with, say, rape before a Children's Court, he may be committed for trial or sentence; but a boy who, at the age of

17 years and 11 months, commits the same offence must, if he manages to evade arrest until he has attained 18, be tried by the Children's Court. For he was a "child" when he committed the offence, and so the Court must exercise jurisdiction; but the special magistrate's power of committal applies only to children, and when the boy appears before the Court he is no longer a child.

A further difficulty results from the insertion, by the same amending section, of the word "exclusive" before "jurisdiction" in the original section 20. Apart from the new provisions under which the Court may or must commit for trial, it now has *exclusive* jurisdiction in respect of all offences by children. The exact force of this amendment will no doubt be judicially determined in due course; but it is at least arguable that its effect is to remove the rights of appeal to the Supreme Court which previously existed under section 19 (6) of the 1947 Act.

The second amendment made by the 1950 Act is to section 137 of the principal Act. That section was apparently intended to create three offences: (a) encouraging a child to commit an offence, (b) allowing a child to become a neglected child, and (c) contributing to a child's becoming a neglected child. The draftsman decided to deal with all three offences in one subsection, and in drafting offences (b) and (c)—not set out in paragraphs in the original—he referred to "the child" and "such child" respectively. The special magistrate accordingly held that (b) and (c) could only relate to such a child as is mentioned in (a), namely, a child who has committed an offence; the Full Court (Wolff and Walker JJ., Dwyer C.J. dissenting) reversed his decision in *Scott v. King*,[12a] but it was restored by the High Court *(King v. Scott*[12b]*)*. Parliament has now expunged the offending intruders "the" and "such" and replaced them by the harmless "any". It has also seized the opportunity to avoid, in respect of offence (a), any troublesome problems of *mens rea* by making the offence extend to the encouragement of any act by a child under 14 which would be an offence if committed by a child over 14. Finally, it has *ex abundanti cautela* made a small clarifying amendment to subsection (3) of the section.

The history of this amendment provides an excellent example of the dangers inherent in the undiscriminating use of the word "such." The modern draftsman would be well advised to remember that two of his favourite usages—"such" as equivalent to "that", and the

[12a] (1950) 52 W.A.L.R. 34.
[12b] (1950) 81 C.L.R. 252.

words "the same"—are classed by Fowler in his *Dictionary of Modern English Usage* as ILLITERACIES.[12c].

P.B.

Administration of estates.

By the Administration Act Amendment Act (No. 55 of 1950), applications may be made to the Master of the Supreme Court instead of to the Court itself for probate or letters of administration where the value of the estate does not exceed £1500; if the deceased normally lived more than fifty miles from Perth application may be

12c It is assumed, perhaps a little charitably, that most draftsmen prefer judicial approval to castigation of their work; their attention is respectfully drawn to two fairly recent examples of judicial criticism. In *In re Kellner's Will Trusts*, [1949] 1 Ch. 509, Harman J. said (at 512-513), "Now bequests of legacies or shares of residue in favour of hospitals are, or were until the springs of charity were dried by a crippling taxation, the commonest form of charitable bounty, and I confess that I approached the problem here posed in the confident expectation that I should find direct guidance in the (National Health Service) Act as to the destination of such gifts. It was indeed with some surprise that I heard that conflicting claims were preferred by the Board of Governors, by the Minister of Health, by the Attorney-General and by the next-of-kin. My attention was drawn by counsel, section by section, to the provisions of the Act, and I read them with a bewilderment which ripened finally into dismay when the conclusion was forced on me, from which I see no escape, that by some mischance the legislature has so framed the sections of this Act as to leave outside it charitable legacies of the nature here in question. The Act in this respect is almost a miracle of ineptitude. I propose to examine it to show how I have been driven to the melancholy conclusion to which I referred; if I am right this is indeed an extraordinary instance of casus omissus."

In *In re Naylor Benzon Mining Company Limited's Application*, (1950) 66 Times L.R. (Part 1) 418, Wynn Parry J. referred (at 422-423) to a section of the Iron and Steel Act 1949 which enables the corporation set up under that Act to disclaim certain agreements and leases. "The vital provision in that sub-section," he said, "is contained in the words 'and the corporation are of the opinion that the making or variation of that agreement or lease was not reasonably necessary for the purposes of the activities of the company'." On the application of that provision may turn the rights of many parties involving, maybe, large sums of money, yet the corporation are invited to form an opinion one way or another on a test which, as expressed in the sub-section, does not begin to be expressed in the King's English. The words "reasonably necessary," used as a phrase in which the adverb is designed to qualify the adjective are meaningless. A thing is necessary or it is not necessary. It may be regarded or treated as necessary in one context and not in another, but the context cannot be provided by merely preceding the word "necessary" with an adverb such as "reasonably". As it stands, the phrase, to me, is a contradiction in terms. The Legislature, presumably, in its wisdom, has not thought fit to throw the burden of interpreting and applying this apparently meaningless phrase on the High Court, but, instead, on the arbitration tribunal. I am, therefore, spared the task of considering it further. I felt it necessary to advert to it, because honest business men coming before the High Court on an application such as this are entitled to protection against the possible dangers with which they may in the future be faced as a result of the use in an Act of Parliament of such sloppy language as this."

made to a district agent, who is to send all the appropriate documents to the Master. In both cases it is the latter who makes the grant in the name of the Court. Under the Administration Act 1903-1949 the power had been limited to estates not exceeding £500 in value.

Legal education.

By the Legal Practitioners Act Amendment Act (No. 49 of 1950) the legal profession is relieved from the obligation (imposed upon it at its own request by an Act of 1926) to pay to the University of Western Australia £500 per annum "as a contribution towards the establishing and maintaining of a chair of law." Twenty-five years ago the profession, dissatisfied with legal education in the State—there was then no Faculty of Law at the University—took the initiative by offering to subsidise a chair of law if the University would create one. The offer was accepted and a chair established at the end of 1927; not only have all members of the profession contributed to the annual subsidy, but many of them have become lecturers in the University Law School for a purely nominal fee. The cessation of the subsidy does not mean that the profession has lost interest in legal education; it merely indicates that it is no longer necessary for the University to rely upon direct financial support from the profession.

III. STATUS.

There was no legislation in this category in 1950.

IV. PUBLIC HEALTH.

Registration of foreign-trained doctors.

Until 1940 it was virtually impossible for any doctor trained in a foreign country to be registered as a medical practitioner in Western Australia. By the Medical Act Amendment Act of that year a limited right to registration was conceded, but the person so registered could only practise either (a) in a specified area where, in the opinion of the Governor, medical and surgical services were inadequate, or (b) as a resident medical officer in a hospital within the meaning of the Hospitals Act 1927, the Lunacy Act 1903-1920, or the Mental Treatment Act 1927, there being no fully qualified medical practitioner available for appointment. A further concession was made in 1945 whereby a foreign-trained doctor could be registered if (a) he had

spent at least five years at a foreign university or medical school and (b) he had obtained a degree or licence to practise not inferior to the medical degree granted by Australian universities and (c) the country in which that university or medical school is situate allows doctors entitled to registration in Australia to practise in that country without further examination.

The principle contained in the 1940 Act has now been extended by the Medical Act Amendment Act (No. 21 of 1950), under which the Governor, if satisfied "that a duly qualified medical practitioner or a sufficient number of duly qualified medical practitioners is or are not available to provide a medical or surgical service, may from time to time by Proclamation declare the service to be an auxiliary service in the whole or part of the State." On such a proclamation being issued the provisions of the 1940 Act, with the necessary verbal alterations, come into operation, the effect being to enable the Medical Board constituted under the principal Act to issue "certificates of auxiliary service registration" under which a foreign-trained doctor may be admitted to practise although there is no reciprocity between his country and Australia.

Control of physiotherapists.

For the first time in this State provision is made for the training, qualification, and registration of persons as physiotherapists. The Physiotherapists Act (No. 75 of 1950) establishes a Board with which persons now engaged in physiotherapy must register; registration will only be granted to (a) persons who have undergone training in and passed the examinations of a university or other body "prescribed" by the Board's regulations and to (b) persons who satisfy the Board not merely that they are competent but that they have *bona fide* been engaged in the practice of physiotherapy in this State during at least two of the past three years. The Board is virtually given full control of the course of training to be undertaken and of the examinations to be passed by persons who in future may seek to become physiotherapists; it has already issued the necessary regulations for this purpose and has prescribed a three-year course, part of which can only be taken at the University of Western Australia.

Preventive medicine.

The Health Act Amendment Act (No. 25 of 1950) empowers the Commissioner of Public Health, by notice published in the *Gazette*, to require "all persons over the age of fourteen years of any class or

classes specified in the notice" to undergo X-ray examination for tuberculosis. Any such person is exempt if within the preceding twelve months he has had an X-ray examination of his lungs; but he may then be required to produce the radiologist's report for inspection by the Commissioner or his nominee.

Section 314 of the principal Act[18] imposes an obligation of secrecy upon all persons concerned in the administration of Part XI (Venereal Diseases and Disorders affecting the Generative Organs) and prohibits any disclosure by them except in the performance of their duties. By the amending Act, if the Commissioner knows or suspects that a person under seventeen is suffering from venereal disease, he may in his discretion disclose his knowledge or suspicion to that person's parents or lawful guardians.

Institutions for the insane.

Following upon the report of a Royal Commissioner appointed to inquire into the administration of the State Hospital for the Insane, certain amendments of the lunacy laws have been made by the Lunacy Act Amendment Act (No. 74 of 1950). It was possible under the principal Act for a person voluntarily to enter a hospital for the insane for treatment; such a person, though agreeing to remain for a specified time, could always give 24 hours' notice of his intention to leave. It is now possible for the parents or guardians of an infant to place him for treatment in such a hospital provided that (a) a doctor in private practice certifies that it would be in the best interests of the infant to admit him and (b) two justices give their written consent. Thereafter the parent or guardian can give any consent or notice on behalf of the infant which could be given by a person of full age for himself.

The Inspector-General of the Insane must now, at least once in every year, inspect all institutions, hospitals, wards, and reception houses and see the patients therein, reporting fully to the Minister on the condition of the patients and on the buildings, equipment, and grounds; he may also be specifically directed by the Minister at any time to inspect the institution where a named person is confined and must report on both person and institution. The duties of the board of visitors appointed for every institution have been more carefully defined so as to ensure regular inspections, the hearing of complaints, and the preparation of reports and recommendations for submission to both Houses of Parliament. Each board is authorised to order any

[18] The Health Act 1911, as amended to the end of 1948, is published in Vol. 3 of the Reprinted Acts of the Parliament of Western Australia.

patient to be examined by a psychiatrist, whose report must go not merely to the board but to the Inspector-General and to the Minister.

V. CONTROL OF PRICES AND COMMODITIES.

Although hostilities ceased six years ago much of the restrictive legislation of war-time is being continued, though there are signs that an increasing number of legislators, if not of the public, are beginning to question their necessity and would probably indorse the view expressed by Devlin J. in *Willcock v. Muckle,*[14] that "it would be very unfortunate if the public were to receive the impression that the continuance of the state of emergency had become a sort of statutory fiction which was used as a means of prolonging legislation initiated in different circumstances and for different purposes."

Price control.

Control of prices was renewed for another year (until 31st December 1951) by the Prices Control Act Amendment (Continuance) Act (No. 19 of 1950).[15] The measure passed through the Assembly very quickly; but some members of the Legislative Council were very critical of the continuance of price control though they did not press their objections to the point of voting against the Bill.

Building control.

The Building Operations and Building Materials Control Act Amendment and Continuance Act (No. 29 of 1950) did not have such an easy passage through Parliament. In the Assembly there was a good deal of criticism of the State Housing Commission, which was thought by some members to be very slow in building houses itself while using its control over essential materials to make it difficult for others to build their own homes. The member for West Perth (a government supporter and Lord Mayor of the City of Perth), speaking to the second reading, announced his intention to move in committee an amendment "to remove all restrictions on material necessary for the building of homes up to 12½ squares"; but when the committee stage was reached later in the same day he remained silent. The Council amended the Bill to allow without permit (a) house-painting to the value of £250 per annum instead of £50, (b) home renovations and additions to the value of £150 per annum instead of £50, and (c) renovation of and repairs to "business,

14 [1951] 2 Times L.R. 373, at 381

15 See also *Review of Legislation*, op. cit., 313-314, 526-527.

educational, or religious buildings" to the value of £200 per annum instead of £100; and to empower the Governor by regulation to vary the amounts so authorised. The Assembly agreed to all these amendments except (b), which it reduced to £100; the Council accepting this, the Bill was passed.[16]

Rent control.

The Increase of Rent (War Restrictions) Act Amendment Bill proved to be the most controversial measure. The Government's first Bill was defeated on the second reading in the Legislative Council; its purpose was to extend until 31st December 1950 the special protection given to ex-servicemen, members of the defence forces, and their dependents. This protection had been given by the Increase of Rent (War Restrictions) Act Amendment Act 1949[17] but was expressly to end on 30th September 1950 since at the time of its passing members generally thought that one year was ample time in which "to cushion the effect of the High Court decision" that had denied constitutional validity to a federal Act giving similar protection. On 26th September 1950 the government suddenly realised that the 1949 Act was about to expire; after the suspension of standing orders to enable its proposals to pass through all stages on the same day, a Bill was introduced and passed to continue the Act until 31st December 1950, the date on which the whole of the principal Act would expire if not renewed. The Bill reached the Legislative Council on the next day, where after some discussion standing orders were also suspended; but the debate on the second reading was adjourned. On its resumption the motion for the second reading was lost by one vote, the majority being of the opinion that the favoured classes were amply protected by the general provisions of the principal Act.[18]

On 26th September 1950 that hardy annual, a Bill to continue the Increase of Rent (War Restrictions) Act 1939-1949 for another year, had been read a first time in the Legislative Assembly. For some reason the second reading debate did not begin until 7th November, when the minister in charge announced that the government proposed to submit some important amendments; a week elapsed before the debate was resumed and the committee stage reached. Nearly twenty amendments were adopted, though a few were rejected;

16 See 126-127 Western Australia Parliamentary Debates 1071-1082, 1379-1381, 1507-1511, 1674-1683, 2120-2121, 2155-2157.

17 This Act received the royal assent on 12th October 1949; as to the reasons for its sudden introduction see *Review of Legislation*, op. cit., 527.

18 See 126 Western Australia Parliamentary Debates, 931--935, 949-955, 1004-1012.

and the Bill at last reached the Legislative Council on 22nd November, only a fortnight before the session was expected to end. But the Council was in no hurry; it discussed the principle of the Bill on 23rd, 28th, and 29th November before starting the committee stage on 30th. It was after midnight when the Council adjourned; it had other matters before it at the sitting of Friday, 1st December, and did not resume the committee stage until Tuesday, 5th December, when once again it adjourned after midnight. By the time it had finished with the Bill late in the evening of 6th December it had passed 49 amendments of the government's proposals, which arrived back at the Assembly shortly before midnight; a tired House refused to consider them in detail and adjourned at 2.22 a.m. without having done so. The sitting was resumed at 2.15 p.m. on the same day; the Assembly accepted a few amendments and rejected the others, sending to the Council a statement of its reasons. The Council gave short shrift to the message, resolving to insist upon all its previous amendments and specifically rejecting one of the Assembly's new proposals. Back went the Bill to the Assembly which decided to stand its ground and to ask for a conference of managers; the Council agreed shortly after 8 p.m. to hold a conference at 9 a.m. on the next day. At approximately 5.30 p.m. on that day both Houses met and accepted the compromise reached at the conference—a compromise which was more favourable to the Council's views than to those of the Assembly, and boded ill for the indefinite continuation of legislation of this kind.[19]

The new Act (No. 62 of 1950) prolonged the life of the principal Act, as amended, to 31st December 1951, but made a substantial change in the existing law which had made it almost impossible for lessors either to evict their tenants or to increase their rent. As soon as the new Act came into operation lessors of dwelling-houses could give their tenants one month's notice that their rent would be increased 20 per cent; lessors of other premises could immediately raise rents by 30 per cent. An unwilling lessee had to apply to a court, which could then adjudicate as to the "fair rent." Alternatively, the lessor of a dwellinghouse could himself go straight to court, which was then empowered to increase the rent up to fifty per cent. or to determine the "fair rent", in the assessment of which the court was to take into consideration any factors which it deemed relevant. A person who had let portion of his house (and remained in occupation

[19] See 126-127 Western Australia Parliamentary Debates 923, 1718-1724, 1885-1911, 1943-1957, 1985-1993, 2149-2154, 2206-2216, 2278-2289, 2364-2379, 2496-2507, 2596-2599, 2691-2694, 2707-2716, 2752-2755.

of the remainder) could evict an unmarried tenant on two months' notice and a married tenant after six months. Any person who has resided in Australia for not less than two years and who makes a statutory declaration that he requires his house for the occupation of himself or of a married son or daughter (to whom the residence qualification also applies) can now evict his tenant; (a) if the lessor has owned the house for three years, on three months' notice expiring on or after 30th June 1951; (b) if he has owned the house for more than six months but for less than three years, on six months' notice expiring on or after 30th September 1951. Lessors of premises other than a dwellinghouse who have owned the premises for at least three years can give three months' notice expiring on or after 30th September 1951; if they have owned the premises for more than one year but for less than three, by six months' notice expiring on or after 31st December 1951. If the tenant refuses to leave after due notice, the lessor can apply to the court for an order of ejectment and for recovery of possession. Under penalty of £500 a lessor who recovers possession after due notice must not without the leave of the court, for good cause shown, lease or part with the possession of the premises within twelve months of regaining possession. If premises are let, after the commencement of the Act, only by reason of a contract of service between lessor and lessee, and that contract is determined, the lessee must quit within seven days. All lessees must now allow their lessors to enter the demised premises for inspection once in every three months, 48 hours' notice being given; but the parties can in writing vary this. Special protection is given to certain classes, *viz.*, (a) a totally and permanently incapacitated ex-service pensioner, (b) the widow of a person whose death occurred during or as the result of war service, *if* a child of his, under 21, is living with and dependent upon her and *if* she has not remarried, and (c) a person engaged on war service outside the Commonwealth. Proceedings can be taken against such persons for recovery of the demised premises, but the court is not to make an order (i) until the State Housing Commission has made a rental home available,[20] or (ii) unless the court is satisfied that the refusal of an order would inflict substantially greater hardship upon the applicant than upon his tenant, or (iii) unless the court considers that the conduct (or misconduct?) of the tenant is such as to make him or her "undeserving of relief."

20 The Act purports to make it obligatory upon the Commission to find such a home on notification by the Court, though the validity and effectiveness of this provision were doubted by some members in both Houses.

Coal mining industry.

The Coal Mine Workers (Pensions) Act Amendment Act (No. 33 of 1950) increases the pensions payable to miners retired from age or disability and the allowances for their dependents, and liberalises the conditions of the grants. The category of "mine worker" has been broadened to include, with retrospective effect to 1st July 1944, superintendents, managers, and under-managers; and, with retrospective effect to 21st July 1944 ,"male persons engaged full time in clerical work in connection with a coal mine." A de facto wife is given the same right to an allowance as a lawful wife; if her de facto husband is killed she will receive the widow's pension if the deceased had contributed for five years to the Pensions Fund; but she will receive nothing at all if allowance or pension is being paid to the lawful wife or widow. Allowances for children normally stop at the age of sixteen but may be continued at the discretion of the Pensions Tribunal if it is satisfied that a child is totally unable, by reason of physical or mental defect, to earn a living. As from 6th January 1951 the weekly rates of contribution to the Fund are to be increased; from four shillings to four shillings and fourpence by the mine worker, and from eight shillings to ten shillings and tenpence by the owner for every mine worker employed by him. The rates of contribution may, however, be increased or decreased by proclamation of the Governor. As from the commencement of the new Act the Tribunal is to have a discretion to cancel or refuse a pension to any mine worker who is neither natural-born nor naturalised; but if he subsequently becomes naturalised the pension *must* be restored or granted.

The Coal Mining Industry Long Service Leave Act (No. 34 of 1950) creates a Trust Fund under the control of an Administrator which will consist of advances from the State Treasurer and of payments by the Commonwealth under the (federal) State Grants (Coal Mining Industry Long Service Leave) Act 1949; the funds required for the purpose of the latter Act being derived from an excise duty on coal imposed by a separate Act of the same year. From this Trust Fund owners will be reimbursed for amounts paid by them to their employees on account of long service if the Administrator's approval has been given before payment.

The conditions under which long service leave is to be granted to coal miners are set out in an award by the Central Reference

Board[21] made applicable in Western Australia by a supplementary award which came into effect as from 19th June 1949 and is declared to be operative for five years or until further order. The award is expressly given the force of law in Western Australia; hence the scheme cannot be affected by a successful challenge to the validity of the continuance of the Coal Mining Industry Employment Regulations as a purported exercise of the defence power.

Road traffic control.

Among minor changes made by the Traffic Act Amendment Act (No. 24 of 1950) is a half-hearted attempt to improve the form as well as the substance of a section introduced by an Act of similar title in 1935. This section, then numbered 20A but appearing as 24 in the consolidated Act,[22] empowered the Commissioner of Police to suspend a driving licence where he had reasonable grounds for believing that the holder suffered from some mental or physical disability rendering him unfit to drive and to continue the suspension until the holder had been examined by a doctor approved by the Commissioner. The second subsection must be given in full so that its verbiage may be properly appreciated:—"If the report of the medical practitioner is to the effect that the person concerned is unfit to hold the license *(sic)* on account of mental or physical disability, *the same shall become void but otherwise shall continue in force.*"[23] Grammatically "the same" should refer to the report of the medical practitioner; one may guess that the draftsman intended it to refer to the licence. But what is to be made of the rest of the sentence, which appears simultaneously to avoid the licence completely and to keep it in force? "Otherwise" seems to be an unnecessarily elliptical manner of saying that "if the report of the medical practitioner is to the effect that the person examined is *not* unfit to hold the licence, the suspension is to be revoked" and the licence to continue in force. The ambiguous use of the words "the same" is now avoided. The Commissioner, by an amendment of subsection (1), can now refuse to

21 The Central Reference Board, with the function of preventing or settling any industrial dispute in the coal mining industry, was first set up by the Coal Mining Industry Employment Regulations made under the (federal) National Security Act 1939-40 (see [1941] Commonwealth Statutory Regulations 476-485). The regulations were originally based upon the defence power; in 1946, by the Defence (Transitional Provisions) Act they were continued until 31st December 1947 and have since been renewed from year to year.

22 The Traffic Act 1919-1949 is published in Vol. 3 of the Reprinted Acts of the Parliament of Western Australia.

23 Reviewer's italics.

issue a licence, as well as suspend a licence already issued, because of his reasonable suspicions about the sanity or physical condition of the applicant (or licence-holder); the amendment to the second subsection deletes the offending words and substitutes, "the Commissioner of Police shall, where a license has been applied for, refuse the issue and grant of the license, and where a license has already been granted and issued, it" (shall become void but otherwise shall continue in force).

Another example of clumsy draftsmanship is to be found in section 8 of the 1950 Act, which inserts a new section 46A in the principal Act. The latter section reads:—

> No vehicle having a greater overall width, including the load, than eight feet, shall be licensed or driven on any road.
>
> Provided that, with the permission of the Minister given on the recommendation of the Commissioner of Police, and under such special circumstances and conditions as may be set out in the permit, a vehicle having a greater overall width, including the load, than eight feet may be licensed and driven on any road.

Time and space could easily have been saved, and the disharmony of attaching a substantial exception to an absolute prohibition avoided, by a simple combination of the two paragraphs, *viz.*, "Except by permission of the Minister. . . . set out in the permit, no vehicle having a greater overall width, including the load, than eight feet shall be licensed or driven on any road."

State housing activities.

The decline in the value of money is reflected in the State Housing Act Amendment Act (No. 27 of 1950). The "worker" for whom the State Housing Commission may provide a rental house or to whom it may make advances to enable him to build his own home is now defined as a person whose annual earnings (exclusive of overtime) do not exceed £750; £500 was the limit under the 1946 Act.[24] On such houses or advances the Commission may now spend or lend up to a maximum of £2000 instead of £1500.

The Commission's activities in building large numbers of houses in one or more areas have raised problems as to the construction of roads. New provision is made by the Roads Agreement between

24 When that Act was passed the basic wage (i.e., the minimum weekly amount payable to an adult male unskilled worker) was £5 2s. 1d.; at the time of the 1950 amendment it was £7 6s. 6d. It is now (October 1951) £10 5s. 8d.!

the State Housing Commission and Local Authorities Act (No. 15 of 1950) for the execution of agreements as to road construction between the Commission and local authorities, the latter requiring the approval of the minister in charge of local government before signing any agreement. Agreements made since 31st July 1947 are ratified and confirmed by the Act.

F.R.B.

Torrens system changes.

By the Transfer of Land Act Amendment Act,[24a] the principal Act of 1893 (which replaced the original enactment of 1874 and was subsequently amended on seventeen occasions) is not only consolidated but has undergone some important substantive amendment. The last available reprint of the Act had previously been that appearing in the statutes of Western Australia 1893-1895, Volume III. The Act of 1950 had as its primary object the revision of previous amendments to enable reprinting. Nevertheless, the substantive changes are the first major alterations since 1893 and to a large extent follow principles already accepted in other States of the Commonwealth and which have been here considered long overdue.[24b]

So far as reforms of the Act are concerned, the most important is that of section 134. The present amendment is designed to close the gap in the system which gave rise to the decision in *Clements v. Ellis*.[24c] Shortly, the facts in that case were that a purchaser of land became registered. At the time of registration the vendor had discharged a mortgage, and the purchaser had paid his money for a title free of encumbrances; but it turned out that the discharge of mortgage had been forged by an agent. The High Court being equally divided did not disturb the decision of the Supreme Court of Victoria which had held that the purchaser did not get a clear title. Section 134 now provides that, except in the case of fraud, no person proposing to take a transfer or other instrument from a registered proprietor shall be concerned to ascertain the circumstances under which any mortgage or other encumbrance is discharged or removed from the Register Book at any time prior to or simultaneously with the registration.

24a No. 17 of 1950—proclaimed 16th March 1951.

24b See P. R. Adams, *The Torrens System: Insecurity of Purchasers under the Transfer of Land Act 1893*, (1948) 1 University of Western Australia Annual Law Review 11.

24c (1934) 51 C.L.R. 217.

The wide class of tenants' interests not notified by caveat or otherwise and hitherto protected by section 68 is now much reduced. In future the only tenants' rights which will prevail as against subsequent registered interests without registration or caveat are those under leases for a term up to five years where the tenant is in actual possession. Terms in excess of five years, and options to purchase or agreements for renewal, will not be valid as against a subsequent registered interest, unless the lease or agreement is registered or a caveat lodged.

If the decision of the Supreme Court of Victoria in *National Trustees & Agency Co. of Australasia Ltd. v. Tindall*[24d] may have been followed in this State in the past, it will not be so in future. There it was held that the consent by a mortgagee to an unregistered lease was not binding on the mortgagee. Section 91 has now been amended by the addition of a proviso to the effect that the consent of a mortgagee will bind him whether the lease is registered or not.

The provisions of the Act relating to caveats are much improved. Whereas previously a caveat in respect of an interest that had ceased to exist could only be withdrawn by the caveator or by the giving of fourteen days' notice that the proprietor had applied for registration of a dealing, now, by a new section 141A, the Commissioner, of his own motion or on the application of any person interested, may give notice to the caveator, even though a dealing has not been presented. Section 138 is also amended so that, after the fourteen days' notice is given, the caveat lapses only in respect of the land sought to be dealt with; that, if the dealing is withdrawn after notice is given, the caveat does not lapse, and that a caveat may be renewed in respect of the same estate or interest, but only subject to the state of the Register Book at the time of renewal. Sections 129A, 129B, and 129C are new, and deal with the creation and discharge of restrictive covenants. Where it is not possible to obtain the agreement of all parties to a discharge, any interested person may apply to the Court which is empowered to make orders discharging or modifying the covenant. The effect of other amendments is mainly administrative and designed to secure the smooth running of the system.

It is now claimed for the Act that it probably represents one of the most up to date and safest systems of registration of title in the Commonwealth.

I.S.

[24d] [1933] V.L.R. 297, 369.

VII. MISCELLANEOUS

Other measures were passed in 1950

(1) to provide for open competition for "reclassified" appointments in the railways service, i.e., to deny to the holder for the time being any right to automatic promotion to a higher grade.[25]

(2) to authorise the sale, after notice, of unclaimed articles found on government tramways or ferries, and the immediate sale or destruction of perishable goods so found.[26]

(3) to allow banks to make periodical payments of stamp duty on their cheque forms instead of requiring every form to have an impressed stamp before being issued to a customer.[27]

(4) to repeal the regulations contained in the Schedule to the Inspection of Scaffolding Act 1924-1938 and to give the Governor a general power to issue regulations for the purpose of the Act. The powers that may by regulation be conferred on inspectors are specifically set out in a new subsection (3) (a) of section 27.[28]

(5) to enable local government authorities, with the consent of the ratepayers (or, in certain circumstances, of the Minister), to establish reserve funds for general or particular purposes and to pay into those funds (a) the proceeds of a special rate and (b) not more than five per cent. of their ordinary annual revenues. Until an authority is ready to spend the money on the purpose for which it was raised or set aside it may invest it in trustee securities or in other "liquid" securities approved by the Minister.[29]

(6) to protect the pension rights of persons now employed by the State but formerly employed by the Commonwealth or by New South Wales, Victoria, South Australia or Tasmania, by enabling them to become contributors to the State Superannuation Fund on certain conditions.[30]

(7) to vary the conditions of long-service leave in the Rural and Industries Bank, a State instrumentality.[31]

(8) to authorise a magistrate, when he has issued a certificate of citizenship to an aboriginal Australian native, in his discretion

25 Railways Classification Board Act Amendment Act, No. 4 of 1950.
26 Western Australian Government Tramways and Ferries Act Amendment Act, No. 5 of 1950.
27 Stamp Act Amendment Act, No. 11 of 1950.
28 Inspection of Scaffolding Act Amendment Act, No. 14 of 1950. The principal Act is published in Vol. 1 of the Reprinted Acts of the Parliament of Western Australia.
29 Reserve Funds (Local Authorities) Act, No. 36 of 1950.
30 Superannuation and Family Benefits Act Amendment Act, No. 39 of 1950.
31 Rural and Industries Bank Act Amendment Act, No. 40 of 1950.

to include therein the infant children of the grantee; but their derivative status is to cease on majority, i.e., each must then as an adult apply for a certificate and satisfy a magistrate of his eligibility.[32]

(9) to authorise State lotteries to be conducted for a further period of five years.[33]

(10) to authorise the closure of

(a) the State Quarry at Boya as from 31st August 1950;[34]

(b) the Upper Darling Range Railway as from 29th December 1950;[35] this railway operated in an outer suburban area now better served by road transport; and

(c) the Port Hedland-Marble Bar Railway on a date to be proclaimed.[36] This railway, 114 miles long, linked Marble Bar (reputed to be the hottest township in Western Australia) to the nearest port; it has no connection with the rest of the State system, being in the tropical north-west of the State approximately 21 degrees south of the equator—the nearest point on the main network, Meekatharra, being about 7 degrees further south.

(11) (a) to confer substantial powers upon the State Department of Agriculture to supervise and compel the destruction as noxious weeds of such plants as may from time to time be specified by proclamation;[37]

(b) to provide for the protection and survival of the natural fauna of the State, fauna being defined as "the vertebrate fauna which is wild by nature and is ordinarily to be found in a condition of natural liberty in the whole or a part or parts of the State . . . ." A chief Warden of Fauna is to be appointed and is to be chairman of the Fauna Protection Advisory Committee of Western Australia consisting of the Chief Inspector of Vermin, the Conservator of Forests, and three other persons appointed by the Governor. The Act declares all fauna to be wholly protected throughout the State at all times but empowers the Governor by proclamation to declare "a close season or an open season in respect

32 Natives (Citizenship Rights) Act Amendment Act, No. 44 of 1950. The Act which for the first time enabled Australian natives to obtain rights of citizenship is No. 23 of 1944.
33 Lotteries (Control) Act Continuance Act, No. 51 of 1950.
34 State Trading Concerns Act Amendment Act, No. 10 of 1950.
35 Railway (Upper Darling Range) Discontinuance Act, No. 66 of 1950.
36 Railway (Port Hedland-Marble Bar) Discontinuance Act, No. 47 of 1950. The last train ran on this line on 27th October 1951.
37 Noxious Weeds Act, No. 60 of 1950.

of any of the fauna or the maximum number of the fauna which one person may take during any specified period of time;"[38]

(c) to establish an Agriculture Protection Board of nine members consisting of the Chief Inspector appointed under the Vermin Act as chairman, the officer in charge of "noxious weeds control", the government entomologist, the Chief Warden of Fauna, a State Treasury official, one representative of each of the pastoral and agricultural industries, and two representatives of local authorities;[39]

(d) to widen the scope of the Vermin Act 1918-1946.[40] Each Act provides for its administration and enforcement in conjunction with the others; with the amendments to the Bush Fires Act 1937-1949 made by No. 59 of 1950, an effort is being made to co-ordinate the work of preserving the countryside, its resources and its fauna from wanton or careless damage or destruction.

F.R.B.

[38] Fauna Protection Act, No. 77 of 1950.
[39] Agriculture Protection Act, No. 76 of 1950.
[40] Vermin Act Amendment Act, No. 61 of 1950.