II. Commonwealth

Introductory.

The Twenty-second Commonwealth Parliament in the first and second periods of its first session, periods which lasted from 15th February to 21st June 1956 and from 29th August to 8th November 1956, passed no less than 113 statutes. But the majority of these were short, many of them being merely consequential amendments to statutes as the result of other enactments. The more substantial measures include the Australian Coastal Shipping Act, the Conciliation and Arbitration Act and the Stevedoring Industry Act, all three being matters about which there is considerable conflict of opinion and which have been dealt with at comparative length in this review. The new Broadcasting and Television Act also has been reviewed at some length, both because it also qualifies as one of the more substantial enactments of the year and because it will, no doubt, be a matter of general interest now that the impact of television has already been felt in some of the Eastern States and is imminent here in the West.

I. AUSTRALIAN COASTAL SHIPPING.

The Commonwealth Government's role in interstate shipping was re-cast by the Australian Coastal Shipping Commission Act (No. 41 of 1956) and the Australian Coastal Shipping Agreement Act (No. 42 of 1956). The two Acts were debated in both Houses of Parliament more or less together, at considerable length, and often heatedly—the Government in the House of Representatives resorting to a motion to treat the Bill for the first of the two Acts as an urgent Bill after there had been "deliberate obstruction by the Opposition to the passage of this measure."[1]

The first of the two Acts creates the Australian Coastal Shipping Commission to take over from the Australian Shipping Board, which had been set up by the National Security (Shipping Co-ordination) Regulations, the operation of the ships owned by the Commonwealth. The Act preserves the life of the Board for a transitional period to enable it to wind up its affairs and transfer its ships and property to the Commission. In 1949 the Labour Government had passed the Shipping Act (No. 6 of 1949) setting up another Board which was to

1 COMMONWEALTH PARLIAMENTARY DEBATES (hereafter referred to as COMMONWEALTH PARL. DEB.), H. of R. No. 16 of 1956, at 3347, *per* the Vice President of the Executive Council and Minister for Defence Production, Sir Eric Harrison, and see also COMMONWEALTH PARL. DEB., H. of R. No. 15 of 1956, at 3326-30.

have taken over from the Board functioning under the National Security Regulations, but although this Act was assented to on 25th March 1949,[2] it never came into operation—no date for its commencement having been proclaimed as required.[3]

The Commission is a body corporate and consists of five Commissioners, one of whom is to be Chairman and another Vice-Chairman. Each is to be appointed by the Governor-General normally for five years but in the first instance the appointments are to be made to ensure that one Commissioner will retire each year. Retiring Commissioners will be eligible for re-appointment. Following "the recommendations of the Joint Parliamentary Committee on Public Accounts, in its report on the affairs of the Aluminium Production Commission, [in which] the Committee recommended that a provision on the lines of that contained in the United Kingdom Atomic Energy Authority Act 1954 should be included in Commonwealth Acts establishing statutory corporations,"[4] the Act excludes from among the grounds on which a Commissioner is required to vacate office, the holding of an interest in a contract made by the Commission, but the Commissioner concerned is required to disclose the interest and is then precluded from taking part in any deliberations or decisions of the Commission regarding the contract in question. The relevant portions of the Act (sec. 13 (2)(3)) follow the wording of the English statute[5] closely except that disclosure is not required at all under these sections of the Australian Act if the interest is held only as a member of an incorporated company of not less than 25 members.

To assist it in the performance of its functions and duties the Commission is empowered to appoint such officers as it considers necessary, and a General Manager to be its chief executive officer. Its functions are "to establish, maintain and operate . . . shipping services for the carriage of passengers goods and materials" (sec. 15) overseas and around the Australian coast but, because of the constitu-

2 The Labour Government continued in power until December 1949.

3 See sec. 2 of Act No. 6 of 1949. Both the Australian Coastal Shipping Commission Act and the Australian Coastal Shipping Agreement Act were assented to on 30th June 1956 and came into operation on 1st October 1956 by Proclamation.

4 COMMONWEALTH PARL. DEB., Senate No. 9 of 1956, at 1126, *per* the Minister for Shipping and Transport, Senator Paltridge.

5 2 & 3 Eliz. 2, c. 32 First Schedule, Cl. 5.

tional limitation,[6] not from place to place within any one State, and it is given power generally "to do all things necessary or convenient" (sec. 16 (1)) to fulfil its functions, and also without limiting its general powers, several special items of power which are listed (sec. 16 (2) (a)-(m)). It also has power to make by-laws for any purposes not inconsistent with the Act. However, it is subject to the Minister's control but only to the extent that any purchase or disposal of assets exceeding £50,000 requires the approval of the Minister and the Minister's direction to provide a shipping service when he is of opinion that it is "necessary to meet the requirements of the particular area and . . . desirable in the public interest" (sec. 17) must be complied with.

The capital required by the Commission to fulfil its functions is provided by the Commonwealth Government in the form of the ships, property and other assets taken over from the Board[7] and monies appropriated by Parliament. The Commission is also empowered to borrow from the Commonwealth Bank, or with the approval of the Minister, any other bank, but its indebtedness at any one time must not exceed £1,000,000. The capital provided by the Commonwealth is re-payable as and when the Minister, with the concurrence of the Treasurer, may determine. This capital does not carry interest but the Commission is to pay to the Commonwealth such portion of its profits as the Minister, once again with the concurrence of the Treasurer, determines, and to that end the Commission is under an obligation to "conduct its shipping services as efficiently as possible . . . [and] . . . to pursue a policy directed towards securing revenue sufficient to meet all its expenditure properly chargeable to revenue, and to permit the

[6] It is well established that sec. 51 (i) of the Commonwealth of Australia Constitution Act read with sec. 107 of that Act restricts the powers of the Commonwealth Parliament to "make laws for the peace order and good government of the Commonwealth with respect to Trade and Commerce with other countries, and among the States," so as to exclude laws relating to trade and commerce within a State. The Commonwealth derives its power to make the statutory corporation to conduct the shipping service from sec. 51 (i). See Australian National Airways Ltd. v. Commonwealth, (1945) 71 Commonwealth L.R. 29.

[7] The Act lists by name in the First Schedule the 44 ships to be vested in the Commission and in the Second Schedule the 11 ships under construction to be purchased by the Commission at "a price determined by the Treasurer" (sec. 41 (D)) but the Treasurer may determine that portion of the amount already expended in the construction of the ships named in the Second Schedule "shall be deemed to have been paid by the Commission on account of the price payable for the ship by the Commission" (sec. 41 (2)) and this is to be added to the capital of the Commission.

payment to the Commonwealth of a reasonable return on the capital" (sec. 18).

"The Government believes" so the Minister for Shipping and Transport, Senator Paltridge, informed the Senate "that both the Australian Coastal Shipping Commission and the private shipping companies have a part to play in providing shipping services and there is ample opportunity on the coast for both interests to operate . . . [with] the shipping companies themselves determining to what extent they will participate in these services."[8] To further this policy the Government entered into an agreement with several of the shipping and stevedoring companies. The second of the two Acts (The Australian Coastal Shipping Agreement Act) approves this agreement, a copy of which is set out as the Schedule to the Act. The agreement, which is to continue for twenty years, was in the first instance executed on behalf of some fifteen companies but contains provision for extension to others, the Minister being empowered to add parties on receipt of applications for this purpose. The shipping companies undertake to "provide adequate efficient economical" services and conduct their operations in "an efficient and economical manner under competitive conditions" (Clause 5) and the stevedoring companies that they will handle the Commission's vessels efficiently and economically and give them fair and equitable treatment. The Commonwealth, for its part, undertakes not to operate shipping services except through the Commission, not to use any regulation making powers[9] to discriminate against private companies, and to subject the Commission to the payment of Commonwealth taxation:[10] also that the Commission will not operate shipping in the aggregate exceeding 325,000 gross registered tons unless the shipping companies are unable to fulfil their obligations after the Minister has informed them that additional tonnage is required; and that it will not engage in stevedoring operations or engage other than signatory companies for such unless these companies are unable or not willing to do any required work at the agreed rate. Disagreements as to the quantity of registered tonnage required for stevedoring rates are to be referred to an "independent authority" who will be appointed by agreement between the parties or, in default of agreement, will be, at the option of the Minister, either a barrister or solicitor nominated by the President of the Law Council of Australia

8 COMMONWEALTH PARL. DEB., Senate No. 9 of 1956, at 1129-30.

9 Under sec. 50 of The Australian Coastal Shipping Commission Act the Governor-General is given power to make regulations not inconsistent with the Act.

10 Sec. 36 of that Act subjects the Commission to Commonwealth taxation.

or a chartered accountant nominated by the President of the Institute of Chartered Accountants of Australia.

The agreement also protects the Australian shipbuilding industry. If at any time there are insufficient orders to keep that industry profitably occupied, and the shipping companies fail to order new tonnage sufficient in the opinion of the Minister to keep the shipbuilding yards "operating at a reasonably adequate level of production" (Clause 13 (1)), the Minister may authorise the Commission to order any necessary tonnage of new shipping. If the companies dispute the Minister's opinion as to the required tonnage, the matter is to be referred to the "independent authority," which in this instance is to be the Tariff Board under the Tariff Board Act 1921-1953.

II. BROADCASTING AND TELEVISION.

There can now be no doubt that broadcasting and television come within the Commonwealth Parliament's "power to make laws for the peace order and good government of the Commonwealth with respect to postal, telegraphic, telephonic and other like services"[11] and in fact control over broadcasting had been exercised under the regulation making power contained in sec. 10 of the Wireless Telegraph Act 1905 for some considerable time before the first Broadcasting Act was passed in 1942.[12] The first Television Act was not passed until 1953.

The Broadcasting and Television Act (No. 33 of 1956) is the first attempt to deal with the two fields together and comprehensively. It repeals the Television Act but retains its general principle of providing for "both a national television service and a commercial television service, the former to be provided by a public authority and the latter by private stations operating under licence granted by the Postmaster-General."[13] It also amends and re-casts the Broadcasting Act and gives to it the new short title to reflect its additional coverage. The Royal Commission on Television appointed with Professor G. W. Paton,

11 Commonwealth of Australia Constitution Act 1900, sec. 51 (v). The tests applied by the majority of the High Court (Latham C.J., Rich, Starke, Evatt and McTiernan JJ. with Dixon J. dissenting) in The King v. Brislan; Ex parte Williams, (1935) 54 Commonwealth L.R. 262, in which it was held that the Commonwealth Parliament had power to legislate with respect to wireless broadcasting, would apply as well to include television.

12 The Statute was enacted as the Australian Broadcasting Act No. 33 of 1942 and was amended by Acts No. 39 of 1946 and No. 64 of 1948 before the manner of citation was changed by the Statute Law Revision Act 1950 and then by the Broadcasting Acts No. 41 of 1951 and No. 82 of 1954.

13 COMMONWEALTH PARL. DEB., H. of R. No. 8 of 1956, at 1531, *per* the Postmaster-General, Mr. Davidson.

Vice-Chancellor of Melbourne University, as its Chairman on 11th February 1953 submitted its report[14] to the Government on 20th February 1954 and the new Act, so the Postmaster-General, Mr. Davidson, told the House of Representatives is "designed to give effect, to a very large extent, to the recommendations contained in the report. . . . It also extends to the broadcasting services most of the provisions recommended by the Royal Commission in respect of television services."[15]

The Bill for the new Act did not go through Parliament unopposed and in the House of Representatives after a lengthy debate on the motion for the Second Reading, the Vice-President of the Executive Council and Minister for Defence Production, Sir Eric Harrison, moved for the Bill to be considered as an urgent Bill with an allotment of time.[16] The Opposition, though they of course opposed the motion, apparently "did not take up the whole of the time allotted for the discussion of [the] measure."[17]

Under the new Act the Australian Broadcasting Commission—still consisting of seven members but with two additional ordinary Commissioners taking the places of the two departmental Commissioners—has its functions extended to take in the provision of television programmes from the national station on the same basis as the broadcasting programmes. The national television service is to be financed in the same way[18] and will be subject to the same provisions as the national broadcasting services except that whereas the Postmaster-General will continue to provide and operate all the technical equipment required for the purposes of the broadcasting programmes he will only provide and operate the equipment required for transmitting stations and the connection from the stations to the studios as far as television programmes are concerned. The provision and operation of television equipment at the studios and any other technical equipment will be the responsibility of the Commission.

14 No. 38 Group H-F.5242/54.

15 COMMONWEALTH PARL. DEB., H. of R. No. 8 of 1956, at 1531.

16 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1956, at 1890.

17 COMMONWEALTH PARL. DEB., H. of R. No. 16 of 1956, at 3346, *per* Sir Eric Harrison.

18 The fee for a television viewer's licence or for a renewal thereof is £5 (sec. 128 as re-numbered by the amending Act). Later in the year the fees for broadcast listeners' licences and renewals thereof were increased by the Broadcasting and Television Act (No. 2) (No. 65 of 1956) from £2 to £2.15.0 in Zone 1, i.e. within a 250-mile radius of any specified broadcasting stations.

As far as the commercial services are concerned—the expressed policy of the Government is that "the conduct of a television [or broadcasting] service is not to be considered as merely running a business for the sake of profit . . . Business interests of licensees must at all times be subordinated to the overriding principle that the possession of a licence is, indeed, as the royal commission said, a public trust for the benefit of all members of our society;"[19] and the licensees are required to provide and supervise programmes "as far as practicable . . . in accordance with the standards[20] determined by the Board" (sec. 99 as re-numbered by the amending Act), i.e., the Australian Broadcasting Control Board whose responsibilities include the function of ensuring the provision of proper services and programmes—both in television and broadcasting—in the best interest of the general public. However, the fact that licences are nevertheless likely to prove profitable, as earnings of commercial broadcasting stations in the past have indicated, has not been overlooked and by the Broadcasting and Television Stations Licence Fees Act (No. 34 of 1956) the annual amount payable to the Commonwealth by licensees has been altered from "one-half of one per centum of the gross earnings from the operations of the station" to "one per centum of the gross earnings . . . in respect of the broadcasting or televising of advertisements or other matter."[21] This of course is in addition to the flat annual fee—£100 for a television station, and, as previously, £25 for a broadcasting station. Licences are to be granted for five years and will be renewable for one year at a time. They will still be granted by the Minister on the recommendation of the Board but the Board is now required first to deal with the application of a public enquiry, the parties directly concerned having the right to have legal or other representation. The Board is in fact empowered to hold such enquiries before taking any action under the Act.

The ownership and control of commercial television stations has been more strictly limited than that of the broadcasting stations. No person is to own or have effective control of more than one television

19 COMMONWEALTH PARL. DEB., H. of R. No. 8 of 1956, at 1536, *per* the Postmaster-General.

20 "[The Postmaster-General was] glad to inform the House that the board [had] already, in consultation with the licensees and advertisers, made very substantial progress with the formulation of standards for commercial television programmes, including advertising matter." This was when he was explaining the Bill on the motion for the second reading. See COMMONWEALTH PARL. DEB., H. of R. No. 8 of 1956, at 1538.

21 Sec. 4 (2), with which compare sec. 4 (1) (c) of the Commercial Broadcasting Stations Licence Fees Act 1942.

station within a radius of thirty miles of the General Post Office of any of the capital cities or more than two altogether in Australia. There is also provision that at least eighty per cent. of the share capital of any company licensee must be beneficially owned by persons resident in Australia and not more than fifteen per cent. of such capital by a person not so resident. The provision for the encouragement of Australian artists is retained and the quota for the broadcasting of the musical works of Australian composers has been increased from two-and-a-half to five per cent.

It is interesting to note that the Government has, following the example set in the English Defamation Act 1952,[22] provided a statutory answer to the question of whether the publication of defamatory matter by wireless broadcasting is libel or slander, by enacting that transmission by a broadcasting station is to be "deemed to be publication in permanent form" (sec. 124 as re-numbered in the Act). In case there should be any doubt as to whether televising defamatory matter is libel, transmission by television too is "to be deemed to be publication in permanent form."

III. CONCILIATION AND ARBITRATION.

The Conciliation and Arbitration Act.

The Conciliation and Arbitration Act (No. 13 of 1904) has been subjected to numerous amendments[23] since its original enactment some of them substantially reorganising the scheme for the "prevention and settlement of industrial disputes extending beyond the limits of any one state."[24]

In 1926[25] for the first time Conciliation Commissioners were introduced as part of the machinery. At the same time the opportunity was taken to deal with the difficulty raised by *Alexander's Case*[26] in which the High Court had held that sec. 72 of the Constitution required that justices (by whatever name they might be called) of all courts created by the Commonwealth Parliament had to be appointed for life. The President with his seven year term, and the Deputy

22 15 & 16 Geo. 6 & 1 Eliz. 2, c. 66, sec. 1.

23 Particulars of the year and number, date of assent and date of commencement of the 32 amending Acts up to and including Act No. 44 of 1956 are set out in the table which appears as a footnote to sec. 1 of the 1956 reprint of the Act.

24 Commonwealth of Australia Constitution Act, sec. 51 (xxv).

25 Act No. 22 of 1926.

26 Waterside Workers' Federation of Australia v. J. W. Alexander Ltd., (1918) 25 Commonwealth L.R. 434.

Presidents appointed by him, became respectively the Chief Judge and Judges of the Court, all appointed for life.

Then in 1947[27] came Dr. Evatt's amendment which aimed at "streamlining" the procedure for conciliation and arbitration. Dr. Evatt, who was then Attorney-General and Minister for External Affairs in Mr. Chifley's Labour Government, claimed that the amending Act opened "a new chapter in Australia's attempt to regulate the relations between the two groups—employer and employee—engaged in the conduct of Australian industry" and that new emphasis was to be placed "on informality as opposed to formalism, on expedition as opposed to the laws delays which in themselves are likely to accentuate industrial disputation and dislocation."[28] The Conciliation Commissioners were given exclusive powers to conciliate and arbitrate in all but four classes of industrial dispute which were reserved to the Court.[29] It was also provided that the award or order of a Commissioner was not to be subject to challenge or appeal but in 1952,[30] apparently with the object of ensuring some uniformity in the awards of the Commissioners, the Liberal and Country Party Government largely negatived the finality of Commissioners' awards and orders by introducing provisions for any party to apply to the Commissioner concerned to refer a dispute to the Court and giving the party a right of appeal to the Chief Judge from a refusal of the Commissioner to grant the application seeking the reference. During the debates on the first of the two 1956 amending Bills, members on both sides of the House referred back frequently to the 1947 Act using it in support of apparently opposed points of view.

Yet another reorganisation of the scheme was introduced by Act No. 44 of 1956. This reorganisation was made necessary by the decision of the High Court in the *Boilermakers' Case*.[31] But apart from this, the Minister for Labour and National Service, Mr. Holt, who introduced the Bill in the House of Representatives, claimed that "for some time there [had] been a widespread and growing feeling throughout Australia that a review of our arbitration system [was] necessary."[32] The Minister listed the factors[33]—"by no means an exhaustive list"—

27 Act No. 10 of 1947.
28 (1947) 190 COMMONWEALTH PARL. DEB., at 548-9.
29 See sec. 13 of the Act as amended by Act No. 10 of 1947.
30 Act No. 39 of 1952.
31 The Queen v. Kirby; Ex parte Boilermakers' Society of Australia, (1955-1956) 94 Commonwealth L.R. 254.
32 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1956, at 1990-1.
33 *Ibid.*

"which [indicated] the desirability of review": the failure of "the division of the arbitral function between the judges and the conciliation commissioners effected by the legislation of 1947" to achieve the results Dr. Evatt had hoped for and this despite—or as members of the Opposition argued, because of—the subsequent amendments; the reduction, instead of an increase, in the incidence of conciliation as a means of maintaining industrial peace, parties not having been disposed to make concessions before a conciliator who might subsequently be the arbitrator to settle the same dispute if conciliation failed; the "unduly legalistic . . . form and atmosphere" which had developed over the years; "the arbitrator being given the responsibility also of the enforcement of awards"; and the now almost inevitable claim that the procedure needed "streamlining."

The decision in the *Boilermakers' Case* which was given on 2nd March 1956, certainly presented the more pressing need for amendment of the Act. The Court by a four to three majority (Dixon C.J., McTiernan, Fullagar and Kitto JJ., with Williams, Webb and Taylor JJ. dissenting) held that "the Commonwealth Court of Conciliation and Arbitration . . . [was] established as an arbitral tribunal which [could] not constitutionally combine with its dominant purpose and essential function the exercise of any part of the strictly judicial power of the Commonwealth"[34] and this after the Court had in fact, since its reconstitution in 1926 after *Alexander's Case,* exercised both arbitral functions and the strictly judicial power of the Commonwealth without challenge. This issue had never really been directly and squarely before the High Court since the original enactment of the Conciliation and Arbitration Act. The decision made the amendment of the Act an urgent matter. The Government had apparently considered and rejected suggestions for vesting the necessary judicial powers in the High Court or the State Supreme Courts because it was "undesirable that those courts . . . should be projected into the hurly-burly and emotionally charged atmosphere of industrial politics and industrial disputation."[35]

To meet the situation the amending Act creates a new court—the Industrial Court with a Chief Judge and not more than two other Judges to exercise the necessary judicial functions connected with

[34] (1955-1956) 94 Commonwealth L.R. 254.
[35] COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1956, at 1991, *per* Mr. Holt.

conciliation and arbitration.[36] Among those qualified for appointment to this Court are the members of the Conciliation and Arbitration Court and barristers or solicitors of the High Court or the Supreme Courts of the States of not less than five years standing.[37] The jurisdiction of the Court is exercisable—with certain specified exceptions when a single Judge is empowered to act alone (sec. 104[38])—by not less than two Judges, with the decision of the majority prevailing in case of a division and the decision of the senior Judge present if the division is equal. There are provisions for a single Judge or the Commission to refer points of law, and for the Registrar to refer any matter before him, to the Court. The Court is also empowered to hear appeals from State Courts (other than State Supreme Courts)[39] and Courts of the Territories of the Commonwealth in matters arising under the Act or under the Public Service Arbitration Act 1920-1956.[40] Appeals from the Industrial Court to the High Court are very limited, no appeal lying from the decisions of the Industrial Court in the exercise of its appellate jurisdiction or its jurisdiction in dealing with matters

36 In Seamen's Union of Australia v. Matthews, (1957) 31 AUST. L.J. 614 the validity of the provisions establishing the Industrial Court was challenged on the ground that "it was in fact a body established for the purpose of the fulfilment of functions conferred without regard to the question whether by their nature they fell within the judicial power of the Commonwealth or outside that power" (see judgment at page 614 of the report quoted above) but the High Court in a joint judgment held that the Industrial Court had been validly established and that "to the extent to which the provisions of the Act may confer on the Court non-judicial powers (if any), such provisions are severable."

37 The Hon. John Armstrong Spicer, who was Attorney-General at the time the amending Act was passed and who introduced the Bill on behalf of the Government in the Senate was appointed first Chief Judge of the new Court.

38 All section numbers referred to hereafter will be to the sections as numbered by the amending Act No. 44 of 1956 and as they appear in the 1956 reprint.

39 The section giving the appellate jurisdiction (sec. 113) has been framed in the light of the High Court decision in Collins v. Charles Marshall Pty. Ltd., (1955) 92 Commonwealth L.R. 529 in which sec. 31 of the Act prior to amendment—the section which had conferred exclusive appellate jurisdiction on the Court of Conciliation and Arbitration in very wide terms—had been held invalid. The case went on appeal to the Judicial Committee of the Privy Council (see [1957] 2 W.L.R. 600; [1957] Argus L.R. 553), but not on the issue of the appellate jurisdiction.

The amended section (sec. 113) was judicially considered by the High Court in The Queen v. Spicer; Ex parte Truth and Sportsman Ltd., (1957) 31 AUST. L.J. 463; [1957] Argus L.R. 557, in which by a majority (Dixon C.J., McTiernan, Williams and Webb JJ.—Fullagar and Kitto JJ. dissenting) the Court held that the appellate jurisdiction did not extend to judgments pronounced other than at first instance.

40 See *infra*, note 60.

referred by the Commission or the Registrar, nor from the exercise of its jurisdiction relating to the interpretation and enforcement of awards or to punishment for contempt, nor from the exercise of its jurisdiction relating to registered organisations and disputed elections. In other cases appeals lie only with the leave of the High Court.

No provision was made in Act No. 44 of 1956 for representation of parties in proceedings before the Court and the effect of this was, as the Minister pointed out when explaining the second of the two amending Acts to the House of Representatives, that "strictly speaking the provisions of the Judiciary Act applied so as to limit representations to properly qualified barristers or solicitors."[41] The omission was remedied by this subsequent amending Act (No. 103 of 1956) passed later in the year. It provided among other things that except on the hearing of appeals the Court could in most matters arising under the principal Act grant parties (including interveners) leave to appear by representatives other than barristers or solicitors (sec. 117a).

Under the new scheme the conciliation and arbitral functions are to be exercised by the Commonwealth Conciliation and Arbitration Commission with a new level of officer, the Conciliator, to assist parties in those cases in which it is likely that the dispute might be settled by amicable agreement—the criterion of the likelihood being either the opinion of a Commissioner or the request of the parties. The Governor-General is empowered to appoint an unspecified number of Conciliators. They are not members of the Commission but the provisions of the Act relating to preservation of rights, and tenure and vacation of and removal and suspension from, office applicable to the Commissioners are applied to them. Their salary scale is somewhat lower than that of the Commissioners.[42]

The Minister in introducing the amending Bill (for Act No. 44) stressed the point that "the parties to a dispute generally speaking, are not prepared to conciliate in the presence of the person who, if conciliation fails, will be the arbitrator"[43] and under the Act the Conciliator is only empowered to decide disputes about which the parties cannot agree if they request him to do so and agree to abide by

41 COMMONWEALTH PARL. DEB., H. of R. No. 25 of 1956, at 1803. Sec. 49 of the Judiciary Act 1903-1955 entitles a person who is a barrister or solicitor or both in any State to practice in a federal Court provided he has himself registered with the Principal Registrar of the High Court.

42 The annual salary of the Senior Commissioner is £3,500; the other Commissioners, £3,000; the Conciliators, £2,750. See secs. 16 and 21.

43 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1956, at 1993.

his decision. If there is no amicable agreement, and no such request and agreement, the Conciliator ceases to function in the dispute but he may be required to furnish to the Commissioner at whose instance he was made available to the parties, a report in writing "as to the result of the endeavour to reach agreement, including the matters upon which agreement, has and upon which agreement has not, been reached" (sec. 30(2)). These provisions are certainly in keeping with the sentiments expressed by the Minister—the desirability of introducing into the scheme a conciliator before whom the parties would feel free to negotiate for a settlement of their dispute without prejudice as to any concessions made during the negotiations. However the Act later provides that on reference of a dispute to the Commission (sec. 34(6)) and on appeal to the Commission from a Commissioner (sec. 35(6)) the Commission may direct "a conciliator to furnish a report." During the debates in the House of Representatives the member for Blaxland, Mr. E. James Harrison, argued that a Conciliator would "find himself in great difficulty in giving effect to the provisions of sub-section (6) [of sec. 34 if he] pays any regard at all"[44] to sec. 30(3). In answer to the question raised the Minister pointed out[45] that the report referred to in sec. 30(3) related back to the preceding subsection. While conceding that the point made by the Minister is as a question of interpretation probably right, it is submitted that the indefinite article in sec. 30(3) might in the circumstances easily and well have been avoided. The Minister also stated that he did "not find an inconsistency" between sec. 30(3) and "the role to be given to a conciliator under [sec. 34]."[46] With respect it is submitted that it is difficult to imagine how a Conciliator might usefully report to the Commissioner otherwise than "as to the result of the endeavours to reach agreement, including the matters upon which agreement has, and upon which agreement has not been reached" (sec. 30(2)) or without at least reneging on the role cast for him by sec. 30. In any case the provisions of secs 34 and 35 will almost surely prejudice the atmosphere of the "without prejudice" type of discussions before a Conciliator which sec. 30 apparently tries to create.

The Commission consists of presidential members and lay members. The presidential members—a President and not less than two Deputy-Presidents— enjoy the same status, precedence and salary as the judges of the Industrial Court but are subject—except in the case

44 *Ibid.*, No. 14, at 2799.
45 *Ibid.*, at 2800.
46 *Ibid.*

of those appointed from among the members of the Court of Conciliation and Arbitration[47] to compulsory retirement at the age of seventy. The qualifications for appointment, too, are similar, but whereas express provision is made qualifying presidential members of the Commission to be judges of the Court there is no reciprocal provision among the qualifications for appointment to presidential membership of the Commission. The qualification relating to the retiring age of the presidential members of the Commission is the only apparent reason—if it can be called a reason—for the distinction, and in any case the qualifications by which he becomes a presidential member would qualify the presidential members to be a judge of the Court. But somehow the impression is gained that despite their equivalence of status and precedence and not merely because of the distinction in tenure of office, members of the Commission who become judges of the Court will be "promoted" to their new appointments.

The lay members of the Commission—a Senior Commissioner and not less than five Commissioners—enjoy a salary and status somewhat lower than that of the presidential members. For some reason they are expected to age sooner. They must retire at sixty-five.

The function of the Commission is to conciliate and arbitrate and all members—presidential and lay—are under a duty to keep themselves acquainted with industrial affairs and conditions. The lay members will in general carry out the functions previously performed by the Conciliation Commissioners, though the availability of Conciliators to assist in the settlement of disputes where amicable agreement is likely to be reached, should limit somewhat their conciliatory functions. Their work is allocated and organised by the Senior Commissioner subject to the President's overriding power to assign any Commissioner to any particular industry or dispute.

The presidential members take over in general the arbitral functions previously performed by the Court of Conciliation and Arbitration. The Commission in Presidential Session i.e. constituted by at least three presidential members, exercising the jurisdiction in the four categories of industrial dispute (sec. 33) excluded from the jurisdiction of the Conciliation Commissioners under the old Act (see sec. 13 of the old Act), and also having the power which the Court had held of deciding whether any particular matter was within its exclusive jurisdiction or the jurisdiction of a Commissioner. The

[47] Some of the members of the Court of Conciliation and Arbitration were appointed to the Commission and others to the new Industrial Court.

Commission constituted by three members, at least one of whom must be a presidential member, is empowered to deal with disputes referred to it by a Commissioner if the dispute is "of such importance that in the public interest it should be [so] dealt with" (sec. 34(2)) and also to hear appeals from awards and certain decisions of the Commissioners.

The Commission whether constituted by one member or in either of its other forms is not required in its proceedings to act in a formal manner nor is it bound by the rules of evidence. In relation to industrial disputes or other proceedings before it, it is given wide powers, but the power to award costs has been omitted. The Bill for the amending Act did contain provision empowering the Commission to award costs in arbitration proceedings but during the Committee stage in the House of Representatives these were deleted on the motion of the Minister himself because, as he explained, the Government had agreed to meet "the view put to [it] by the trade union movement on this matter and [omit] any provision for costs in arbitral proceedings."[48]

An interesting alteration has been made in the power relating to the declaration of a common rule. Despite the decisions[49] of the High Court that under the Constitution the Commonwealth Parliament could not empower the Court to declare a common rule in industry the provision relating to the power to declare common rules retained in the Act through all the previous amendments. The position has now been neatly, if ineffectively, dealt with so that any term of an award may still be declared a common rule but only "in a Territory of the Commonwealth" (secs 49 and 179), thus avoiding the constitutional difficulty while largely depriving the original provision of its intended scope and purpose.

Under Part III of the amended Act which deals with the powers and functions of the Commission, in addition to its powers and function to deal with industrial disputes generally, there are divisions containing special provisions relating to the Maritime Industries, to the Snowy Mountain Area, to the Stevedoring Industry and to Com-

48 COMMONWEALTH PARL. DEB., H. of R. No. 14 of 1956, at 2814.

49 See Rex v. Commonwealth Court of Conciliation and Arbitration; Ex parte Whybrow & Co., (1910) 11 Commonwealth L.R. 1 and The King v. Commonwealth Court of Conciliation and Arbitration; Ex parte Ozone Theatres (Aust.) Ltd., (1949) 78 Commonwealth L.R. 389.

monwealth Projects.[50] The Labour Party strongly opposed the inclusion of the provisions relating to the Snowy Mountain Scheme. Their spokesman, the member for Blaxland, Mr. E. James Harrison, expressed the view that "if ever this Government should keep its nose out of anything it should keep it out of the Snowy Mountains hydro-electric scheme [which] has demonstrated to the world that, given proper conditions of employment Australian workmen are equal to, if not better than any other workmen in the world."[51] Mr. Harrison went on to prophesy that "the moment that this Government attempts to bring the Snowy Mountains scheme under a central authority controlled by the Government, there will be nothing but strikes and stoppages on the project."[52] Though this attitude might possibly be explained as an exception in unusual circumstances the Minister's reply that "[he] really wondered whether [he was] listening to the spokesman for the Labour party"[53] is not surprising.

The Court of Conciliation and Arbitration is not dissolved. Certain amendments were necessary to fit it into the new set up and prevent any conflict and inconsistency with the jurisdiction and powers of the Industrial Court and the Commission. It was no secret that the Government was seeking leave to appeal to the Judicial Committee against the High Court decision in the *Boilermakers' Case*[54] in the hope[55] that the appeal would succeed, the sections which gave the Industrial Court jurisdiction to hear questions of law referred by the Commission (sec. 107) and power to interpret awards (sec. 110), contain special provision for the Governor-General by proclamation to terminate this jurisdiction. The effect of such proclamation would be to leave jurisdiction in these matters exclusively with the Court of Conciliation and Arbitration.

50 The Division dealing with Commonwealth Projects was introduced by the second of the two amending Acts of the year, Act No. 103 of 1956, which enables the Minister to declare by notice published in the Gazette that a Commonwealth work or undertaking is a Commonwealth Project and also the persons or classes of persons are or are not employed in connection therewith for purposes of giving the Commission power to exercise its functions under the Division.

51 COMMONWEALTH PARL. DEB., H. of R. No. 14 of 1956, at 2819.

52 *Ibid.*, at 2820.

53 *Ibid.*, at 2821.

54 The appeal was dismissed by the Judicial Committee on March 19th 1957: Attorney-General of the Commonwealth of Australia v. The Queen, (1957) 95 Commonwealth L.R. 529; [1957] A.C. 288.

55 The Prime Minister, Mr. Menzies, was himself of opinion that the majority decision of the High Court was wrong. See COMMONWEALTH PARL. DEB., H. of R. No. 12 of 1956, at 2345.

Transitional provisions (Part III of Act No. 44 of 1956) are also made to enable the Court of Conciliation and Arbitration to continue and complete the hearing of disputes and other matters pending before it but, because of the decision in the *Boilermakers' Case,* "not including matters the determination of which involves the exercise of judicial power" (sec. 46 of Act No. 44 of 1956) and to enable the Commission to take over matters pending before Conciliation Commissioners. Provision is also made for the saving of orders previously made by the Court in the exercise of judicial power.

Consequential Amendments to other Acts.

Several other statutes were effected to a greater or less degree by Act No. 44 of 1956, the first of the two Acts amending the Conciliation and Arbitration Act during the year and with the Bill for this amending Act six other Bills were introduced, the Government having "arranged to have all the cognate bills stapled together as one document and to have one second reading debate to cover all the bills."[56] The Minister assured the House of Representatives that "the associated measures were purely consequential" and that he was "advised by the Parliamentary Draftsmen, and by [his own] department, that no change of substance [had] been made whatsoever . . . other than that required by the principal bill."[57] The "principal bill" was strenuously opposed at various stages but the Minister's assurances on these "associated measures" were apparently accepted, the six Bills passing through Parliament without debate.

Act No. 51 of 1956 amends the Public Service Arbitration Act 1920-1955 (which was also amended again later in the year with the second of the Conciliation and Arbitration Acts) to substitute the Commission for the Court of Conciliation and Arbitration as the tribunal to deal with matters referred by the Arbitrator or with appeals from his determinations. It also makes other minor adjustments including transitional and saving provisions.

Act No. 45 of 1956 amends the Snowy Mountains Hydro-Electrical Act 1949-1955 by repealing "Part IVA—Industrial Matters" and Act No. 46 of 1956 repeals "Part XA—Industrial Matters" of the Navigation Act 1912-1953, these matters now being specifically covered in the amended Conciliation and Arbitration Act.

[56] COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1956, at 1935, *per* the Minister.

[57] *Ibid.*

The Australian Capital Territory Supreme Court Act 1953-1955 is amended by Act No. 47 of 1956 to include the Judges of the new Industrial Court among those qualified to substitute for the Judge of the Supreme Court of the Capital Territory while he is unable to act, and Act No. 49 of 1956 ensures that the Judges of the new Court will be entitled to the same privileges as the other Federal Judges under the Judges' Pensions Act 1948-1951.

Act No. 48 of 1956 amends the Evidence Act 1905-1950. The Industrial Court is included within the definition of "Courts," the Commission is included with the Courts for the purposes of the judicial recognition of its seal, and its members—presidential and lay—are included among the officers, the official signatures of whom are to be judicially noticed.

In addition to these, two other "cognate" or "associated" measures were introduced during the course of the passage of the "principal bill" through Parliament. All the measures—the "principal bill" and the eight consequential Bills—were finally passed together and assented to on the same day.[58]

The Northern Territory (Administration) Act 1910-1955 is amended by Act No. 50 of 1956 the purpose of the amendment being to make the provisions of the amended Conciliation and Arbitration Act relating to the Maritime Industry and the Stevedoring Industry applicable in the Northern Territory in the same way as the general provisions of that Act, i.e. without the constitutional limitation that an industrial dispute must "extend beyond the limits of any one state" to give jurisdiction.

Act No. 52 of 1956 amends the Coal Industry Acts 1946-1952 and 1951. As the Minister explained to the House of Representatives the Bill for this Act was not brought forward "when the other consequential measures were before the House because under arrangements which operate between [the Commonwealth] Government and the New South Wales Government, there is consultation on any legislation effecting the respective Commonwealth and State coal industry Acts, and up to that point, it had not been possible to complete that process."[59] The Government of New South Wales subsequently agreed to the proposed Act subject to the deletion of the Coal Industry Act from among the Acts specifically mentioned in the section defining the appellate jurisdiction of the Industrial Court in the Conciliation

58 30th June 1956.

59 COMMONWEALTH PARL. DEB., H. of R. No. 15 of 1956, at 3214.

and Arbitration Act. The Commonwealth Government was prepared to concede this point and the section which was to become sec. 113 of the Conciliation and Arbitration Act was amended accordingly.[60]

The Bill for this amendment to the Coal Industry Act did not go through unopposed as had the other "cognate measures," though it apparently effects no more than consequential amendments, substituting the Commission for the Court of Conciliation and Arbitration in the provisions relating to the enforcement of awards and agreements. However Mr. E. James Harrison "[voiced] on behalf of the Australian Labour Party, objection to the extension of this central control in every direction." He went on to say that the "Opposition took the view that the Snowy Mountains Hydro-electric Authority should be allowed to function in its own right to the maximum degree, without being subject to the overriding authority being given to the proposed court. [They, the Opposition] believed, perhaps more fervently, that the same argument [applied] to the coal industry."[61] The Leader of the Opposition, Dr. Evatt, took the opportunity, in addition to referring once again to the Snowy Mountains Scheme, which he conceded on interjection by the Minister was a matter that the House had already disposed of, to "pay tribute to [Mr. E. James Harrison] and the Honourable Member for Bendigo (Mr. Clarey) for their efforts on [this] series of industrial bills."[62] "Conciliation and Arbitration bills are really a branch of the Statute law that needs special study and special experience" said the Doctor and "it [had] been fortunate for the Opposition, and for the House and the Country that [these two members had] analysed these bills and [had] put forward every point that the Opposition wishes to raise."[63] The Opposition's efforts were nevertheless of little avail. No significant changes were made in the Bills as introduced by the Government.

With the Bill for the second of the Conciliation and Arbitration Acts of the year (Act No. 103)—the Act which contained among other things the provisions already referred to relating to representation of parties before the Industrial Court and introducing the Division dealing with Commonwealth Projects—"cognate" measures were also dealt with. Again as a matter of convenience the Bills (there were four of them including the Bill for the Conciliation and Arbitration Act)

60 See *supra* note 40.
61 COMMONWEALTH PARL. DEB., H. of R. No. 15 of 1956, at 3215-6.
62 *Ibid.*, at 3216.
63 *Ibid.*

were debated and passed at the same time and subsequently assented to on the same date.[64]

Act No. 104 of 1956 further amends the Public Service Arbitration Act and with the amendments to the Conciliation and Arbitration Act the position arising from the overlapping of jurisdiction between the Arbitrator and the Commission is clarified. The Arbitrator may now refuse to deal with matters which have been dealt with, or are being dealt with, or should properly be dealt with by the Commission or "another industrial authority" (see sec. 14A of the amended Public Service Arbitration Act) and to overcome the difficulty created by sec. 11 of that Act and permit organisations of Public Service employees to take claims regarding "conditions of employment"[65] to the Commision (or as it had been previously, the Court of Conciliation and Arbitration) either with the consent of the Arbitrator, or if he exercises his right to refuse to deal with the matter under the new sec. 14A. The Arbitrator's powers to make awards inconsistent with Commonwealth law are revised and the Commission is given similar powers when making awards relating to conditions of employment of employees in the Public Service.

Officers and employees of Trans-Australia Airlines and of the Australian Aluminium Production Commission are now no longer within the jurisdiction of the Public Service Arbitrator as the result of amendments to the Australian National Airlines Act 1945-1952 (by Act No. 105 of 1956) and the Aluminium Industry Act 1944-1954 (by Act No. 106 of 1956), but will now be subject to the jurisdictior of the Conciliation and Arbitration Commission in industrial matters in the same way as other manufacturing and trading organisations. Officers and employees of the Australian Coastal Shipping Commission, too, will be in a similar position as the result of secs 25 and 26 of the Australian Coastal Shipping Commission Act.[66]

IV. FISCAL.

Loans.

Two statutes were passed during the year authorising the raising of loans. The Loans (Housing) Act (No. 76 of 1956) permitted the Government to raise £32,150,000 for advance to States for purposes

64 15th November 1956.

65 A definition was introduced to the principal Public Service Arbitration Act by Act No. 104 of 1956 to avoid the repetition of "salaries, wages, rates of pay or other terms or conditions of service or employment."

66 Reviewed *supra,* at p. 125.

of housing, and the Loans (War Service Land Settlement) Act (No. 81 of 1956), £8,500,000 for advances to them for purposes of war service land settlement.

The Loans Securities Act of 1919 was also amended—Act No. 82 of 1956 in fact being the first amendment to the principal Act. Under the amended statute though the amount of any loan will still have to be fixed by the Governor-General in Council, the Treasurer is now authorised to determine the terms and the conditions on which it is raised. The precaution has also been taken of authorising generally the borrowing in other than Australian currency. The Commonwealth has in fact in the past raised loans in foreign currency when the statute authorising the loan has not specifically authorised the borrowing in such but "in a recent New Zealand case before the Privy Council, however, the suggestion was made in argument, but not decided, that the relevant New Zealand law, which was in terms similar to Australian loan acts and made no reference to borrowing in foreign currency, might not authorise borrowing in other than New Zealand currency."[67] Hence the precaution.

State Grants.

The States Grants (Special Financial Assistance) Act (No. 108 of 1956) made £173,000,000 available for distribution among the States in accordance with the tax reimbursement formula. This amount is an increase of £18,000,000 on 1955.[68] It was estimated that the formula grant would amount to some £153,600,000[69] leaving about £19,400,000 to be made up by the supplementary grant. In addition the State of Victoria received a special grant of £1,050,000 "in view of the special financial difficulties which [faced] that State in 1956-1957. Among the factors . . . contributing to Victoria's financial difficulties were the need for Victoria to assist the dried vine-fruit industry in that State and Victoria's comparatively adverse position in 1956-1957 under the formula used in distributing tax reimbursement grants."[70]

67 COMMONWEALTH PARL. DEB., H. of R. No. 24 of 1956, at 1533, *per* the Minister for Labour and National Service and Minister for Immigration, Mr. Harold Holt. The case referred to is National Mutual Life Association of Australia Ltd. v. Attorney-General for New Zealand, [1956] A.C. 369.

68 See Review of Commonwealth Legislation in 3 U. WESTERN AUST. ANN. L. REV. 533-4.

69 COMMONWEALTH PARL. DEB., H. of R. No. 17 of 1955, at 111.

70 *Ibid., per* the Treasurer, Sir Arthur Fadden. In 1955 New South Wales had received an additional amount because of difficulties arising from floods. See Review of Commonwealth Legislation in 3 U. WESTERN AUST. ANN. L. REV. 533-4.

Once again, as in previous years, following the recommendation in the report of the Commonwealth Grants Commission, special grants were made to the States of South Australia, Western Australia and Tasmania, the States Grants Act (No. 107 of 1956) making the necessary provision. On the system of adjustments on audited budgets two years after the special grant *advances* are made, South Australia and Western Australia each received additional amounts over their 1956-1957 grants and Tasmania a somewhat reduced amount.

The States Grants (Universities) Act (No. 37 of 1956) provided for an increase in the Commonwealth grant for the universities in 1956—the maximum amount for which the Commonwealth could be liable under both the basic and second level grants being fixed at £2,000,000. The definition of capital expenditure (on which the Commonwealth grant is not to be used) is altered so that only expenditure of over £1,000 on alterations to existing buildings or on equipment will come within the prohibition. This was one Act passed during the year with which the Opposition was "in entire agreement."[71]

The States Grants (Coal Mining Industry Long Service Leave) Act (No. 54 of 1956) amends the principal Act to make provision for payments from the Coal Mining Industry Long Service Leave Fund in cases in which a State accepts periods of employment with private employers in calculating the entitlement of its coal mine employees to long service leave. The Act also provides for the income derived from investment of fund monies to be paid back into the fund—and not to consolidated revenue as apparently it had been.[72]

Commonwealth Aid Roads.

The Schedule to the Commonwealth Aid Roads Act 1954-1955 is amended by Act No. 31 of 1956, which increases from 7d. per gallon to 8d. per gallon the portion of the duty collected after 31st March 1956 under the Customs and Excise Tariffs on petrol,[73] payable into the Commonwealth Aid Roads Trust Account. The Treasurer, Sir Arthur Fadden, estimated that "at the current rate of petrol consumption the increase [would] add approximately £1,000,000 to the Commonwealth aid roads grant in the remainder of [the 1955-1956 financial year] and about £4,000,000 in a full year."[74]

71 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1956, at 3556, *per* the Leader of the Opposition, Dr. Evatt.

72 See COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, at 2522.

73 The extra penny was provided from the 3d. per gallon increase in Customs and Excise tariffs on petrol—see *infra*, at 147.

74 COMMONWEALTH PARL. DEB., H. of R. No. 9 of 1956, at 1739.

Customs and Excise Tariffs.

The Customs Tariff (1933-1954) was amended by Act No. 15 and the Excise Tariff (1921-1953) by Act No. 16 of 1956, in each case to increase the duty payable on beer and spirits; cigarettes, cigars and tobacco; and petrol. These were followed by a group of six Acts[75] passed by way of "a reintroduction of the various tariff alterations made by the Government during [1955],"[76] the collection of duties until 30th June 1955 having been regularised by validation Acts (Nos. 48 and 49 of 1955). Mr. Pollard (Lalor) criticised "this practice of adjourning the debate [i.e. when the proposal had been first introduced] and telling Parliament simply that ample opportunity will be given to discuss the matter at a later stage, which in some cases means twelve months later."[77] He said the position was farcical, the new tariffs being in force and there being no hope of altering them.[78]

Later in the year the Customs Tariff was amended by Act No. 86 to impose a duty of £7 on imported cathode ray tubes (picture tubes) used in television receiving sets, and the Excise Tariff by Act No. 87 of 1956 to impose a similar duty on locally made tubes.

The final tariff proposal enacted in the year was the amendment (Act No. 111 of 1956) to the Customs Tariff (Industries Preservation) 1911-1936. The amendment introduced a new section 11A empowering the Minister to impose emergency duties by notice in the Gazette to protect from serious injury Australian producers or producers of countries entitled to preference in Australia, the Minister having first satisfied himself that such duties would not in the circumstances be inconsistent with Australia's obligations under any international agreement. "The General Agreement on Tariffs and Trade, to which Australia is a party, permits a member country to take [such] emergency action . . . [and] the principal trading nations of the world . . . have recognised the right of countries to take emergency action against imports in certain circumstances."[79] The amendment enables Australia to take advantage of this right.

75 Acts Nos. 58 and 62 amending the Customs Tariff 1933-1956; Act No. 59, The Excise Tariff 1921-1953; Act No. 60, the Customs Tariff (Canadian Preference) 1934-1954; Act No. 63, the Customs Tariff (Papua and New Guinea Preference); and Act No. 61 repealing the Customs Tariff (Southern Rhodesian Preference) 1941 and 1948 and enacting the Customs Tariff (Federation of Rhodesia and Nyasaland Preference) 1956.

76 COMMONWEALTH PARL. DEB., H. of R. No. 11 of 1956, at 2113.

77 COMMONWEALTH PARL. DEB., H. of R. No. 18 of 1956, at 145

78 *Ibid.*

79 COMMONWEALTH PARL. DEB., H. of R. No. 25 of 1956, at 1753.

Sales Tax.

Ten statutes (Acts Nos. 5 to 14 of 1956) were passed to effect increases in the sales taxes. First, the Sales Tax (Exemptions and Classifications) Act 1935-1954 was amended to remove passenger motor vehicles—item 43—from the Second Schedule and to introduce two new Schedules, Schedule Four to take in commercial vehicles, motor cycles, autocycles and motor scooters and parts and accessories (other than tyres and tubes) and Schedule Five, other motor vehicles. Item 48 of that Schedule which related to wireless receiving sets, was also redefined to include television receiving sets. The amendment of the Exemptions and Classifications Act was followed by Acts to amend the nine Sales Tax Acts 1935-1954 and fix the new tax rates. The tax on Second Schedule items—all those things like jewellery, cameras, toilet preparations, fountain pens, wireless (and now of course television) receiving sets—goods other than those ordinarily used for household purposes, is increased from 16 2/3rd% to 25%. The tax on the Fourth Schedule goods (previously not classified in a Schedule and carrying tax at 12½%) is now to be 16 2/3rd%; and the tax on the Fifth Schedule goods (the passenger motor vehicles—previously taxed under the Second Schedule at 16 2/3rd%) 30%.

Post and Telegraph Rates.

"In order to . . . provide for the additional revenue required to offset the inescapable, higher costs incurred by the post office in the provision, operation and maintenance of its services"[80] the Post and Telegraph Rates Act (No. 66 of 1956) was passed to increase the postal and telegraph rates. The postal rates are raised from 3½d. to 4d. for the first ounce on letters and lettercards, from 3d. to 4d. on postcards, from 3d. to 3½d. for the first two ounces on commercial papers and the first four ounces on other printed matter; the rates on ordinary telegrams of not more than twelve words, between offices not more than fifteen miles apart, from 2/3d. to 2/9d., and between other offices from 2/6d. to 3/-, and the costs of additional words in each case from 2d. to 3d. each. Double the ordinary rates will still be charged for urgent telegrams. The heading of Part III of the Second Schedule of the Act is amended to include with broadcasting telegrams, television telegrams. The Postmaster-General, Mr. Davidson, estimated that for the balance of the current financial year, i.e. from 1st October 1956, on which date the Act came into operation, to 30th

80 COMMONWEALTH PARL. DEB., H. of R. No. 19 of 1956, at 359, *per* the Postmaster-General, Mr. Davidson.

June 1957, the postal services would yield extra revenue of about £2,100,000 and telegraph services about £250,000.[81]

Bounties and Subsidies.

Act No. 23 of 1956 extends the operation of the Gold-Mining Industry Assistance Act of 1954 which would have expired on 30th June 1956 for a further three years, i.e. until 30th June 1959, because "despite Australia's support in international discussions of moves for an increase in the world price of gold, no such increase had eventuated . . . Accordingly the Government [believed] that the need for the subsidy scheme still [obtained]."[82] The amended Act also gives the Treasurer more scope to limit the reduction of the subsidy when there have been sales in excess of the Commonwealth Bank's rate of £15/12/6 an ounce. It gives him an absolute discretion to limit the operation of the reduction as he sees fit if the net profit derived by a producer over two years is less than 20 per cent.

"Cellulose acetate flake is produced in Australia by only one company—C.S.R. Chemicals Proprietary Limited of Sydney. The rayon grade of this flake is purchased by Courtaulds (Australia) Proprietary Limited for the production of cellulose acetate rayon yarn."[83] On the recommendation of the Tariff Board, which had previously recommended that no assistance be given to the industry for the production of cellulose acetate flake in Australia but had now "[come] to the conclusion that in view of the strenuous and rewarding efforts to reduce the cost of production of cellulose acetate flake, the stage had been reached where assistance to this industry was justified,"[84] the Government decided to assist by way of a bounty. The Cellulose Acetate Flake Bounty Act (No. 38 of 1956) makes £142,000 available for payment of bounty at the rate of 10d. per pound unless the amount is insufficient to pay all valid claims in full, in which case there is to be a proportionate reduction. The bounty is payable to producers of "cellulose aceate flake produced in a factory and . . . sold for use in the manufacture in Australia of cellulose acetate rayon yarn" (sec. 5). The Act provides, in a manner similar to that provided in the Rayon Yarn Bounty Act, for the registration of factories producing the flake and for the supervision of production, including the inspection of

81 *Ibid.*, at 361.

82 COMMONWEALTH PARL. DEB., H. of R. No. 9 of 1956, at 1731, *per* the Treasurer, Sir Arthur Fadden.

83 COMMONWEALTH PARL. DEB., H. of R. No. 14 of 1956, at 2997, *per* the Minister for Customs and Excise, Mr. Osborne.

84 *Ibid.*

stock and the process of production, the taking of samples, and the inspection of books, accounts and other documents. The Act is to operate for three years from 1st July 1955 and returns on its operation are to be furnished to Parliament by the Comptroller General of Customs at the end of each year.

The Rayon Yarn Bounty Act 1954 which would have expired on 31st October 1957 has also been amended (by Act No. 39 of 1956) to extend its life for three years until 30th June 1959, that is, it is to last for one year longer than the the Flake Bounty Act. The Rayon Yarn Bounty Act has also been amended so that the bounty is now payable not on the yarn "produced at a factory in a year to which this act applies and sold . . ." but on the yarn "produced at a factory and, in a year to which this act applies, sold . . ." (compare sec. 5 of the Act prior to amendment with the new sec. 5) i.e. the sale must take place during the currency of the Act for the bounty to be attracted.

The Tractor Bounty Act 1939-1953 appears to have been enacted for the benefit of Chamberlain Industries Pty. Ltd. of Western Australia, the only manufacturer receiving payment of bounty under the Act.[85] The Act expired on 23rd October 1955 but its life has been extended for three years commencing retrospectively with effect from that date, by Act No. 40 of 1956, which makes the bounty payable also on tractors produced for use in a Territory of the Commonwealth as well as elsewhere in the Commonwealth. The principal Act was amended for a second time during the year (by Act No. 90) to increase from 55 to 70 the maximum horsepower of tractors on the production of which bounty would be payable, as "farmers and other users could doubtless on occasion take advantage of the extra horsepower which could be made available."[86]

The Wool Products Bounty Act 1950 was passed to help keep down prices of locally consumed woollen goods manufactured from the 1950-1951 wool clip which had sold at record prices. The bounty was only payable on goods manufactured prior to 1st October 1952 and the Act, no longer being necessary, was repealed by the Wool Products Bounty Act Repeal Act (No. 75 of 1956).

With the Home Nursing Subsidy Act (No. 84 of 1956) the Commonwealth entered the field of financial assistance to nursing serivces "carried on otherwise than for the purposes of profit or gain to its individual members" (sec. 5(1)). The subsidies are to be paid from

85 See COMMONWEALTH PARL. DEB., H. of R. No. 25 of 1956, at 1751.
86 *Ibid., per* Mr. Osborne, who is now Minister for Air.

the Trust Account established under the National Welfare Fund Act 1943-1952 and are not to exceed the amount of the State aid received by the organisation for the same period. The Government's declared policy is "to grant to non-profit-making home nursing organisations now in the field subsidies approximating the salaries paid to the nursing sisters employed by them over and above the number ordinarily employed during the year prior to the commencement of the act, . . . [and to] organisations which commence home nursing services after [the] act comes into operation . . . a subsidy equal to approximately half the salary paid to each nurse employed on home nursing duty."[87]

V. HOUSING.

Commonwealth and States Housing Agreement.

The Housing Agreements Act (No. 43 of 1956) authorises the execution on behalf of the Commonwealth of a new housing agreement with the States, the 1945 agreement having expired on 30th June 1956. The form of the new agreement is set out as a schedule to the Act. When the Bill for the Act was introduced, on 7th June 1956, agreement had not yet been reached with the various States[88] which "had not relished the attitude of the Commonwealth Government in standing firm upon the issue that, as it was undertaking to find the funds, it proposed to ensure that, at least a reasonable proportion of those funds was used in a way which the Commonwealth believed to be best in the national interest."[89] The agreement provides that for the first two years of its five-year term at least 20 per cent., and for the next three years at least 30 per cent. of the monies advanced are to be paid into a "Home Builders' Account" and used to provide finance for home builders by means of loans to approved building societies and other institutions. The balance of the monies advanced by the Commonwealth to a State—the total amount is not specified—is to be used by the State for the erection of dwellings "of reasonable size and standard, primarily for families of low or moderate

87 COMMONWEALTH PARL. DEB., H. of R. No. 23 of 1956, at 1308-9, *per* the Minister for Health, Dr. Donald Cameron.

88 The execution of the Agreement by New South Wales was authorised by Act No. 35 of 1956 of that State, by South Australia by Act No. 9 of 1956 of that State, by Western Australia by Act No. 6 of 1956 of that State and by Tasmania by Act No. 55 of 1956 of that State. The Victorian Government does not appear to have passed in 1956 any statute authorising its execution, and the Queensland Statutes of 1956 are not available to the Reviewer at the time of review.

89 COMMONWEALTH PARL. DEB., Senate No. 10 of 1956, at 1303, *per* the Minister for National Development, Senator Spooner.

means, and . . . in such localities and in accordance with such policy as the State deems fit" (Clause 11(1)). There is provision for the allotment of "as far as possible" (Clause 14(2)) 50 per cent. of such dwellings to members of the Forces, their dependants and widows of deceased members; and a special fund made up of an amount decided by the Minister but not exceeding 5 per cent. of the monies advanced to the State in any one year and augmented by a similar amount specially advanced by the Commonwealth, is set aside for the erection of dwellings for serving members of the Forces. The States are empowered to sell any of the dwellings, either for cash or on terms.

The annual advances to the States are to be made available to them by equal monthly instalments unless otherwise agreed; are to carry interest at the long term bond rate less $\frac{3}{4}$ per cent. if that rate does not exceed $4\frac{1}{2}$ per cent. and less 1 per cent. if it does; and the advances and the interest are to be repaid by the States by annual instalments over 53 years.

The 1945 agreement will continue to apply to dwellings completed and advances made prior to 30th June 1956, but any dwellings commenced under the old agreement but not completed by that date will be brought within the terms of the new agreement.

War Service Homes.

The definition section (sec. 4) of the principal War Service Homes Act 1918-1955 is amended by Act No. 100 of 1956 to bring within the definition of "eligible persons" seamen domiciled in Australia who served on troop, transport or hospital ship during World War II and who did not come strictly within the terms of the previous definition. The Minister for National Development, Senator Spooner, when explaining the amendment to the Senate stated that "in effect, [the amendment did] not extend the provisions of the War Service Homes Act to new categories of persons but merely [overcame] technical discrepancies affecting certain persons who served on the high seas under equally hazardous conditions as did the class of sea-going personnel already covered by the Act."[90] The principal Act was also amended to alter the qualification to the definition of an "Australian soldier" as an eligible person so as to bring within it persons serving in operational areas in Malaya who qualified for benefits under the Repatriation (Far East Strategic Reserve) Act 1956 from the date of the commencement of that Act.[91]

[90] COMMONWEALTH PARL. DEB., Senate No. 19 of 1956, at 903.

[91] The proclamation to bring the Act into operation had not been made up to 30th March 1957. See *infra* at p. 157.

VI. INCOME TAX.

Three Income Tax and Social Services Contribution Assessment Acts were passed during the year amending the principal Act 1936-1955. The first (No. 25 of 1956) extends for five years until 30th June 1965 the period of exemption from tax, income derived from the mining of uranium, and for three years until 30th June 1959 the period of the operation of the special depreciation deduction of 20 per cent. per annum allowed primary producers on plant, machinery and equipment, with improvements commenced during this period and completed before 30th June 1960 also qualifying for the special depreciation rate. The maximum amount for improvements in the form of housing for any one employee or share farmer which will qualify for the special depreciation rate is raised from £2,000 to £2,500.

The second amending Act (No. 30 of 1956) is supplementary to the Parliamentary Allowances Act (No. 29 of 1956)[92] and was passed together with it. It deletes from the principal assessment Act the provisions exempting from tax the expense allowances of all Senators and Members of Parliament.

The third Act (No. 101 of 1956) is the most substantial of the amending Acts. As far as individuals generally are concerned, it increases the maximum deduction permissible for the education of each child of under 21 years of age from £75 to £100, and for life assurance premiums from £200 to £300, at the same time removing payments to hospital benefits funds to a separate category. For the first time some concession is made in allowing a deduction for the payment of debts but only if they were incurred during any of the previous seven years being a year in which the taxpayer incurred a loss. Fulbright grants are now included in the list of items completely exempt from taxation, and the list of institutions and funds to which gifts of £1 or more may be claimed as a deduction has been added to. The provisions relating to the special Zones are also amended, Zone A being extended to take in additional areas and that Zone allowance being increased from £120 to £180. The Zone allowance in Zone B has been increased from £20 to £30, and the Zone allowance for members of the defence forces serving overseas also from £120 to £180. The total exemption from tax allowed to Commonwealth forces engaged in operations in Malaya while so engaged is extended to members of the Australian naval forces retrospectively with effect from 1st July 1955, but conditions of service in Malaya having changed the general exemption

92 Reviewed *infra* at p. 155.

ceased on 15th November 1956. However, service personnel serving in Malaya will benefit from the increase in the overseas Zone allowances. The Act also contains provisions granting exemptions in respect of "Timber Operations" (Part III, Division 10A) and "Industrial Property" (Part III, Division 10B). As far as "Timber Operations" are concerned certain deductions are to be allowed on the construction of access roads and the acquisition of standing timber or the right to fell such, and as far as "Industrial Property" is concerned, deductions will be allowed on a patent, copyright or design calculated on its residual value and the number of effective years of its life.

For the first time separate statutes were passed imposing the tax on companies and on individuals. The Income Tax and Social Services Contribution (Companies) Act (No. 28 of 1956) increases the rates of tax on the various types of companies other than trustee companies by 1/- in the £, while the Income Tax and Social Services Contribution (Individuals) Act (No. 102 of 1956) makes no change in the rates applicable in the previous year.

VII. SALARIES, ALLOWANCES, SUPERANNUATION AND PENSIONS.

Salaries.

The Salaries Adjustment Act (No. 18 of 1956) gives "legal sanction to the payment of increased salaries resulting from the judgment of the Commonwealth Court of Conciliation and Arbitration,[93] delivered on 16th December 1955."[94] The Act gives statutory authority to the reclassification already made to positions in the several departments of state and of the Parliament with effect from 10th June 1956, to positions in the Overseas Telecommunications Commission (Australia) from 18th February 1956, and to those in the Commonwealth Bank from 1st July 1955. It also fixes the date of the judgment as the date from which increased contributions become payable under the Superannuation Act because of these salary adjustments and also salary adjustments to positions in the C.S.I.R.O., Australian Broadcasting Commission and under the Defence Act 1910-1952 (which were also affected by the same judgment).

93 The Commonwealth Arbitration Reports for December 1955 were not available at the time of the review—but see Federal Slip No. A4659.

94 COMMONWEALTH PARL. DEB., H. of R. No. 7 of 1956, at 1193, *per* the Vice-President of the executive Council and Minister for Defence Production, Sir Eric Harrison.

Parliamentary Allowances.

The Government adopted "the report of the independent committee of enquiry into the salaries and allowances of members of the Commonwealth Parliament. The committee [had been] set up on 8th August 1955, with the concurrence of all parties in the Parliament"[95] and submitted its report in October 1955. The Parliamentary Allowances Act (No. 29 of 1956) with the Income Tax and Social Services Contribution Assessment Act (No. 2) (No. 30 of 1956) gives effect to the report. As from 1st July 1956 the annual allowance of Members and Senators is increased from £1750 to £2350, the expense allowance of Senators from £550 to £700. Expense allowances of "city members" of the Lower House are increased to £600 while all other Members are now grouped together and get an allowance of £800. The Deputy Leader of the Opposition in the Senate now qualifies for the special annual allowance of £375 and an additional expense allowance of £250 a year. All expense allowances now lose their income tax exemption.[96]

Pensions and Allowances of "Transferred Officers".

The Parliament of Western Australia by the Pensions Supplementation Act Amendment Act (No. 21 of 1955) increased the annual pension rate from 12th November 1955 by £26. The Commonwealth Government in accordance with its past policy[97] ensured that the former State officers who transferred to the Commonwealth Public Service—the majority of these in fact came from Western Australia—should get equivalent benefits. The Superannuation Act (No. 19 of 1956) and the Transferred Officers Allowances Act (No. 20 of 1956) make the necessary amendments to the respective principal Acts to add the extra £26 to the annual amounts payable in addition to the pensions and retiring allowances.

Superannuation.

The principal Superannuation Act 1922-1955 was amended for the second time during the year (see Act No. 112 of 1956) mainly for the purpose of straightening out certain drafting deficiencies discovered, it would seem,[98] by the actuary appointed to carry out the

95 COMMONWEALTH PARL. DEB., H. of R. No. 12 of 1956, at 2479, *per* the Prime Minister.

96 See *supra*, at p. 153.

97 See COMMONWEALTH PARL. DEB., H. of R. No. 8 of 1956, at 1371, the Treasurer's Second Reading Speech.

98 See COMMONWEALTH PARL. DEB., H. of R. No. 24 of 1956, at 1602, the Second Reading Speech of the Minister for Labour and National Service and Minister for Immigration, Mr. Harold Holt.

quinquennial investigation of the superannuation fund—the deficiencies being in the provisions relating to the repayment to the Commonwealth of monies made available to keep the average rates of interest on the fund at $3\frac{3}{4}$ per cent, and in the provisions relating to the continued contribution by employees who changed the nature of their employment. "In accordance with [the actuary's] recommendation"[99] the Act also makes increases in the rates of pension payable to contributors who remain in the service after attaining the maximum retirement age.

Defence Forces Retirement.

The Defence Forces Retirement Benefits Act (No. 24 of 1956) increases the rate of contribution to the Retirement Benefits Fund that may be made by officers—their rates of pay having been recently increased.[100] The increased contributions, of course, result in increased rates of benefits. The Act also gives naval ratings who had previously elected not to contribute to the fund the opportunity, if appointed to officer status between 11th August 1954 and 23rd May 1956 (the date of commencement of the relevant section of the amending Act) to revoke such election and become contributors.

Pensions.

The Social Services Act (No. 67 of 1956) gives to widow pensioners and invalid pensioners, who have the care or control of two or more children of under 16 years of age an additional £26 per year for each of such children other than the eldest, but in the case of married pensioners not living apart the children will be deemed to be in the care and control only of the husband for the purposes of the additional payment. The Act also provides that a Class A widow who ceases after attaining the age of 45 to receive her pension because she is no longer has the custody, care and control of a child, will not have to wait until she is 50 before qualifying for a Class B pension. It also raises the maternity allowance from £5 to £10.

Repatriation Benefits.

The Repatriation Act (No. 68 of 1956) extends the provisions for the extra £26 per annum for each child other than the eldest to certain service pensioners; and excludes from the definition of income for purposes of the means test (in the application of which the income

99 *Ibid.*

100 See COMMONWEALTH PARL. DEB., H. of R. No. 9 of 1956, at 1728, the Treasurer, Sir Arthur Fadden's Second Reading Speech.

of pensioners is now to be calculated on an annual and not a fortnightly basis) the allowance paid by the Repatriation Commission to pensioners for expenditure on transport for recreation purposes and also any amount paid as an allowance because of any decoration awarded. It also enacts that if the marriage of a member of the defence forces is dissolved otherwise than by death, the pension to which the former spouse was entitled is to cease.

Repatriation (Far East Strategic Reserve).

The Repatriation (Far East Strategic Reserve) Act (No. 91 of 1956) extends the pension and repatriation benefits of the Repatriation Act to the members of the Australian forces serving in Singapore and Malaya as part of the British Commonwealth Far East Strategic Reserve, "but some variations have been made, having regard to the nature of the service those members of the forces are performing and their present conditions of service . . . [They] are members of the permanent forces . . . Normally, their service is performed in peacetime conditions . . . In the case of the strategic reserve, however, its members have in their anti-bandit operations in Malaya, been exposed to an additional operational risk. Although that risk is not so great as it was in either of the two world wars or in Korea, the Government felt that it merited the provision of a scheme of pensions based on that for war pensions under the Repatriation Act."[101] The service pension provisions of the Repatriation Act are not extended to members serving with the Far East Strategic Reserve, but pensions will be payable if "incapacity or death has resulted from an occurrence that happened during the member's Malayan service (including the contracting of a disease during that service)" (sec. 6(1)). For the purpose of the Act a member's "Malayan service" is to be "deemed to have commenced" (sec. 3(2)) on departure from the last port of call in Australia or on being allotted to the duty if he was not in Australia and it ends on his arrival at the first port of call on return to Australia or on his arrival at any other area to which he is allotted. However, "Malayan service" is defined to mean service after the commencement of the Act with a unit in Malaya or Singapore and the proclamation to bring the Act into operation had not been made up to 30th March 1957.[102] Regulation making power is included in the Act and the Government apparently intends to use this power to make regulations "covering such matters as the provision of medical treat-

101 COMMONWEALTH PARL. DEB., Senate No. 19 of 1956, at 899-900, *per* the Minister for Repatriation, Senator Cooper.

102 See 1956 Cum. Supp. to Commonwealth Acts, 577.

ment, the payment of medical sustenance, the provision of benefits under the Soldiers' Children Education Scheme and under the disabled members' and widows' training scheme . . . [following] the similar [provisions] under the repatriation regulations."[103]

Consequential amendments were at the same time made to seven statutes which are to come into operation with the Repatriation (Far East Strategic Reserve) Act. The concession rates for broadcasting listeners' and television viewers' licences applicable to some pensioners under the Repatriation Act are extended to totally and permanently incapacitated "Malaya service" pensioners by the third Broadcasting and Television Act (No. 92 of 1956) passed during the year; the estates of deceased members of the forces who died while on "Malayan service" or three years thereafter as a result of injuries received or disease contracted during such service will receive duty free concessions similar to those applying to members of the forces who died as the result of other war service (Estate Duty Assessment Act (No. 94 of 1956)). The Commonwealth Employees' Compensation Act (No. 93 of 1956) and the National Health Act (No. 2) (No. 95 of 1956) amend the respective principal Acts to avoid the eligibility of any individual for similar benefits both under those Acts and under the Repatriation (Far East Strategic Reserve) Act. The Re-establishment and Employment Act (No. 96 of 1956) ensures that pensions payable for "Malayan service" will not be taken into account as income when determining business re-establishment allowances. The Repatriation Act (No. 2) (No. 97 of 1956) extends to the "Malayan service" personnel the provisions avoiding double pensions in respect of children, excludes attendance allowances payable to them from the definition of "income" in the "service pensions" division of the principal Act, and ensures that a widow cannot receive both a service pension and a pension under the Repatriation (Far East Strategic Reserve) Act; and the Social Service Act (No. 2) (No. 98 of 1956) is amended to extend its definitions of "members of the forces" and its provisions dealing with pensions to include reference to that Act.

VIII. STEVEDORING INDUSTRY.

"It is a matter of unhappy notoriety that our waterfront performance is chronically bad. Performance is poor. Industrial relations are bad and have been bad for generations. The stevedoring industry has been described more than once as a turbulent industry. If we examine the incidence of industrial disputes in this industry, we find

103 COMMONWEALTH PARL. DEB., Senate No. 19 of 1956, at 900.

that over recent years they have caused an average loss of about 5 per cent. of working time. This is around 30 times the rate of loss experienced over industry generally,"[104] said the Minister for Labour and National Service and Minister for Immigration in introducing the Bill for the new Stevedoring Industry Act (No. 53 of 1956). While there is considerable difference of opinion as to who is to be blamed for this state of affairs, few would dispute that such a state exists.

The Commonwealth Government first interfered in the Stevedoring Industry "when a shortage of man power developed during the war years" and "an organisation was set up under war-time controls."[105] Then in 1947 the first Stevedoring Industry Act (No. 2 of 1947) was passed by the Chifley Labour Government setting up the Stevedoring Industry Commission. In 1949 the Chifley Government tried a new approach to the problem. A new Act was passed (No. 39 of 1949) repealing the 1947 Act (which had been amended in some minor aspects by Act No. 70 of 1948) and setting up the Stevedoring Industry Board, but with not much more success or any great improvement on the waterfront. In December 1949 came the change in government. "There [were] strong differences of opinion about how an improvement of the position established by the 1949 legislation might best be brought about" but the new Liberal and Country Government "did not rush into any immediate overhaul of the existing legislation following its assumption of office."[106] In 1954 by Act No. 75 of that year,[107] in addition to making some amendments to the 1949 Act, provisions were made for the setting up of a Committee of Enquiry with wide powers. Under these provisions "the Government set up the Tait Committee consisting of a chairman in the person of Mr. Tait, a barrister at the Victorian bar, Mr. Gibson, a senior and respected representative of the employers, and Mr. Shortell, a senior and respected member of the trade union movement."[108] The 1954

104 COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, at 2549. The Minister went on at 2551 to analyse what he referred to as a typical voyage experience of a typical D. class ship of the Australian Shipping Board for the period 1st April 1954 to 25th March 1955—nearly a year—during which the ship's earnings were £297,000 against its management costs of £343,000 i.e. showing a loss of £46,000, but a rather startling fact was that £151,000, or more than half the freight earned, was swallowed in stevedoring costs.

105 *Ibid.*, at 2551, *per* the Minister.

106 *Ibid.*, at 2552, *per* the Minister.

107 See Revieiw of Commonwealth Legislation in 3 U. WESTERN AUST. ANN. L. REV. 362-3.

108 COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, at 2552, *per* the Minister.

Act was assented to on 15th November of that year and the Government apparently hoped for a report by 31st March 1955—but the hope was not realised. Meanwhile action was precipitated by "a general stoppage following the legislation of 1954 and a general stoppage of three weeks arising out of the wage claims in January [1955]"[109] and the Government therefore obtained an interim report from the Committee. The Act of 1955 is largely based on this report.[110]

The Debates on the Bill were long and often acrimonious. "In the view of the Opposition . . ." said the Leader of the Opposition, Dr. Evatt, ". . . this bill [represented] not an impartial and just way of dealing with the difficulties of the waterfront in Australia, but a partisan way . . . the bill [discriminated] against the trade unionists because of its treatment, on the one hand, of the stevedores who [were] the shipping companies as contrasted with its treatment of trade unionists. The bill [showed] partisanship in favour of the shipowners and against the trade unions."[111] In the Upper House Senator O'Byrne (Tasmania) referred to the Bill as "a flagrant attempt to give powers to the authority to smash the Waterside Workers' Federation."[112] During the Committee stage in the House of Representatives the Minister resorted frequently to a gag motion to cut short the debate and the Member for East Sydney, Mr. Ward, no doubt expressed the sentiments of many of the Opposition when he opposed the motion for the third reading of the Bill "because Parliament [had] not been afforded an ample opportunity to discuss its provisions."[113] "Owing to the ruthless use of the gag," he said "numbers of members of the Opposition had not been given the opportunity to express their profound opposition to this anti-Labour and anti-working class piece of legislation."[114] It might be added that the Government had not found it necessary to gag the debate at all in the Senate and that in both Houses many of those who had had the opportunity, had expressed "their profound opposition" but to little avail—the Government conceding very little during the debates though several amend-

109 *Ibid.*

110 The final report was expected somewhat later in the year and the new Act preserves the relevant portions of the Act of 1954 by which the establishment of the Committee was authorised.

111 COMMONWEALTH PARL. DEB., H. of R. No. 14 of 1956, at 2769.

112 COMMONWEALTH PARL. DEB., Senate No. 12 of 1956, at 1817.

113 *Ibid.*, No. 15 of 1956, at 3200.

114 *Ibid.*

ments were made to the Bill on the motion of the Minister apparently after discussions outside Parliament.[115]

The new Act sets up the Australian Stevedoring Industry Authority in place of the Board. Like the Board, the Authority is to have three members—a President and two others each appointed for seven years but eligible for re-appointment. The new Act specifies that these two must be "experienced in industrial affairs," the one "by reason of having been an employer or having been otherwise associated with management in industry," and the other "by reason of having been associated with trade union affairs" (sec. 10(1)(b) and (c)) but the Government's stated policy is that these members "should not come from the waterfront or shipping interests or the unions directly involved . . . at least at this stage of the industry."[116] The Authority is given similar powers to those which were possessed by the Board, to appoint officers to assist in the exercise of its powers and functions but these officers now constitute the "Service of the Authority." In addition specific provision is made for the appointment of Inspectors[117] by the Authority from among its officers and employees and the duties of these inspectors is defined. They are required to investigate and report to the Authority and to "suggest" to employers and waterside workers means for the performance of operations on the waterfront to greater advantage. They are given a right of entry on to wharves and ships during working hours.

Compared with those of the Board under the old Act, the functions of the Authority are now more extensively and explicitly stated, but they are in some respects more limited. Its power to undertake or control stevedoring operations is restricted to periods of emergency declared by the Minister, and its function of providing medical, washing, canteen and other amenities is limited to cases in which in its opinion satisfactory provision has not been made by the employer or other person or authority concerned. The Board's powers relating to the development of port facilities find no place in the new Act.

115 Senator McKenna, Leader of the Opposition in the Upper House, pointed out to the Senate, "That in another place [the House of Representatives] the Government introduced 25 amendments to its own bill" and from this he concluded that it "[showed] plainly that it is a most ill-considered measure." COMMONWEALTH PARL. DEB., Senate No. 12 of 1956, at 1675.

116 COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, at 2555.

117 There was no specific provision in the old Act itself for the appointment of inspectors. They had however been used, among other things, "in averting stoppages by giving rulings on the spot. But their position [had] been somewhat undefined." COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, at 2557, *per* the Minister.

The Authority is also to investigate causes of delay and to endeavour to find means of improving methods and practice on the waterfront. It is to encourage safe working in operations and the use of protective "articles and equipment, including clothing." The Government was of opinion that in the performance of this last function "there would be more satisfaction, and that much greater economy would be effected, if the authority were to maintain stocks of protective clothing and issue such clothing as occasion required"[118] and hence in addition to encouraging its use, when necessary the Authority is to provide the workers with protective "articles and equipment" [including clothing?] (see sec. 17(1)(o)).

The Authority's regulatory functions are defined to include the ensuring of a fair distribution of work including transfers from one to another operation; the determination of methods of engagement and the times at which workers must present themselves for work; the making of arrangements for the engagement of workers and the avoidance of unnecessary attendance at employment bureaux; and the regulation of the conduct of workers at the bureaux and wharves and on the ships.

In the performance of its regulatory functions the Authority, except to the extent it considers necessary for the proper performance of such functions, is expressly required to "avoid imposing limitations on employers with respect to their control of waterside workers engaged by them and their manner of performance of stevedoring operations" (sec. 17(2)). In this regard it is also required to "have regard to the desirability of encouraging . . . regular employment . . . in stevedoring operations" (sec 17(3)). Although "the Tait committee saw no practical plan in sight for permanent employment in the industry, the Government has not given up hope that some plan can be developed."[119]

To exercise its functions the Authority is empowered to make orders and directions as was the Board under the old Act, but a clearer distinction has been drawn between directions and orders. The term "direction" is now used in connection with the performance of the Authority's functions in undertaking or controlling stevedoring operations at a port after the declaration of an emergency by the Minister. They may be either oral or written. Orders on the other

118 COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, *per* the Minister, at 2556.

119 *Ibid.*, at 2561.

hand, must be written, and may be made only after consultation with representatives of the employers and workers likely, in the opinion of the Authority, to be affected, and either on its own motion or at the request of a representative of an employer or a Union[120] the consultation may take the form of a hearing. The penalties for the breach both of orders and of directions have been increased and the formula used in the old Act to make orders and directions as final as the Commonwealth Parliament can, has been followed. As far as the orders are concerned, provision is also made for consultation to avoid inconsistency with awards made by the Commission under the Conciliation and Arbitration Act 1904-1956[121] and for the prevalence of such orders when the Authority has not consulted (though it is required to do so if in its opinion there will be inconsistency) or after consultation and with the agreement of the Presidential member concerned, notwithstanding such inconsistency. The sections of the two Acts (the Stevedoring Industry Act 1956 and the Conciliation and Arbitration Act 1904-1956) dealing with this question of inconsistency do not seem to provide the answers to the various situations that might arise and their smooth working in practice will depend on the co-operation of the Authority and the Commission.

On the question of labour recruitment on the waterfront, the Minister pointed out that "in short, the problem is to reconcile the interests of the community, which is directly affected by freight rates, which in turn are affected by losses resulting from idle ships, with a need to have proper regard to the interests of the waterside worker,"[122] not a problem to which a generally acceptable solution could be found and some of the measures introduced by the Government into the scheme inevitably met with strong objection from the Labour Opposition.

The determination of port quotas—"the number of waterside workers which in the opinion of the Authority, is required for the proper and effective conduct of stevedoring operations at the port" (sec. 25(d))—and the registering of employers and waterside workers,

120 "Union" is defined in the Act to include the Waterside Workers' Federation of Australia, the North Australian Workers' Union and any other organisation of employees declared by the Authority by notice published in the Gazette to be a Union in relation to a particular port for the purposes of the Act (see secs. 7 and 9).

121 Division IV of Part III which deals with "Industrial Matters—Stevedoring Industry" and see *supra* p. 139-40.

122 COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, at 2557, *per* the Minister.

is the responsibility of the Authority, as it had been of the Board before. Registration of workers otherwise than through a Union may be effected by the Authority but only if the port quota is not filled and the Authority if of opinion that it will not be filled in the normal way. Before registering such workers the Union must be given further opportunity of filling the quota—during the period when applications are called for by advertisement and for seven days after the last day specified for receipt of the applications, and the Authority must also before registering any such worker consult with the Union as to his competence and suitability for the work.

The Authority has the same powers the Board had to suspend or cancel the registration of workers when the quota has been exceeded either because of the declaration of a new quota or otherwise. The last registered workers will be the first to lose their registration. The widely framed powers permitting the engagement of non-registered workers "at a port at which a sufficient number of registered waterside workers is not available," under the old Act have not been repeated but to cope with the problem of seasonal demand for labour on the waterfront at certain ports and at the same time avoid the use of un-registered workers the Authority is empowered to register workers in excess of the quota for short periods after having consulted with the employers and Union concerned and made a declaration as to the extra demand for labour, the number of extra workers to be registered and the period for which they will be registered. A new provision is also included in the Act permitting the engagement of unregistered persons between 5 p.m. and midnight on working days and at any time on Saturdays or Sundays in special circumstances of unusual heavy demand for labour when registered workers are not available or not prepared to do the work, and the stevedoring operations at the port are likely to be prejudicially effected for at least five days. The usual preconsultation with the employers and Union is required, as is a declaration by the Authority that the employment of unregistered workers until the declaration ceases to be in force is "in the public interest." The declaration must be revoked as soon as the special circumstances cease to exist. The operation of sec. 40 of the Act, which introduces this new provision for the use of unregistered workers in special circumstances, is postponed until publication of a notice in the Gazette after 1st January 1957.

Unregistered persons willing to accept work on the waterfront in the terms of sec. 40 may have their names recorded, and such persons and also persons registered otherwise than through a Union

or in excess of a quota are protected by the Act against discrimination in Union rules. The boycotting of such persons or of registered workers to prevent them from doing things which the Act authorises them to do is penalised.

Two novel and somewhat unusual sections included in the Miscellaneous Part of the Act warrant some mention. Neither was referred to during the Committee debates on the Bill in either House. Under sec. 57 the Authority is required "as soon as practicable after the last day in each month" to publicise particulars of stoppages of work by registered waterside workers and of delays due to the failure of employers to comply with the requirements of the provisions of the Act or of any order or direction of the Authority or award of the Commission. It would seem that the public are to be made aware of at least some of the causes for the "unhappy notoriety" and the "chronically bad" performance of our waterfront.[123] And sec. 59 protects the Commonwealth, the Minister, the Authority and its members, and all officers, employees, servants and agents of the Commonwealth or Authority from any civil or criminal proceeding that might arise from the printing or publication of such report or of the annual report which the Authority is required to provide to the Minister to be laid by him before each House of Parliament (sec. 58).

Stevedoring Industry Charge.

The extra revenue that the Authority requires to carry out its functions and duties is provided for by an increase in the charge payable by the employers of waterside workers[124]—The Stevedoring Industry Charge Act 1947-1954 being amended by Act No. 83 of 1956 to increase the charge from 6d. to 1/7d. per man-hour. The Opposition, Mr. Ward (East Sydney) informed the House of Representatives, would not "vote against this measure" but were "very critical of it . . . [They] would have handled this situation in an entirely different way."[125] This different way, he went on to explain, was "to have a Commonwealth line of steamers operating and competing effectively with private enterprise" and when "Labour again [took] control . . . [they would] give to the exporting industries ships that will carry their products at a reasonable rate and by that means,

123 See note 104 *supra*.

124 The Minister in introducing the Bill listed several reasons justifying the additional revenue. See COMMONWEALTH PARL. DEB., H. of R. No. 25 of 1956, at 1692.

125 COMMONWEALTH PARL. DEB., H. of R. No. 25, at 1986.

bestow great benefits on the Australian nation."[126] That a reorganised Commonwealth Shipping line will solve our waterfront difficulties to any great extent is bound to be viewed by many with considerable doubt.

IX. TRADE AND INDUSTRY.[127]

Canned Fruit Export Control.

The purpose of the Canned Fruit Export Control Act (No. 64 of 1956) can be stated quite shortly. It enables members of the Australian Canned Fruits Board to hold office for three years instead of two, to bring the Board into line with such comparable organizations as the Australian Meat Board and the Australian Apple and Pear Board. It also provides for the representative on the Board of canned pineapple producers to be elected on the same basis as other industry representatives, instead of being appointed on the nomination of a State authority. Whereas at one time pineapple production was confined to Queensland and marketing was controlled by a single State authority—the Committee of Direction of Fruit Marketing—subsequent years have seen a development of independent pineapple canneries outside Queensland and that industry is now to be represented in the same way as the others.

Fisheries and fishing.

The administration of the Commonwealth fisheries legislation has been carried on where practicable through existing State machinery. "Under this arrangement, the State fisheries officers, using delegated powers, issue licences and effect registrations under the Commonwealth act."[128] To lessen the amount of work associated with the issue of Commonwealth and State licences and registration, the Fisheries Act Amendment Act (No. 4 of 1956) enables State officers to issue licences and effect registrations for the Commonwealth at the same time as they issue State licences.

126 *Ibid.*, at 1992. Mr. Ward had already expressed his disapproval of the Government's scheme setting up the Australian Coastal Shipping Commission and approving the Australian Coastal Shipping Agreement contained in Acts No. 41 and No. 42 of 1956 (reviewed *supra* at p. 125)—see COMMONWEALTH PARL. DEB., H. of R. No. 16 of 1956, at 3353, 3362 and 3392—but not quite in the terms that might have been expected from the stand he took in the debate on this Bill.

127 The Reviewer is indebted to Mr. John Toohey for preparing the review under this heading and also under the sub-headings of Census and Statistics and Security in the Miscellaneous section.

128 COMMONWEALTH PARL. DEB., H. of R. No. 9 of 1956, at 761, *per* the Minister for Primary Industry, Mr. McMahon.

The proposed sale of the Australian Whaling Commission's business at Carnarvon in Western Australia provoked a considerable outcry, particularly in this State. The enterprise had been carried on at a profit and had proved very successful. In anticipation of the sale of the undertaking the Fishing Industry Act (No. 22 of 1956) establishes a Fisheries Development Trust Account. Into this account is to be paid the profit, if any, of the sale of the Whaling Commission, and thereafter the fund is to be used for widespread purposes connected with the fishing industry, including research and investigation, financial assistance, the establishment or development of fishing industries and the publication and dissemination of information.

The Whaling Industry Act Repeal Act (No. 21 of 1956) is complementary to the previous statute, repealing the legislation which in 1949 established the Australian Whaling Commission and vesting control of the Commission's business in the Commonwealth.

Meat export.

The object of the Meat Export (Additional Charge) Act (No. 2 of 1956) was "to repeal existing legislation relating to an export charge on meat and to provide a new basis for collection of the charge."[129] As the law stood the charge was a straight export charge payable on meat exported to the United Kingdom, of the kind and class fixed by the Minister on the recommendation of the Australian Meat Board. Under the present legislation the charge will be collected at the point of export to the United Kingdom on meat placed in store during periods fixed by the Minister.

As this was a taxing Act, it was necessary because of the Commonwealth Constitution (sec. 55) to introduce a separate measure for other required provisions. This was done by the Meat Agreement (Deficiency Payments) Act (No. 3 of 1956) which enables monies collected under the Meat Export (Additional Charge) Act 1956 to be paid from Consolidated Revenue to the Australian Meat Board and contains one or two incidental amendments brought about by the alteration to the method of calculating the export charge.

Sugar.

The Sugar Agreement Act 1956 gives Parliamentary approval to an agreement between the Commonwealth and the State of Queensland to control the production and marketing of sugar in Australia

129 COMMONWEALTH PARL. DEB., H. of R. No. 9 of 1956, at 710, *per* the Minister for Trade, Mr. McMahon.

until 31st August 1961. Annexed to the Act is the agreement between the two Governments under which the Commonwealth undertakes to continue its embargo on the importation of sugar, in return for which Queensland is bound to acquire all raw sugar produced from cane grown in Queensland and New South Wales. "The Commonwealth undertakes also to make sugar available in Australia at certain fixed prices; to control production; to accept responsibility for losses arising from the export of surplus sugar; to pay rebates on the sugar content of goods exported; and to contribute to the funds of the Fruit Industry Sugar Concession Committee."[130]

Export Insurance.

It was against a "background of our pressing balance of payments problem and the urgent need to stimulate exports, and as a part of the Government's positive attack on the problems of increasing export"[131] that the Export Payments Insurance Corporation Act (No. 32 of 1956) became law. The Act attempts to stimulate exports from this country by offering insurance cover against the risk involved in breaking into new markets and selling to new customers overseas. To be more specific it establishes an Export Payments Insurance Corporation to carry on the business of insurance, the field being "contracts of insurance with, or for the benefit of, persons carrying on business in Australia, being contracts of insurance against risk of monetary loss or other monetary detriment attributable to circumstances outside the control of the person suffering the loss or detriment and resulting from failure to receive payment in connexion with, or otherwise arising out of, acts or transactions in the course of, or for the purpose of, trade with countries outside Australia" (sec. 13(2)). The type of insurance envisaged by the Act is against the risk of non-payment "arising from causes such as insolvency of the overseas buyer or his failure to pay within a certain period, or from actions of overseas governments such as blockage of foreign exchange or the sudden imposition of new import controls in markets abroad."[132]

The Corporation is prohibited from entering into insurance against risk normally insured with commercial insurance houses, such as fire, pilferage or damage to goods. Insurance is entirely voluntary with this qualification only that an insured must offer a fair spread

130 COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, at 1690, *per* the Minister for Primary Industry, Mr. McMahon.

131 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1956, at 1760, *per* the Minister for Trade, Mr. McEwen.

132 *Ibid.*, at 1761.

of risk. To encourage insured persons to take action themselves to attempt to recover their losses there is a maximum indemnity of 85 per cent. prescribed (sec. 16).

Although the hope of the Government is that after a time the Corporation will be financially self supporting, it is statutorily guaranteed by the Commonwealth, although nothing in the Act authorises any action against the Commonwealth itself in respect of a claim (sec. 22).

X. MISCELLANEOUS.

Census and Statistics.[133]

The Commonwealth Constitution sec. 51(xi) enables the Commonwealth to legislate as to "census and statistics," and since 1905 there has been a Census and Statistics Act. "However, the necessary development of statistical investigation has been impeded by the absence of effective means of ensuring uniformity of State data required to produce Australian totals and by the difficulty of arranging that six states should collect additional facts on a common basis."[134]

Negotiations over the years between the Commonwealth and the States has now resulted in the Statistics (Arrangements With States) Act (No. 17 of 1956), the object of which is to integrate the statistical services of Australia. The Act itself authorises the Commonwealth to enter into arrangements with the States "with respect to the collection and publication of statistics, and the supply of statistical information" (sec. 4). Where such an arrangement is entered into there will in future be an integrated statistical service operated by the Commonwealth under a person in each State who will be both Deputy Commonwealth Statistician and State Government Statistician. The Act also provides for the transfer of State employees to the public service of the Commonwealth and contains detailed provisions to protect them in the event of their so doing.

The effectiveness of the statute will depend of course on the acceptance of the arrangement by all the States.[135]

Commonwealth Railways.

The Commonwealth Railways Act 1917-1955 is amended by Act No. 99 of 1956 to enable the Commissioner with the authority of the

133 See note 127 *supra.*

134 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1956, at 1369, *per* the Treasurer, Sir Arthur Fadden.

135 Western Australia has already done so by the Statistics Act Amendment Act, No. 62 of 1956. See *supra,* at p. 120.

Governor-General to close a railway which is no longer required and to sell or otherwise dispose of the land and property available as a result of the closure.

Cocos (Keeling) Islands—Customs tariff exemption.

Act No. 89 of 1956 exempts from customs duty goods produced or manufactured in the Cocos (Keeling) Islands and shipped for export to Australia, provided they are goods which would not have been subject to excise duty if produced or manufactured in Australia.

Defence Forces.

The Defence Act 1903-1953 is amended by Act No. 72 of 1956 which enables a soldier to re-enlist before the termination of his current period of enlistment. It also ensures that references in the principal Act to the Army Act will continue to be to the old Imperial Army Act and not the new one coming into force on 1st January 1957, and together with the Air Force Act (No. 73 of 1956) makes similar provision to avoid the application of the new Imperial Air Force Act.[136]

Distillation.

"Wine makers having been able to establish that the quality of their high class fortified wines would be improved by the use of mature brandy"[137] are now permitted so to fortify their wines, Act No. 74 of 1956 making the necessary amendment to the Distillation Act 1901-1954. The Amending Act also empowers the Collector of Customs to sell spirits on which duty has not been paid, six months after the removal of such spirits from the premises in respect of which the licence has ceased to be in force or has been cancelled, unless the duty has in the meantime been paid.

International Wheat Agreement.

The International Wheat Agreement Act (No. 80 of 1956) repeals the Act of 1953 and approves the acceptance by Australia of the 1956 International Wheat Agreement which was signed on behalf of Australia at Washington on 17th May 1956.

Land Tax.

Although land tax was abolished from the end of the 1951-1952 financial year, outstanding taxes continued to be a first charge on the

136 3 & 4 Eliz. 2, c. 19, passed with the new Army Act (3 & 4 Eliz. 2, c. 18) in 1955 but the provisions of the old Army Act are preserved until the end of 1956 by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 (3 & 4 Eliz. 2, c. 20).

137 COMMONWEALTH PARL. DEB., H. of R. No. 17 of 1956, at 46, *per* the Minister for Customs and Excise, Mr. Osborne.

land by virtue of the provisions of the Land Tax Assessment Act 1910-1952 and a purchaser of land became liable for any outstanding taxes. To overcome the administrative costs arising from constant enquiries by intending purchasers, the Land Tax Abolition Act (No. 85 of 1956) provides that the charge to which the land is subject for outstanding land tax will have no effect against a purchaser for value unless registered in the terms of sec. 56(2) of the Land Tax Assessment Act or as a caveat with the Registrar of Titles or other appropriate officer in the State or Territory in which the land is situated.

Ministers of State.

The Prime Minister, Mr. Menzies, having decided while reducing the number of members in his Cabinet to increase the number of ministers to take charge of the Government departments, Act No. 1 of 1956 was passed to amend the principal Ministers of State Act (No. 1 of 1952) to increase the number of ministers from 20 to 22 and provide an additional £5,500 for their salaries.

Mount Stromlo Observatory.

The Mount Stromlo Observatory Act (No. 79 of 1956) was passed to implement the recommendation of "the former Commonwealth Astronomer, Dr. R. Woolley, . . . and the Board of Visitors of the observatory, that it was appropriate to transfer control of the observatory to the Australian National University for incorporation in the Research School of Physical Sciences."[138] The Act empowers the Minister of State for the Interior to arrange with the University for the transfer of the administration to the University. It also repeals the Commonwealth Observatory Trust Fund Act 1953 and transfers the monies and investments from that fund to the University.

National Health.

The National Health Act 1953-1955 is amended by Act No. 55 of 1956 to enable the Minister to determine up to a maximum of £11.5.0 the amount of benefit he considers appropriate for any medical service for which no amount is specified in any of the Schedules to the principal Act; to define specifically the services for which Commonwealth benefits will be paid where the expenses are payable to public hospitals; to enable the Minister during the absence of a member of a Committee of Enquiry to appoint an acting member to serve in his stead; and to empower the Minister to publish in the Gazette

138 *Ibid.*, at 47, *per* the Minister for the Interior and Minister for Works, Mr. Fairhill.

with the notice of action taken under the Act against any doctor or chemist, a statement of the reasons for the action.

Northern Territory Administration.

The Northern Territory (Administration) (No. 2) Act (No. 110 of 1956) amends the principal Act 1910-1955 to clarify the provisions relating to the application of the Commonwealth Electoral Act 1918-1953 to the election of members of the Legislative Council of the Territory. The Supreme Court of the Northern Territory is now to be deemed to be the Court of Disputed Returns and writs for election are to be issued by the Administrator. The provisions of the principal Act regarding disqualification from membership of the Council are also modified, a member with an interest in a contract[139] made by the Commonwealth not being disqualified but being precluded from participating in the discussions or voting or any matter connected with the contract. The precaution is taken of validating previous acts of the Council in respect of which the qualifications of members might have been questionable.

Security.[140]

The Australian Security Intelligence Organisation Act (No. 113 of 1956) puts the Australian Security Intelligence Organisation on a statutory basis instead of the executive basis on which it has previously operated. "This course will give the officers of the service contractual rights as against the Commonwealth, subject only to the Parliament, and will protect them from the otherwise possible exercise of the Crown's right to terminate at pleasure the services of officers who do not serve in pursuance of statutes."[141] However, officers and employees are not subject to the Public Service Act 1922-1955, which is expressly excluded. They are employed under agreements in writing, the conditions of employment to be determined by the Chairman of the Public Service Board, the Solicitor-General and the Director-General of the Organisation. There are no statutory provisions for appeal against

139 "To exclude from participation in the Council as elected members, all persons who come into any kind of contractual relationship with the Commonwealth will exclude a large proportion of the residents of the territory and leave a very limited field of possible candidates from which the electors could make their choice." See COMMONWEALTH PARL. DEB., H. of R. No. 25 of 1956, at 1749, *per* the Minister for Supply and Minister for Defence Production, Mr. Beale.

140 See note 127 *supra.*

141 COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1956, at 1746, *per* the Prime Minister, Mr. Menzies.

unwarranted dismissal, an omission which gave rise to some criticism of the measure.

This and other objections were made by the Opposition during a long and frequently hostile debate in which the whole question of the function of an intelligence organisation and its relationship to civil liberties was an issue.

ERIC J. EDWARDS.*

* *B.A., B.L. (Rangoon), LL.B. (Western Australia); Senior Lecturer in Law, University of Western Australia, 1956—.*