REVIEW OF LEGISLATION.

I. Western Australia.

Introductory.

There were two sessions, the second and third, of the Twenty-first Parliament during 1954. The second session opened on 6th April and closed on 15th. It was called especially to consider the control of rents and tenancies, which the government thought an urgent matter. Control was scheduled virtually to disappear on 30th April[1]; the Rents and Tenancies Emergency Provisions Act Amendment Bill sought to continue substantial control beyond that date. But Assembly and Council proved this time to be quite stubborn and, a conference of managers having failed, the Houses adjourned having added nothing to the statute book and amidst government forebodings that rents would soar and that there would be an orgy of evictions. The only other Bill introduced during this session was the Industrial Arbitration Act Amendment Bill, but this was defeated in the Council. The Bill sought to make it obligatory on the Arbitration Court to make quarterly adjustments of the basic wage determined by the index figures supplied by the Government Statistician. The making of these adjustments is in the discretion of the Arbitration Court, and, inspired by the example of the Commonwealth Court, the State Court in November, 1953, had discontinued making adjustments. The Court sought in this way to help to avoid that dread manifestation of the economic weather which we have come to know as the "inflationary spiral." Just what is the connection between a rise in wages and inflation of the currency seems to be as vaguely understood as the connection between atom bombs and the unusual rain we experienced last February.

The third session opened on 17th June and closed on 9th December, 1954. In this period 75 public Acts became law. 21 public Bills were introduced but were not passed. Three Bills were defeated in the Council and one was dropped after a conference of managers had been unable to reach agreement. Three Bills—the Constitution Acts Amendment Bill (No. 1), the Electoral Districts and Provinces Adjustment Bill and the Electoral Act Amendment Bill—were lost in the Assembly because of the lack of a constitutional majority. The Constitution Acts Amendment Bill (No. 1) sought to remove provisions as to qualifications of electors for the Legislative Council from

[1] See 3 U. WESTERN AUST. ANN. L. REV. 135-136.

the Constitution Acts Amendment Act and to insert new provisions in the Electoral Act which would make the franchise for elections for the Council the same as for elections for the Assembly. Three Bills were introduced but not proceeded with and eleven Bills lapsed on prorogation.

I. CONSTITUTIONAL.

Office of President of the Legislative Council.

By the Constitution Acts Amendments Act (No. 2) (No. 32 of 1954)[2] the principal Act is amended so as to provide that where the office of President of the Legislative Council becomes vacant the Chairman of Committees is to hold the office and perform the duties of President pending the next meeting of the Council when a new President must be elected. The Chairman of Committees is to hold the office and perform the duties of President during any absence of the President on leave granted him by the Council.

Parliamentary superannuation.

The Parliamentary Superannuation Act Amendment Act (No. 69 of 1954)[3] raises rates of pension by fifty per cent. The amount of contribution payable by members into the Superannuation Fund and the amount of contribution payable by the Consolidated Revenue Fund are raised by the same percentage.

Reprinting of regulations.

While progress continues in the reprinting of Acts some approach is being made to the problem of making regulations rules and by-laws more accessible. They are now published separately in the Government Gazette in a form that admits of binding into a convenient volume. The Reprinting of Regulations Act (No. 8 of 1954) will stimulate consolidation and reprinting and will make unnecessary the Departmental reprints, often poorly prepared, which have until now sought to meet Bentham's demand that the law be "cognoscible." Regulations reprinted pursuant to the Act do not require to be laid before the Houses and judicial notice of the reprinted regulations is to be taken. Some regulations have already been reprinted under the Act and others are in hand. As with the statutes, how much can be done is

2 It has been noted above that the Constitution Acts Amendment Bill (No. 1) was defeated in the Assembly. Hence the curiosity that an Act described as "(No. 2)" appears on the statute book though "(No. 1)" is not to be found. See the comment *supra* at 129.

3 For the history of the principal Act, see 1 U. WESTERN AUST. ANN. L. REV. 304, 2 U. WESTERN AUST. ANN. L. REV. 118, 409, 3 U. WESTERN AUST. ANN. L. REV. 128.

controlled by the limited capacity of the Government Printing Office and the staff available in the Government Departments concerned. Before he certifies that the copy he sends to the Government Printer is correct the Minister must have received certificates of correctness from an officer of the Crown Law Department and an officer of the Government Department administering the regulations.

II. ADMINISTRATION OF JUSTICE.

Supreme Court sittings and procedure.

The Supreme Court Act Amendment Act (No. 21 of 1954) gives the judges complete control over the number, times and places of sittings of the Supreme Court in circuit districts. Sittings are to be held in each year on the days appointed by a rule of court, and on such other days during any year as the Chief Justice or, in his absence, the senior judge appoints. Formerly all sittings had to be appointed by rule of court and, provided there was business to be done, a sitting of the Supreme Court had to be held in every circuit district once at least in every three months.

Provision is now made for the exercise of the Master's powers by a duly appointed acting or Deputy Master and of the Registrar's powers by a duly appointed acting or Deputy Registrar. Deputy Registrar is a new office. There has been a Deputy Master for some time but his powers were formerly derived only from the Lunacy Act and the Administration Act.

Some doubts as to the procedure on the sale of land under a writ of *fieri facias* have been cleared up. The land must, in the first instance, be offered for sale by public auction. This has always been the procedure, though the Act was not clear. Where the land remains unsold at the auction it may now, by leave of a judge, be sold by public tender. Formerly there was some doubt whether a judge had power to order sale by public tender.

Procedure by way of writ of sequestration to enforce an order for payment of a sum of money into Court has been made obsolete by making a writ of *fieri facias* available. Another amendment makes clear which Commonwealth consular officers overseas are empowered to take affidavits. The amendment was made at the request of and in terms suggested by the Commonwealth.

Local Court jurisdiction and appeals to the Supreme Court.

The Local Courts Act Amendment Act (No. 26 of 1954) substantially increases the civil jurisdiction of magistrates. Since 1930 the jurisdiction of a Local Court had been confined to actions in

which the amount claimed did not exceed £250, unless the parties formally consented to trial in a Local Court.[4] The jurisdiction of a Local Court now extends to actions in which the amount claimed does not exceed £500. The provision for consent jurisdiction beyond this amount remains. The amending Act also abolishes the procedure by which, with certain exceptions, trial in a Local Court of an action in which the amount or value of the claim exceeded £100 had to be before a judge unless the parties formally consented to trial by a magistrate. When moving the second reading the Minister for Justice gave as reasons for the increase in jurisdiction the falling value of money and the fact that magistrates had nowadays higher qualifications. He added that anyway the same principles of law and the same difficulties in ascertaining facts are usually involved in a claim for £250 as in a claim for £500.[5] But why stop at £500? It is far from obvious why the quality of protection which a right merits should be determined by the money value which is put upon it.

There are a number of minor amendments adding to the list of persons who may witness a confession of or agreement as to debt and dispensing with the need for a witness in certain circumstances, changing the procedure on discovery so as to make it accord with the practice of the Supreme Court, redefining the circumstances in which a plaintiff who has brought an action in the Supreme Court which could have been brought in the Local Court will recover Supreme Court costs, and increasing from twenty to fifty pounds the amount which must be in issue to give an appeal as of right to the Supreme Court. One section[6] purports to amend section 99 when, as the marginal note indicates, section 91 is intended.

Powers of the coroner and admissibility of depositions signed by him.

The Criminal Code Amendment Act 1945 inserted section 291A in the Criminal Code making it an offence punishable by five years imprisonment to cause death to another by failure to use reasonable care and take reasonable precautions in the use and management of a motor vehicle. The High Court in *Callaghan v. The Queen*[7] placed an interpretation on sec. 291A which makes the offence thereby

4 Changes in jurisdiction in actions in the Local Court for the recovery of land made by the Local Courts Act Amendment Act 1953 are noted *supra* at 130.

5 (1954) 139 PARLIAMENTARY DEBATES (Western Australia) 1593 (hereafter referred to as PARL. DEB.).

6 Sec. 19.

7 (1952) 87 Commonwealth L.R. 115; see the comment *supra* at 284, footnote 296.

created no more than a special case of the offence of manslaughter. But juries are prone, perhaps properly, to allow their idea of the punishment merited to govern their verdict and, since the punishment under sec. 291A is less than for manslaughter, are more likely to convict if the indictment is under that section. The Coroners Act Amendment Act (No. 9 of 1954) empowers the coroner to make a finding that the deceased came by his death as a result of an offence under sec. 291A and to commit for trial. Previously he could commit for trial only for wilful murder, murder, and manslaughter. The same Act clears up a doubt as to the admissibility at the trial of depositions taken by the coroner. The depositions may be read as evidence on the trial in the same circumstances as under the Justices Act 1902-1954, section 109, i.e., where the person who made the deposition is dead or out of the State or is so ill as not to be able to travel. But it should be noted that under the Justices Act the accused must have been present and might have been represented by counsel and have cross-examined the witness. The accused will normally have been present at the hearing before the coroner but this is not necessarily so, and representation by counsel is always by leave of the coroner.

Limitation of actions against the Crown and public authorities.

The Crown Suits Act Amendment Act (No. 22 of 1954) and the Limitation Act Amendment Act (No. 73 of 1954) represent some advance in liberalising our law with regard to time hazards in actions by the citizen against the State. The model for the advance is the New Zealand Limitation Act, 1950. The United Kingdom has meanwhile forged well ahead of us with the Law Reform (Limitation of Actions) Act 1954, which, generally, imposes the same time limits for actions against the Crown and public authorities as for actions against a citizen.

By the Crown Suits Act Amendment Act a party proposing to take action against the Crown must give notice in writing to the Crown Solicitor as soon as practicable or within three months (whichever of such periods is the longer) after the cause of action accrues, and the action must be commenced within one year from the date when the cause of action accrued. The Attorney-General is empowered to consent to the bringing of an action against the Crown at any time before the expiration of six years from the date when the cause of action accrued. In addition there is power in the Court to grant leave to bring an action at any time before the expiration of the period of six years where it considers that the delay was occasioned by mistake or by other reasonable cause or that the Crown is not prejudiced.

The Limitation Act Amendment Act makes, with one important difference, similar provisions with regard to actions against public authorities. The difference is that notice within three months, alternative to notice as soon as practicable, is not available. This alternative in the Crown Suits Act Amendment Act resulted from an amendment moved by Mr. C. W. M. Court.[8] But Mr. Court was apparently not so vigilant when the Limitation Act Amendment Bill was before the Assembly. The varying provisions in more than fifty Acts imposing time limits on actions against public authorities have all been repealed. Legal practitioners, at any rate, will be saved many headaches. During the debate some members spoke up for the United Kingdom Act of 1954. Mr. H. K. Watson in the Council put forward two amendments[9] which would have extended the period for bringing an action. The second amendment was carried but was not insisted upon after the Assembly had disagreed.[10] In the Assembly the Premier referred to the strong advice of the Crown Law Department, asserted that one year was a reasonable time, and exhorted the Assembly to do its duty by the public authorities.[11]

Criminal law.

The Criminal Code Act Amendment Act (No. 20 of 1954) makes a number of amendments to the Criminal Code. Formerly the Code provided that a person who fraudulently takes or converts anything capable of being stolen steals that thing. It was arguable that an agent who fraudulently converted a sum standing to his credit in a trust account at a bank was not guilty of stealing because the conversion was of something which was not capable of being stolen. The Code now provides that a person who fraudulently takes anything capable of being stolen or fraudulently converts any property steals that thing or that property; and "property" is defined so as to include "any description of real and personal property, money, debts, bank credits, and legacies and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods and also includes not only such property as has been originally in the possession or in the control of any person but also any property in which or for which it has been converted or exchanged and anything acquired by the conversion or exchange, whether immediately or otherwise."

8 (1954) 139 PARL. DEB. 1270.
9 (1954) 140 PARL. DEB. 3081-3082.
10 (1954) 140 PARL. DEB. 3732.
11 (1954) 140 PARL. DEB. 3492.

The definition of the crime of "receiving" has been widened. A person who receives property which he knows to be the proceeds, by conversion or exchange, of stolen property is now guilty of receiving.

Formerly the offence of making a false statement for the purpose of entry in a Register of Births, Deaths and Marriages was punishable only on indictment and carried a maximum punishment of two years' imprisonment and a fine of £200. The offence may now be dealt with summarily provided the justices consider that the offender may be adequately punished upon summary conviction and the consent of the accused person has been given. On summary conviction the maximum punishment is a fine of £100.

Two further exceptions to the basic principle of "one charge to one indictment" have been created. When several distinct indictable offences form part of a series of offences of the same or a similar character, such offences may now be joined in the one indictment. The existing safeguard still remains so that where the joinder appears to the Court to be likely to prejudice the accused, the Court may require the prosecutor to elect or may direct separate trials upon each or any of the charges. Specific authority is given to the joinder to a charge of breaking and entering and stealing of the charge of receiving the property stolen or any part thereof knowing it to have been stolen. The accused person may be convicted either of the charge of breaking and entering and stealing or of the charge of receiving. According to Archbold this is already the practice in England but difficulty in this State was created by a decision of the Court of Criminal Appeal in 1905[12] forbidding such joinder.

The grounds on which the Crown may appeal to the Court of Criminal Appeal have been extended so as to include a case where the sentence which has in fact been passed could not lawfully be passed on the convicted person for the offence for which he was convicted. The extension would appear to be intended to meet a case where a wrong sentence has been imposed but the convicted person does not appeal.

III. STATUS.

Access to children by a father.

The Married Women's Protection Act Amendment Act (No. 50 of 1954) gives power to a court of summary jurisdiction, where an order is made granting the legal custody of her children to a married

12 R. v. Young, (1905) 7 West. Aust. L.R. 256.

the children at such times and under such conditions as the court woman, to direct the married woman to permit her husband access to thinks fit. Prior to this amendment an application by a father for access had to be made to a judge under the Matrimonial Causes Code.

Matrimonial Causes.

The Matrimonial Causes and Personal Status Code Amendment Act (No. 7 of 1954) gives the Court a discretion to dissolve a marriage on the grounds of incapacity to consummate where the action is commenced more than three years after the date of the marriage. Formerly delay of more than three years was an absolute bar to relief. In moving the second reading the Minister for Justice said that the form of the amendment had been discussed with the judges, and that the Chief Justice had suggested that rather than extend the period in which the plaintiff was entitled to relief as of right, it might be preferable to give the Court a discretion to grant relief after three years.[13] The apparent willingness of the Chief Justice to assume a discretion with attendant responsibility for the formulation of policy seems to be in conflict with the view which, according to the Minister, the Chief Justice expressed in supporting the other amendment to the Code made by the amending Act. Sec. 63 of the Code provided that every five years the Chief Justice should furnish the Attorney-General with a report on the working of the Code and the rules drawing attention to any anomalies in the law and to any amendments that might be advisable. The Attorney-General was then to introduce a Bill to give effect to any recommendations, and if the Bill was passed he should cause a full reprint of the Code to be prepared. This section has now been repealed.[14] The Minister drew attention to the inconvenience of insisting on a reprint of the Code even though only a minor amendment had been passed, but gave as the first objection to sec. 63 the view of the Chief Justice that judges should be reluctant to propose substantive changes in the law, that they should confine their recommendations for legislative amendments to procedural matters, though they might, without making any specific recommendation, draw the attention of the Government to any apparent anomalies in the law.[15] The conception of the judicial process inherent in these views—"it is for us to apply the law and not to give effect to policies"—is hardly consistent with the readiness to accept the policy-making function which judicial discretion involves.

13 (1954) 138 PARL. DEB. 575.

14 Thus, utterly without offspring, died the provision for which Enid Russell (1 U. WESTERN AUST. ANN. L. REV. 234-5) had high hopes.

15 (1954) 138 PARL. DEB. 576.

Native administration.

The Native Administration Act Amendment Act (No. 60 of 1954) amends the principal Act so as to exclude from the definition of "Native" persons descended from the original inhabitants of Australia who have completed specified service in the Australian Naval, Military or Air Forces. Such persons are now outside the protection and restrictive provisions of the Native Administration Act.

IV. PUBLIC HEALTH.

Manufacture of therapeutic substances.

The Health Act Amendment Act (No. 2) (No. 34 of 1954) is complementary to Commonwealth legislation—the Therapeutic Substances Act 1953[16]—providing for the setting up of standards for therapeutic substances. Following conferences between Commonwealth and State health authorities it was agreed that the States should enact legislation to license and control the manufacture of therapeutic substances. The Commonwealth Pharmaceutical Benefits Scheme had apparently spawned a number of "backyard factories" where drugs were being manufactured with little regard for standards.[17]

The Act, which is to come into force on a date to be fixed by proclamation,[18] provides that prescribed therapeutic substances may not be manufactured for sale unless they are manufactured on premises which are licensed by the Commissioner for Public Health.

Dangerous and substandard food and drugs.

In 1953 when it was discovered that some consignments of Papuan coconut were infected with typhoid organisms action was taken under the Health Act to impound the coconut and compensation was paid to the importer or retailer. Legislation was thereafter introduced giving special powers to the Commissioner for Public Health to seize and destroy any Papuan coconut which in his opinion was contaminated, and providing that no compensation should be paid.[19] The weaknesses in the provisions of the Health Act revealed by the coconut episode have now been cured by the Health Act Amendment Act (No. 45 of 1954). A new section inserted in the principal Act provides that where the Governor receives a certificate in writing from the Commissioner that the Commissioner is of opinion

16 Reviewed *supra* at 162.

17 (1954) 139 PARL. DEB. 2116.

18 At the time of writing no proclamation had been made.

19 See tne comment *supra* at 134.

that any quantity of food or drugs is dangerous, and the Governor considers that there are reasonable grounds for the opinion, the Governor may declare that quantity of food or drugs to be dangerous. The Commissioner is then vested with wide powers for the protection of public health, including power to destroy or dispose of the quantity of food or drugs as he thinks fit. Neither the Crown nor the Commissioner may be required to pay any compensation. Who shall bear the loss will be determined by private law governing the relations between manufacturer, distributor, and retailer; the Minister for Health, in moving the second reading, insisted that there was no reason why the loss should be borne by the community.[20]

Another amendment to the principal Act makes it an offence to expose for sale, or deposit in any place for the purpose of sale, any food or drug which is not of the standard prescribed by the Act. Formerly there was no offence unless a sale had actually taken place.

Medical practitioners.

The Pharmacy and Poisons Act Amendment Act (No. 56 of 1954) debars legally qualified medical practitioners from carrying on business as pharmaceutical chemists. The original Pharmacy and Poisons Act 1894 included medical practitioners among those who might lawfully carry on such a business. At that time it was common practice for doctors, especially in country areas, to supply drugs to their patients, and some doctors continue to do so. It is not proposed to forbid this practice. The amending Act seeks only to prevent a doctor from dealing in drugs with the public generally. The bill was introduced in the Council by Hon. R. J. Boylen who explained that since 1894 only one doctor, a man whose first profession was that of a pharmaceutical chemist, had carried on business as a pharmaceutical chemist. He had now ceased to do so. The Bill had been prompted by a report that a doctor, who had never been registered as a pharmaceutical chemist, proposed to open a pharmacy and conduct it in addition to his medical practice. Mr. Boylen gave as reasons for the Bill the inadequate training of medical practitioners in pharmacy, the pressure on the patient to patronise the doctor's pharmacy, the temptation to the doctor to prescribe unnecessarily, the lack of a check on the doctor's prescription where prescriber and dispenser are the same person, and the danger of attempts to defraud the Commonwealth in connection with pharmaceutical benefits.[21]

20 (1954) 138 PARL. DEB. 1011.
21 (1954) 140 PARL. DEB. 2533-2534.

Control of radioactive substances.

Recent developments in atomic energy have led to the manufacture of a wide range of irradiating apparatus and of radioactive substances. An awareness of the dangers to life and health which may result has inspired the Radioactive Substances Act (No. 65 of 1954). The Act follows substantially a model approved by the National Health and Medical Research Council.

The Act, which is to come into force on a date to be fixed by proclamation,[22] prohibits the possession or use of any irradiating apparatus by any person who is not licensed under the Act unless he is exempt from obtaining a licence. Medical practitioners and dentists, and persons acting in accordance with their directions, are exempt where they possess or use irradiating apparatus for the sole purpose of taking X-ray photographs. The use of certain irradiating apparatus in medical, surgical or dental treatment of human beings is confined to licensed medical practitioners and dentists and those acting in accordance with their directions. Thus, for example, the use of X-rays by beauty specialists to remove hair will no longer be lawful.

The Act prohibits possession, sale or use of any radioactive substance by a person who is not licensed under the Act. The use of radioactive substances in treatment of human beings is confined to licensed medical practitioners and dentists and persons acting under their supervision or instructions. Provision is made for the appointment of inspectors to police the Act.

V. CONTROL OF PRICES AND COMMODITIES.

Rents and tenancies.

The convening of Parliament on 17th June was some six weeks earlier than usual. The Government proposed to make another attempt, against the background of experience since 30th April, to convince Parliament of the need for substantial control of rents and tenancies. In moving, on 23rd June, the second reading of a bill designed to restore the measure of control which obtained prior to 30th April, the Minister for Housing sought, amidst many interjections, to convince the Assembly that the grim forebodings expressed when the Houses adjourned in April had been borne out in the events since 30th April. He quoted figures showing a substantial increase in the number of applications for rental homes by persons under notice to quit and in the number of eviction proceedings. He referred to investi-

22 At the time of writing no proclamation had been made.

gations made by the rent inspector indicating that the average increase in rentals of flats had been 66⅔ per cent. and of houses 113 per cent.[23] Opposition members, though somewhat chastened by the results of the Legislative Council elections,[24] questioned inferences drawn from the Minister's figures, and asserted that all would have been well if the Government had shown a more conciliatory attitude in April.[25] The "urgent" consideration of the Bill by the Houses during the next two months makes dreary reading. Amendments and messages punctuate Hansard; the Government this time would not be drawn into a conference of managers. The Act which finally emerged is a pale reflection of the Government's intentions.

The Act has no application to leases entered into after 1st August, 1954, for a period of three years or more. No attempt is made to undo evictions subsequent to 30th April. But the landlord who had evicted in order to let to a tenant who would pay a higher rent could not charge a higher rent after 1st August 1954 and before 31st August 1955, unless the rent had been determined by an inspector or the Court. In other cases the rent is that agreed upon. The tenant may apply to a Fair Rents Court or to an inspector for the amount of the rent of the premises to be determined. In this event, provided the tenant was not already under notice to quit, the landlord may not give notice to quit until the expiration of three months from the date of the application for a determination. And if the amount of the rent determined by the Court is less than 80 per cent. of the amount of the rent being charged or requested by the landlord, the landlord may not give notice to quit until the expiration of twelve months from the date of the determination. The minimum period of notice to quit is 28 days.

Marketing of dried fruits.

The Dried Fruits Act Amendment Act (No. 70 of 1954) requires annual registration of growers and dealers and generally brings the principal Act more into line with similar Acts in New South Wales, Victoria, and South Australia.

Milk board.

The Milk Act Amendment Act (No. 46 of 1954) provides for representation of producers and consumers on the Milk Board. The producers' representative will normally be selected from names submitted to the Minister by the Farmers' Union.

23 (1954) 138 PARL. DEB. 48-57.

24 See the comment *supra* at 126, note 1.

25 (1954) 138 PARL. DEB. 105-138, 159-206.

Wheat industry stabilization.

The Wheat Industry Stabilization Act (No. 52 of 1954) is complementary to the Commonwealth Wheat Industry Stabilization Act, 1954.[26]

VI. GENERAL.

Administration on intestacy.

The Administration Act Amendment Act (No. 30 of 1954) makes a number of amendments in the Administration Act 1903-1953. A qualification has been introduced into the general provision which forbids lease (for a longer term than three years), sale or mortgage of land in respect of which administration has been granted without the written consent of all persons beneficially interested, or the order of the Court. Where the value of the real estate is not more than five hundred pounds or the gross value of the estate is less than two thousand pounds the land may now be leased for longer than three years, sold or mortgaged, without consent or order of Court, unless the persons resident within the jurisdiction entitled in distribution, or a majority in value of them, object. The amendment will save the expense of an application to the Court in some cases where written consents cannot be obtained, but the value limits are so low that very few estates will come within them.

The administration bond, where required by the Act, must now cover both administration and distribution. This will overcome the effect of decisions which have held that administration ceases when the administrator becomes a trustee.

The Court's control over the administrator has been increased. On the report of the Master, the Court may of its own motion revoke the administration or order a new or additional bond. The amendment is intended to meet the situation where the value of the estate as finally assessed for duty is higher than the value sworn to by the administrator, and the administrator is reluctant to provide additional security.

The power of the Court to make and prescribe rules, forms, and fees is clarified and enlarged. The Court may by rule prescribe the jurisdiction of the Master provided that his power to grant probate or administration, and to make orders at the instance of the Public Trustee, must be limited to estates the gross value of which as sworn for duty does not exceed five thousand pounds.

[26] Reviewed *infra*, at 367-368.

Betting.

By the Betting Control Act (No. 63 of 1954) off-the-course bookmaking has been brought in from the streets and the lanes and is now housed, with the law's approval, in newly decorated and sometimes newly erected shops which, in most instances, nestle in filial dependence near to our hotels. Betting law and its enforcement in this State have now for some years provided spice for the teacher of jurisprudence and shafts for those who would mock our institutions of government. Before the Act credit betting by telephone was disturbed neither by the words of the law nor by the law's executors. Betting under the umbrellas on the race courses was forbidden by words of the law spoken in one place, and tolerated by words spoken in another which imposed a tax on the activity, and was carried on unhindered by any interference from the law's executors. Betting in barbers' shops and the like was forbidden by the words of the law and hampered in varying degree by the law's executors. Betting in the streets, one would have thought, was privileged by the words of the law, but was hampered by marvellous devices conceived by the law's executors. It must all have been hard for the uninitiated to understand. The punter seemed always to be immune. The bookmaker was immune on the race course. He was immune off the course provided he took bets by telephone and did not settle until Monday. He ran substantial risk if he took bets at a shop. On the streets the risk was much less. The penalty was less, and provided his relations with the police were amicable, or his "nits"[26a] vigilant and his "stooge" handy, he did not have to suffer the penalty directly. He would pay the stooge's fine or give the stooge £20 if he went to jail. And, strangest of all, the penalty was not imposed for betting, but for "obstructing the traffic."

The Act provides for the constitution of the Betting Control Board of Western Australia. The Board consists of one member representing the Western Australian Turf Club, one member representing the Western Australian Trotting Association, and three other members, one of them to be Chairman, chosen by the Governor. The Board may, in its discretion, grant licences to carry on the business of bookmaking. The holder of a licence may carry on the business upon a race course if he holds a permit to do so from the committee or other authority controlling the course or at registered premises specified in the licence. A licence may not be granted to a person who holds or is employed in any capacity by one who holds a licence for the sale of

26a I.e., look-out men, posted at strategic points to give warnings of the approach of a police officer. See PARTRIDGE, A DICTIONARY OF SLANG 450, and BAKER, THE AUSTRALIAN LANGUAGE 141.

liquor, to a person under the age of 21, to a body corporate or to an undischarged bankrupt.

Bookmakers are required to pay tax at the rate of $1\frac{1}{4}$ per cent. (imposed by the Bookmakers Betting Tax Act (No. 62 of 1954)) on turnover. 20 per cent. of the proceeds of the tax is distributed among racing clubs—10 per cent. to clubs registered with the Western Australian Turf Club, and 10 per cent. to bodies registered with the Western Australian Trotting Association. A racing club receiving a distribution must apply one-half of the amount towards increasing stakes.

Betting with a person apparently under the age of twenty-one, or with a person apparently under the influence of intoxicating liquor, is forbidden, and such persons must not be permitted to enter registered premises. Other restrictions are imposed on the conduct of registered premises including prohibitions on the playing of games or the use of musical instruments. A person under the age of twenty-one commits an offence if he enters or remains on registered premises or bets with a bookmaker or requests any other person to place a bet for him.

A limited *cura prodigi* may be ordered by any two justices of the peace where it is shown to their satisfaction that any person by excessive betting is likely to impoverish himself. No bookmaker after notice of prohibition may bet with such person.

Those citizens who have felt some sensation of guilt when placing a bet with an off-the-course operator or, perhaps being very academically minded, when placing a bet on a race course, will be relieved to read the bold provision which proclaims that "notwithstanding any law to the contrary, persons may, in accordance with this Act, lawfully bet by way of wagering or gaming on races on a race course during the holding at the race course of a race meeting; or at or in registered premises." But they should now be careful that they bet at a place registered under the Act or at a licensed race or trotting meeting and that their bets are in accordance with the Act; otherwise they may incur a penalty of twenty-five pounds for the first offence and one hundred pounds for any subsequent offence. We are told that the law's executors, armed with these new words and no longer embarrassed by the solemn mockery of charges of "obstructing the traffic", will cleanse us of the evil of street betting.

The bill became law only after lengthy debate. The resumed debate on the second reading in the Assembly on 11th November began at 2.56 p.m. and continued, despite repeated motions to adjourn,

until 5.19 a.m. the following morning when, after getting himself into a fine procedural pickle, the Speaker declared the motion for the second reading carried.[27] The Government brought forward the Bill as a non-party measure though it did appear that the Labour party presented a pretty united front in supporting the Bill. The debate in both Houses reflects a sincere endeavour by members to grapple with value questions which probe to the very core of philosophy of democracy. Judgments shaded from one extreme which insisted, with support from some religious bodies, that it was evil to bet and that Parliament should unequivocally outlaw betting and insist on strong enforcement action, to the other extreme which insisted that there cannot be anything wrong with betting because so many people bet and indeed horse-racing is the "Sport of Kings" and, apparently, a king can do no wrong. Settled judgment came with difficulty to some members, to others it did not come at all. Thoughts such as these kept judgment hovering: It may be that there is evil in a system which tolerates an almost unlimited discretion to the police in the enforcement of the law—there is a very real risk of corruption—and there is something unsavoury about skulking in laneways and employing "nits" and "stooges." But are not the evil and the unsavoury things to be cured by strong measures in word and deed to outlaw betting? It may be that betting in moderation is unobjectionable and a desire to bet seems to be innate in the Australian character. Perhaps some betting might be tolerated. But will not the legitimation of the betting shops stimulate betting? How effective, if at all, will be the *cura prodigi* in protecting poorer families against want? It may be that the majority of people want facilities for betting. But is this the only guide to value judgment in a democracy? The push and pull of these considerations at times left members forlorn and unable to say where they stood. Near the end of his speech one member said: "I will be perfectly satisfied if this Government will have a referendum of the people. I am always willing to bow to the majority. I may be in the minority. If the Government holds a referendum on the matter, and then brings down a Bill, I will wholeheartedly support it—or rather, if I do not support it, I will not oppose it."[28]

In preparing the Bill the Government was able to draw on the experience of South Australia, Tasmania, and New Zealand where off-the-course betting has been legitimated and controlled for some time. South Australia was a poor advertisement for the Government's

27 (1954) 140 PARL. DEB. 2820-2910.

28 Hon. Sir Charles Latham in the Legislative Council, (1954) 140 PARL. DEB. 3400.

Bill. While a considerable number of betting shops were licensed before the war, a change in the South Australian Act in 1945 and, apparently, a change in policy followed by the licensing authority, have had the result that now only six shops are licensed, all of them in Port Pirie.[29] Members opposing the bill made much of the apparent failure of the system of licensed shops in South Australia.[30] Members supporting the Bill directed attention to Tasmanian experience.[31] Tasmania continues full operation of a system similar to that in the Bill, though a report recently presented to Parliament contemplates a change to the New Zealand system. New Zealand has nation-wide totalisators fed by an actively cooperative telegraph system. In introducing the Bill the Minister for Police said that totalisators could not be successfully operated in Western Australia because of the immense distances and because telegraphic communication, being a federal function, could not be commanded by the State Government.[32] However, the Act directs the Board to enquire whether a system of betting by totalisator is possible and advisable and report to the Minister. And the Act professes to be experimental. Unless Parliament extends its life, it will expire on 31st December, 1957.

Lotteries.

The Lotteries (Control) Act (No. 18 of 1954) repeals the Lotteries (Control) Act 1932-1951 and re-enacts it with amendments. Most of the amendments are directed to improving the form of the Act. Separate parts of the Act are now devoted to lotteries conducted by the Lotteries Commission and lotteries conducted by a person other than the Commission.

Some amendments have been made to the substance of the law. After 21 years of professed temporality the Lotteries Commission has now achieved a continuing legislative authority. The old Act required periodical renewal; the new Act will stand until repealed. Members of the staff of the Commission will now be eligible to participate in the Government superannuation scheme. The charitable purposes to which money may be applied by the Commission include "any object which in the opinion of the Minister may be fairly classed as charitable." Formerly money applied to objects whose classification depended on the Minister's opinion might not exceed £250 from any

29 (1954) 140 PARL. DEB. 2822.

30 See, for example, the speech of Hon. A.F. Watts, (1954) 140 PARL. DEB. 2820-2831.

31 See, for example, the Minister's speech, (1954) 140 PARL. DEB. 2707-2711.

32 (1954) 140 PARL. DEB. 2708-2709.

one lottery. This restriction has now been removed. The power to grant permits to persons other than the Commission to conduct lotteries was formerly vested in the Minister on the recommendation of the Commission; the letter of the law was satisfied by weekly submission of a list for the Minister to sign. Power to grant permits is now vested in the Commission.

Debate on the Bill left the value problems almost undisturbed. Perhaps members were weary of the conflict of judgments which had marked debates on the original Act, and were saving themselves for the starker problems stirred up by the Betting Control Bill. Anyway it would be hard not to be convinced that the end justifies the means. In moving the second reading in the Assembly the Minister reported[33] that since the inception of the Commission approximately four millions had been applied to various charitable purposes. The Commission has undertaken to repay to the Government the whole of the capital expenditure of the new Royal Perth Hospital, and to meet the total cost of the Mt. Henry Home for Women. Our experience with the Lotteries Commission points strongly to State-owned totalisators as the most desirable means of controlling betting on horse-racing, and may provoke a solution to the mechanical difficulties which for the time being are said to lie in the way of adopting that means of control.

Licensing of inquiry agents.

Judges and members of the legal profession have for some time been unhappy about evidence given, especially in matrimonial causes, by self-styled inquiry agents. The immediate source of the Inquiry Agents Licensing Act (No. 11 of 1954) was the report of a select committee of the Legislative Council. The committee was of opinion that control was urgently necessary.

The Act provides for the licensing of inquiry agents and makes it an offence for any person, for reward, to obtain evidence or undertake to obtain evidence, for the purposes of proceedings under the Matrimonal Causes and Personal Status Code, or the Married Women's Protection Act, unless he holds a valid licence. The offence may be committed whether the person acts as a principal or as an employee. Members of the Police Force and public service while carrying out their duties, legal practitioners while practising their profession, and medical practitioners while carrying out medical examinations for the purpose of obtaining evidence, are exempt from the provisions of the Act. A licence may be granted by a Court of Petty Sessions to a person over twenty-one who, "in the opinion of

[33] (1954) 139 PARL. DEB. 1207-1209.

the Court, is of good character and in all respects a fit and proper person to be the holder of a license."[33a] A licence must be renewed annually. Notice of application for a licence or renewal of a licence must be given to the Commissioner of Police who may object to the grant or renewal. Before a licence or renewal of a licence is issued the applicant must deposit a fidelity bond in the sum of £500.

Third-party insurance.

The provisions of the Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 36 of 1954) have been considered in the article entitled ***Death and Injury on the Roads.***[34]

Native welfare.

The Native Welfare Act (No. 64 of 1954) makes a number of amendments to the principal Act. They involve some advance towards an eventual equality in law of native and white. Assimilation of natives into the economy and culture of the white community proceeds slowly. Removal of restrictions designed, though perhaps not always used, for the protection of natives is a measure of that assimilation.

The provision in the principal Act which, with certain exceptions, forbids employment of a native under 21 years without a permit from the Commissioner of Native Affairs has been repealed. Apparently the provision had been honoured more in the breach than in the observance. The Minister for Native Welfare proudly informed the Assembly that the Railway Department and the Public Works Department employed natives covered by the provision without permits! These natives belonged to unions and were paid award rates of pay.[35]

The provisions of the principal Act which prescribed conditions of the validity, against a native, of an employment agreement and which, in effect, imposed status restrictions on the native who had entered an agreement, have been repealed. The employer who requires a native to work at a place more than fifty miles from the place where he was engaged must at the conclusion of the native's service provide and pay for his return to the place where he was engaged.

An employer who employed a native under permit was formerly under no liability for workers' compensation provided he contributed to a sickness fund kept at the Treasury and took certain steps with regard to treatment of the native if he became ill. The duty to see

33a Sec. 4 (1) (a).
34 *Supra* 201, at 220, 247, 248, 249, 254, 266.
35 (1954) 139 PARL. DEB. 1695.

to the treatment of the native remains, but the employer is not now relieved of any of his obligations under the Workers' Compensation Act.

There is a clear recognition of changing relations between native and white in the abolition of a number of offences provided for in the principal Act. These offences were directed to preventing persons entering native camps save in certain limited circumstances, to ensuring the removal of camps near townships, to requiring "any native loitering in any town . . . or being therein and not decently clothed" to leave such town, to preventing natives entering prohibited areas, and to keeping female natives, between sunset and sunrise, away from "any creek or inlet used by the boats of pearlers."[36]

The Commissioner of Native Affairs no longer has power to object to the marriage of a native. The offence of cohabiting with a native has been retained, though it was suggested in debate that the offence ought to be abolished.[37] It is still an offence for any person to supply liquor to a native and for a native to receive liquor. The Bill, as introduced, sought to remove the prohibitions which exclude natives from licensed premises. The Minister pointed out that a native working on some assignment which took him away from his home could not obtain meals and accommodation at an hotel.[38] The Bill was amended so that the prohibitions remain but are qualified to the extent that the licensee may at his discretion permit a native to enter and remain on his licensed premises for the purpose of having food or lodging.

Petroleum.

Oil was discovered in Western Australia in November, 1953, and legislation which, as to many of its terms, had appeared to be academic, now merited careful study. The result was a number of amendments made by the Petroleum Act Amendment Act (No. 66 of 1954).

Mindful of petroleum discoveries beneath the sea-bed in other parts of the world, the area of operation of the Act has been extended by an amendment to the definition of "Crown land" so as to include "the sea-bed and subsoil of the submarine areas contiguous to the coast of Western Australia and its Dependencies to the extent seawards to which State jurisdiction for the time being extends." The Act is thus ready to adapt itself to the ebb and flow of juristic disputation among the international lawyers.

36 The Minister pointed out that all native females in Broome were breaking the law because there is a creek within two miles; (1954) 139 PARL. DEB. 1699.

37 (1954) 139 PARL. DEB. 1699.

38 (1954) 139 PARL. DEB. 1700.

Provision is now made for the appointment of wardens and for delegation of the powers of a warden. Formerly the warden was the Under-Secretary of Mines and he could delegate his powers only "temporarily."

Any transfer or assignment of a permit to explore, licence to prospect, or petroleum lease[39] now requires the prior approval of the Minister and is of no effect until it is registered. According to the Minister the object is to prevent speculation and trafficking in permits and licences.[40]

Under the principal Act the Minister was entitled to a report of operations conducted under a permit to explore within thirty days after the end of specified quarters, and a report giving particulars of the work done under a licence to prospect within thirty days of the end of each month. It was thus possible for oil to be discovered but for the Government not to hear of the discovery officially for some time. Amendments to the principal Act now require that the holder of a permit to explore or a licence to prospect must "immediately and firstly inform the Minister of the occurrence of any petroleum encountered during the course of any scout drilling on the land in respect of which the permit was issued or the licence granted."

The period for which a licence to prospect remains in force has been reduced from four to two years where the licence is

39 A "permit to explore" must be for an area of not less than one thousand square miles. It remains in force for two years but may be renewed by the Minister for further periods of twelve months. The holder of a permit has the exclusive right to explore for petroleum in the area, but must carry out the duties prescribed by the Act with regard to exploration for oil, and comply with any notice given him by the Minister requiring him to conduct the operations specified in the notice. If he does not carry out these duties or comply with notices his permit may be cancelled. Drilling may only be conducted with the consent of the Minister, and the consent may not provide for other than scout drilling. A "licence to prospect" may be granted to the holder of a permit to explore who has carried out his duties and obligations in respect of land within the area covered by the permit to explore. A number of licences may be granted to the same person. The area covered by a licence may not exceed 200 square miles. The holder of a licence has the exclusive right to prospect for petroleum within the area. The holder of a licence must carry out a detailed geological survey of the area and carry out such other operations as the Minister may reasonably require; otherwise his licence may be cancelled. The licensee may conduct drilling operations with the consent of the Minister. A "petroleum lease" is granted to a person for the purpose of obtaining petroleum from the land. It may be granted to a person who has complied with the provisions of the Act with regard to permits to explore and licences to prospect. A petroleum lease may not exceed one hundred square miles; it is for a term of 21 years and may be renewed.

40 (1954) 140 PARL. DEB. 3111-3112.

granted after 1st January 1955. However, three renewals for one year, instead of two renewals for one year, may now be granted by the Minister. The object is to enable earlier review of the activities of the holders of licences.[41] A licence to prospect gives the holder the exclusive right to prospect for petroleum in the area covered by the licence, and areas should not be too long tied up in the control of dilatory licensees.

Under the principal Act where the holder of a licence to prospect discovered oil within the area covered by his licence he was entitled as of right to select so much of the area as he required to hold under petroleum lease and on application and payment of fees to a grant of such number of petroleum leases as might be necessary to comply with the entitlement. This provision is now confined to licences granted before 1st January 1955. Where the licence is granted after that date the holder who discovers oil is entitled to select no more than one-half of the area covered by the licence. The remainder is reserved to the Crown.

The rate of royalty is that specified in the petroleum lease and is fixed by the Minister at the time of granting the lease. The minimum rate remains five per centum but the maximum has been raised from ten per centum to fifteen per centum. It would appear from the Minister's speech on the second reading[42] that the Company which discovered oil in November, 1953, has an agreement with the Government by which royalties for the first fifteen years of production shall be at 5 per centum.

Workers' compensation.

The Workers' Compensation Act Amendment Act (No. 74 of 1954) makes a number of amendments to the Workers' Compensation Act 1912-1953. The Bill introduced in the Assembly by the Minister for Labour sought to increase rates of compensation, to widen the provision for payment to or in respect of dependants resident overseas, to extend the protection of the Act to workers travelling to and from work, and to raise the limit of income within which a person might qualify as a worker under the Act. The bill was considered by a select committee of the Council, and amendments by the Council led to a conference of managers. The Act which finally emerged makes some increases in the rates of compensation and provides for increase or decrease in the future in proportion to any alteration in the basic wage; leaves untouched the provision for payment to or in

41 (1954) 140 PARL. DEB. 3113.
42 (1954) 140 PARL. DEB. 3115.

respect of dependants overseas; specifies the circumstances in which a worker travelling between his employer's establishment and a trade, technical or training school is entitled to the protection of the Act but makes no general provision extending protection during travel to and from work; and abolishes the income limit as a test of a person's qualification as a worker under the Act.

VII. MISCELLANEOUS.

Other measures passed in 1954 included the following Acts:—

(1) to increase the penalties for acts of vandalism;[43]

(2) to establish a punishments appeal board for the Police Force;[44]

(3) to constitute The Argentine Ant Control Committee whose functions include the formulation and carrying out of plans to control argentine ants;[45]

(4) to consolidate and amend legislation relating to the prevention and control of bush fires;[46]

(5) to amend the Fauna Protection Act 1950;[47]

(6) to amend the Forests Act 1918-53;[48]

(7) to set up and provide for the control of a Soil Fertility Research Fund financed by voluntary contributions from wheat farmers;[49]

(8) to delete from the Stamp Act the provisions requiring payment of stamp duty on the admission of a legal practitioner;[50]

(9) to alter the constitution of the State Electricity Commission by creating one further office of Commissioner. The additional Commissioner shall be a person nominated by the Minister to represent commercial consumers;[51]

(10) to enable the State Government Insurance Office to provide accident insurance for school children while they are attending school o rtravelling to and from school.[52]

ROSS PARSONS.

43 Police Act Amendment Act, No. 6 of 1954.
44 Police Act Amendment Act (No. 2), No. 25 of 1954.
45 Argentine Ant Act, No. 39 of 1954.
46 Bush Fires Act, No. 53 of 1954.
47 Fauna Protection Act Amendment Act, No. 38 of 1954.
48 Forests Act Amendment Act, No. 43 of 1954.
49 Soil Fertility Research Act, No. 51 of 1954.
50 Stamp Act Amendment Act, No. 5 of 1954.
51 State Electricity Commission Act Amendment Act, No. 23 of 1954.
52 State Government Insurance Office Act Amendment Act, No. 68 of 1954.