## II. Commonwealth.

*Introductory.*

The Twenty-second Commonwealth Parliament in 1957 during its second session—the two periods of which lasted respectively from 19th March to 22nd May and from 27th August to 28th November—passed 103 statutes. For none of these acts can a special claim of singular importance be made nor were any of them—apart from the Geneva Conventions Act (No. 103 of 1957) which with the copies of the Conventions as schedules runs to 108 pages—at all bulky. Among the more important of the measures considered by Parliament during the year would have been the four Bills dealing with banking, but each of these was defeated in the Senate on an equal division on the motion for its first reading,[1] Senators of the Opposition having gone to considerable lengths[2] to ensure the sufficiency of votes. Considering the legislation of the year as a whole, the tendency of the Commonwealth Parliament to delegate wide legislative powers to the Executive is fairly apparent, though both the Government and the Opposition seem agreed that for many matters this is desirable, and no questions were raised as to the extent of the allocation of regulation-making powers to the Executive.

### I. CIVIL AVIATION.

*Civil Aviation Agreement.*

Despite the guarantees and assistance given Australian National Airways Proprietary Limited (A.N.A.) by the Commonwealth Government under the 1952 Civil Aviation Agreement,[3] the company was on the verge of liquidation by 1957. To maintain its policy, which is "to secure and maintain a position in which there are two, and not

1 The first reading of the Reserve Bank Bill and the first reading of the Commonwealth Bank Bill were each moved on two occasions — first on 27th November and again on 3rd December — on the second occasion motions also being put for the first readings of the Banking Bill and of the Banking (Transitional Provisions) Bill.

2 On 3rd December "Senator Arnold was waiting a few yards away in his wheel-chair, ready to be wheeled into the Senate. But his presence was not required. There was a hurried consultation across the Ministerial table and a Government Senator withdrew for each division." (The "West Australian", 4th December 1957.) Senator Tangney also attended in spite of ill-health particularly to vote on the banking legislation. (See her explanation, COMMONWEALTH PARLIAMENTARY DEBATES (NEW SERIES) (hereafter referred to as COMMONWEALTH PARL. DEB.), Senate No. 18 of 1957, at 1552.)

3 A copy of the Agreement is set out as a schedule to Act No. 100 of 1952.

more than two, operators of trunk route airline services, one being the Commission [which is constituted under the Australian National Airlines Act 1945-1956 and operates the Trans-Australia Airlines (T.A.A.) service], each capable of effective competition with the other",[4] the Government after negotiations with Ansett Transport Industries Limited (Ansett) which had bought up all the issued shares in A.N.A. for £3,300,000,[5] agreed to vary the terms and re-arrange the loans guaranteed under the 1952 Agreement. The Civil Aviation Agreement Act (No. 86 of 1957) authorized the execution of the new Agreement on behalf of the Commonwealth and the Australian National Airlines Commission and the re-arrangement of the loan guarantees. A.N.A., Ansett and Ansett Airways Proprietary Limited are also parties to the new Agreement, the last-named company undertaking as soon as possible and in any event within twenty-five months of the date of the Agreement to cease operating airline services. Under the new Agreement, which is to continue in force until 17th November 1967, the date of the termination of the 1952 Agreement,[6] the review by the parties of "air routes, time-tables, fares and freights and other related matters in respect of routes . . . so as to avoid unnecessary overlapping of services and wasteful competition, to provide the most effective and economical services with due regard to the interests of the public and to bring earnings into a proper relation to over-all costs"[7] is not restricted to routes already being operated[8] but is to extend to all routes "on which the Commission and any one of the other airline operators [i.e., those controlled by A.N.A. or Ansett] operate, or propose to operate."[9] A "Rationalization Committee" constituted by a nominee of the Commission and a nominee of A.N.A. with a Co-ordinator nominated by the Minister has been set up to settle disputes between the parties, with the Co-ordinator deciding matters when the other two members of the Committee are unable to agree, but either party to a dispute if dissatisfied with the Co-ordinator's decision may elect to take the matter to the Chairman[10] to be

4 See recitals to the 1957 Civil Aviation Agreement, a copy of which appears as a schedule to Act No. 86 of 1957.

5 Particulars from the speech of the Minister for Civil Aviation, Senator Paltridge. COMMONWEALTH PARL. DEB., Senate No. 16 of 1957, at 1209.

6 The 1952 Agreement was to continue in force for 15 years from the date of its approval. The Act approving it came into operation on 18th November 1952, the date of assent.

7 See 1957 Agreement, cl. 1.

8 See 1952 Agreement, cl. 7 (1).

9 See 1957 Agreement, cl. 1.

10 Under clause 14 of the 1952 Agreement the Chairman was to be "an independent person appointed by agreement . . . and in default of agreement . . . a retired Justice of the High Court . . . or the Supreme Court

dealt with under clause 7 (2) of the 1952 Agreement, and the Chairman will now be assisted in his task by a report which the Co-ordinator is required to submit, giving the reasons for his decisions. It was considered that the "Rationalization Committee", which will be able to meet on very short notice, will be more suitable "for obtaining day-to-day decisions on rationalization matters and, in some respects, . . . for broad policy decisions since this type of issue has to be considered in the light of over-all air transport policy . . . [Moreover] no procedure [had] existed for placing such policy considerations before the chairman."[11]

*Air Navigation (Charges).*

The charges for airport and airway facilities payable by holders of airline or charter licences were increased by 10% by Act No. 87 of 1957 which amended the Air Navigation (Charges) Act 1952. The Minister for Civil Aviation informed the Senate when introducing the Bill that it was "proposed to keep the scale of charges under constant review with the object of progressively reducing the gap between the cost of providing facilities and the revenue obtained from the users",[12] but, pointed out the Leader of the Opposition, Senator McKenna,[13] the additional £50,000 expected from this increase would make "a most microscopic contribution to bridging the gap" between the £9,862,000 representing the maintenance of the Department for the year and the £1,372,000 being the total receipts of the Department from charges and other sources. The amending Act also increased the number of the flights for which "factors"[14] are specified to take in all those being operated by public transport services and made an interesting, and to the anti-bureaucrat no doubt pleasing, consequential amendment taking away the power to make regulations "in particular for amending the Schedules to [the] Act",[15] there being "no longer any justification [i.e., in the light of the extension of the number of flights in the Schedule] for vesting such wide powers in the executive",[16]

of a State appointed by the Minister." Sir John Latham had been appointed and had rendered valuable services — see the speech of the Minister for Civil Aviation, COMMONWEALTH PARL. DEB., Senate No. 16 of 1957, at 1213.

11 COMMONWEALTH PARL. DEB., Senate No. 16 of 1957, at 1212, *per* the Minister for Civil Aviation.

12 *Ibid.*, at 1214.

13 COMMONWEALTH PARL. DEB., Senate No. 17 of 1957, at 1467.

14 The charge for an aircraft is determined by multiplying the unit charge (which depends on the weight — see paragraph 7 of the First Schedule of the Act) by the specified flight factor.

15 See sec. 6 of the 1952 Act.

16 COMMONWEALTH PARL. DEB., Senate No. 16 of 1957, at 1214, *per* the Minister for Civil Aviation.

and permitting instead the making of regulations for the limited purpose of prescribing factors for flights not already included in the Schedule.

## II. CUSTOMS AND EXCISE.[17]

The Customs Act 1901-1954 was amended by Act No. 37 of 1957 "in respect of certain matters concerning customs securities, the boarding of aircraft, the control of persons on wharfs and airports and the enforcement of penalties under the Act."[18] Without affecting the right of the Customs (now defined to mean the Department of Customs and Excise,[19] after a separate Department of Trade had been set up following the passing of the Ministers of State Act 1956) to require security for protection of revenue and compliance with the Act, persons having the possession or control of dutiable goods are now responsible for their safe custody and for the payment of the duty if the goods are not kept safely or accounted for to the satisfaction of the Collector. Act No. 11 of 1957 introduced into the Beer Excise Act 1901-1951 like provisions relating to the possession or control of dutiable beer on which the duty has not been paid.[20] The licences issued to railway authorities to carry goods subject to the control of the Customs will now cover not only railway carriages but also other vehicles under the control of the authority concerned and the specific provisions requiring security from railway authorities has been repealed. The provisions relating to the boarding of aircraft "bring requirements into line with present-day practice whereby aircraft [from overseas] operating regular services may land at the airport shown on their approved itinerary."[21] Other overseas aircraft are still required to land at the airport nearest the place at which the aircraft enters Australia for which there is a boarding station. The provisions introduced by the 1952 Act (No. 108 of 1952) excluding unauthorised persons from ships, aircraft and wharfs during examination of passengers' baggage had not been applied by the Department to persons with official duties on the ship, aircraft or wharf in question. These persons are now expressly excluded from the requirement of obtaining prior authority. And the sections of the Principal Act relating to im-

17 Tariffs are dealt with under the heading TAXES AND TARIFFS.

18 COMMONWEALTH PARL. DEB., Senate No. 5 of 1957, at 513, *per* the Minister for Customs and Excise, Senator Henty.

19 A similar amendment was made to the Excise Act 1901-1952 by Act No. 10 of 1957.

20 And see Excise Act 1901-1957, sec. 60 and Distillation Act 1901-1956, sec. 49.

21 COMMONWEALTH PARL. DEB., Senate No. 5 of 1957, at 514, *per* the Minister for Customs and Excise.

prisonment for non-payment of fines and release from prison have been repealed, as it was considered "preferable for the matters covered . . . to be left to ordinary powers of enforcement of penalties of the courts under their State legislation. Sections 68 and 69 of the Judiciary Act would provide for the application of State laws . . . "[22]

The Excise Act 1901-1952 was amended by Act No. 10 of 1957 to enable exemption from duty to be given to excisable stores to be used on aircraft engaged in international services, and to enable the Collector to remove and sell excisable goods where a licence has been cancelled or has expired and has not been renewed and the duty has not been paid. Similar powers regarding spirits had been given the Collector under the 1956 amendment[23] to the Distillation Act 1901-1956 and the Beer Excise Act (No. 11 of 1957) empowered him to remove and sell beer in like circumstances. Other changes were made to the Principal Beer Excise Act substituting "cart-notes" for "permits" on the transfer of beer by a brewer from one of his breweries to another or to a delivery store (the object of the amendment being to reduce paper work), and making it mandatory for a licensee to cut the stamp on a vessel of beer (a container other than a bottle) immediately before the vessel is removed from the licensed premises when sold to a person not licensed to resell the beer by retail.

## III. COMMONWEALTH TERRITORIES.

*National Capital Development.*

The Select Committee appointed by the Senate to inquire into and report upon the development of Canberra recommended *inter alia*, that "the present system of divided departmental control of Canberra be replaced by a single Authority"[24] to "be responsible to the Minister for the administration, planning, construction and development of the Federal Capital."[25] The Committee also stressed the necessity for "a constant Parliamentary oversight of the National Capital's development, Parliament in the past [having] shown a most regrettable lack of interest in Canberra's development."[26] The Government, being in agreement with "the general recommendations of the Senate committee",[27] introduced the Bill for the National Capital Development

22 *Ibid.*

23 Reviewed *supra*, p. 170.

24 See Report (Parliamentary Papers (Commonwealth) No. S.2. [Group G & H]—F. 5703/55) 72, Recommendation (3).

25 *Ibid.*, p. 72, Recommendation (5).

26 *Ibid.*, paragraph 585.

27 COMMONWEALTH PARL. DEB., H. of R. No. 9 of 1957, at 44, *per* the Minister for the Interior and Minister for Works, Mr. Fairhall.

Commission Act (No. 42 of 1957). No serious objection was made by the Opposition. The Act established a Commission constituted by a Commissioner "to undertake and carry out the planning, development and construction of the City of Canberra as the National Capital of the Commonwealth" (sec. 11 (1)) and gave him power to make provision within the Australian Capital Territory for "buildings, roads, bridges, works for the supply of water and electricity, sewerage or drainage works and other matters or things for, or incidental to, that purpose" (sec. 11 (2)). The Departments of the Interior and of Works are to continue to deal with these matters until they are taken over by the Commission. Two Associate Commissioners will advise and assist the Commissioner and perform such duties as he directs. In addition there is to be a National Capital Planning Committee—consisting of the Commissioner as chairman, two architects, two engineers, two town planners and "two other persons with special knowledge and experience in artistic or cultural matters" (sec. 25 (2) (e))—"to advise the Commission as to the planning, development and construction of the City of Canberra" (sec. 25 (1)).

*Australian Capital Territories Supreme Court.*

The Australian Capital Territories Supreme Court Act 1953-1956 was amended by Act No. 34 of 1957. Prior to this amendment a person could not be tried for an indictable offence except after committal proceedings nor was there any provision in the Act for the entry of a *nolle prosequi*. Now the Attorney-General is empowered to file an information against an accused person without prior "examination or commitment for trial",[28] and "the Attorney-General or such other person as the Governor-General appoints in that behalf, may decline to proceed further in the prosecution" of any indictable offence (sec. 53 (6)). The amending Act also enables matters of practice and procedure to be provided for by ordinance as well as by rules of court, and creates an additional office, that of Deputy Registrar, to assist with the administrative work of the Court.

*Australian Antarctic Territory and Heard Island and McDonald Islands.*

The laws in force in the Australian Capital Territory are also,

28 See sec. 53 (2). The power to file an *ex officio* information without examination or commitment for trial is limited to the Attorney-General, following the pattern in the Judiciary Act 1903-1955, sec. 71A. However by virtue of sec. 19 of the Acts Interpretation Act 1901-1957 the term "Attorney-General" would include "any Minister or member of the Executive Council for the time being acting for or on behalf of" the Attorney-General. See R. v. Judd, (1919) 26 Commonwealth L.R. 168. *Cf.* Criminal Code (W.A.) 1913, sec. 579.

so far as applicable, in force in the Heard and McDonald Islands and the Australian Antarctic Territory,[29] and consequential amendments were made to the Australian Antarctic Territory Act 1954 and the Heard Island and McDonald Islands Act 1953 (by Acts Nos. 35 and 36 of 1957 respectively) to ensure that all matters of practice and procedure under the Australian Capital Territories Supreme Court Act, including those regulated by ordinance will apply in these areas. "The opportunity [was also] taken of including, in conformity with the practice in legislation relating to other external territories",[30] a section in each of the two amending Acts expressly authorising the granting of pardons and remissions of sentences. The Attorney-General, Senator O'Sullivan, informed the Senate that "the ambit of the power given . . . [was] identical with that possessed by the Governor-General in relation to offences against the Commonwealth."[31] A comparison of the several provisions relating to the granting of pardons and remission of sentences is however interesting. The Governor-General has no statutory authority but is expressly empowered by paragraph VIII of the Instructions dated 29th October 1900 to grant pardons and remit penalties in respect of crimes and offences against the laws of the Commonwealth and only in capital cases is he required specifically to obtain the prior advice of the Minister. Under the Norfolk Island Act 1957[32] he is required expressly whenever granting a pardon or remitting a sentence to act "with the advice of the Minister" (sec. 27), and provision may also be made by ordinance for the remission, for good conduct, of part of the sentence of a prisoner serving a term of imprisonment on the Island (sec. 27 (2)). Under the Papua and New Guinea Act 1949-1954 it is the Administrator who is empowered to grant pardons and remissions except when the offender is sentenced to death, when the Governor-General is the pardoning authority, but until 1957, when the omission was repaired by Act No. 15 of 1957,[33] there was no statutory authority for the pardoning of accomplices. Neither the Governor-General nor the Administrator is expressly required in the exercise of this authority in Papua or New Guinea to obtain the prior advice of the Minister. The new sections in the Australian Antarctic Territory Act and the Heard Island and

29 See Heard Island and McDonald Islands Act 1953, sec. 5 and Australian Antarctic Territory Act 1954, sec. 6.

30 COMMONWEALTH PARL. DEB., Senate No. 8 of 1957, at 915, *per* the Vice-President of the Executive Council and Attorney-General, Senator O'Sullivan.

31 *Ibid.*

32 Reviewed *infra,* at 308.

33 Reviewed *infra,* at 309.

McDonald Islands Act follow the 1957 Norfolk Island Act provisions except that the prior advice of the Minister is not expressly required before the pardoning of accomplices and the subsection (sec. 27 (2)) relating to remissions for good conduct is omitted. The significance of the variation from statute to statute is not immediately apparent.

*Norfolk Island.*

Act No. 29 of 1957 repealed the Norfolk Island Acts of 1913 and 1935 and provided anew for the government of Norfolk Island. The new statute was enacted "partly for the sake of making the legislation tidier; partly in order to bring it into line with the more recent acts passed by Parliament in relation to the administration of other Commonwealth territories; and partly in order to introduce new positions in relation to the administration of justice and local government in the island community."[34] The Norfolk Island Council to be "constituted as provided by ordinance" (sec. 11 (2)) has been substituted for the Advisory Council. The powers and functions of the new Council are to be conferred by ordinance which may cover a wide range of local government matters, the raising of revenue and expenditure of moneys, and the enforcement of such by-laws which the Council may be empowered by ordinance to make. In addition the Council is to advise the Administrator on "any matter affecting the peace, order and good government" of the Island (sec. 11 (5)). As in the past, legislation will continue to be by ordinances made by the Governor-General with the Council having the right to consider and make representations and subject to Parliamentary supervision and disallowance. Notice of the making of ordinances is to be published in the Norfolk Island Government Gazette and unless the contrary intention appears in an ordinance it is to come into operation on the date of publication of the notice. Some concern was expressed when the measure was being debated in Parliament[35] at this power to legislate with retrospective effect and the Government accepted an amendment to ensure that an ordinance could not impose a penalty for an act or omission which occurred prior to publication of the notice (sec. 15 (3)).

Some confusion existed as to the dates of the commencement of ordinances made under the previous Acts. Under the terms of the 1913 Act, ordinances were to come into force at a time fixed by the Governor-General but not before the date of their publication in Norfolk Island (sec. 8 of that Act) and this provision was repeated

[34] COMMONWEALTH PARL. DEB., H. of R. No. 8 of 1957, at 1639, *per* the Minister for Territories, Mr. Hasluck.
[35] *Ibid.*, at 1714-1718.

in the 1935 Act. However under the Interpretation Ordinance of 1915 of Norfolk Island it was laid down that an ordinance would take effect, unless the contrary intention appeared, on the day on which a copy was affixed on or near the Court House on the Island. To clear up this anomaly and any doubts as to the validity of the ordinances already made the Norfolk Island Ordinances Act (No. 28 of 1957) was passed. With effect from 30th May 1957 (the date of assent) notices of ordinances made under the Norfolk Island Act 1913-1935 are to be published in the Norfolk Island Government Gazette, and subject to any contrary intention will come into operation on the date of such publication. This amendment at first sight seems unnecessary because the 1957 Norfolk Island Act (Act No. 29 of 1957) repealed the Acts of 1913 and 1935, but the 1957 Act is only to come into operation on a date to be fixed by Proclamation and no date of commencement has as yet (i.e., on 9th January 1959) been proclaimed.

The new Norfolk Island Act also set up the Supreme Court of Norfolk Island to consist of a judge appointed to hold office until sixty-five years of age and only removable for misbehaviour or incapacity. The Minister for Territories informed the House of Representatives when introducing the Bill "that there [was], happily, not enough litigation or crime on the island to occupy the whole time of a judge, and it [was] intended to continue the system under which the Judge of the Supreme Court of the Australian Capital Territory [would] also hold a separate appointment as Judge of the Supreme Court of Norfolk Island."[36] Other courts and tribunals may be established and their jurisdiction, practice and procedure provided for by ordinance. An appeal will lie from the Supreme Court to the High Court.

*Papua and New Guinea.*

As the community from which members of the Legislative Council may be elected or appointed is somewhat limited in these areas the provisions relating to the disqualification from membership were modified—Act No. 15 of 1957 making the necessary amendment to the Papua and New Guinea Act 1949-1954[37]—so that a member of the Council with an interest in a contract made by or on behalf of the Commonwealth is not thereby disqualified from membership though he is precluded from participating in any discussion or voting on any

[36] *Ibid.*, at 1614.

[37] A similar amendment and for the same reason had been made to the Northern Territory (Administration) Act 1910-1955 in 1956 — commented on *supra*, at 172—but was limited to the elected members of the Council.

matter connected with the contract. The Council itself is to determine any questions that might arise as to the application of these provisions or as to the qualification of members or vacancies on the Council. A new section—sec. 47A—was also inserted to validate anything done by the Council in respect of which the validity might have been in doubt because of any question as to the qualifications of members.

*Christmas Island.*

Christmas Island is a small coral limestone island about halfway between Perth and Singapore. "[It] is not the Christmas Island in the Pacific Ocean where British nuclear tests have been conducted."[38] There are substantial deposits of phosphates of lime to be found on the Island and in 1949 the Australian and New Zealand Governments acquired the balance of the lease which had been granted to the Christmas Island Phosphate Company Limited for a term of 99 years from 1st January 1891, and set up the Christmas Island Phosphate Commission to extract the phosphates on their joint behalf.[39] The only inhabitants of the Island are the Government officials and those working under contract to the Commission. At the beginning of 1957 the population consisted of 2,000 Chinese, 500 Malays and 150 Europeans. The Island, though a separate possession of the Crown, had for convenience been administered from Singapore, but with internal self-government imminent there, it was considered advisable—after negotiations had been carried out between the Governments concerned—to transfer the administration to Australia. The Christmas Island (Request and Consent) Act (No. 102 of 1957) which requests and consents to the enactment by the Parliament of the United Kingdom of an Act to place the Island under the authority of the Commonwealth, is the first of the statutory steps required to achieve this object.[40]

*Removal of Prisoners (Territories).*

The Removal of Prisoners (Territories) Act 1923-1950 enables the Governor-General on the recommendation of the Administrator to order the removal of a prisoner from a Territory to a State or an-

38 COMMONWEALTH PARL. DEB., Senate No. 19 of 1957, at 1726, *per* the Minister for National Development, Senator Spooner. The particulars relating to the Island given in the text have been taken from the Minister's speech.

39 See Christmas Island Agreement Act 1949.

40 Similar procedure was followed for the transfer of the administration of the Cocos (Keeling) Islands to the Commonwealth — see 3 U. WESTERN AUST. ANN. L. REV. 529.

other Territory with the concurrence of the Government of such State or other Territory. Act No. 2 of 1957 extended the right to make the recommendation to other authorized persons when the Territory in question has no officer with the title of Administrator.

## IV. FISCAL.

*Loans.*

The Loan (International Bank for Reconstruction and Development) Act (No. 5 of 1957) gave statutory approval to the Loan Agreement of 3rd December 1956 under which the Commonwealth borrowed $50,000,000 from the Bank for "the development, expansion and improvement of productive facilities being undertaken"[41] in the Commonwealth. The Treasurer, Sir Arthur Fadden, informed the House of Representatives that though there had been no precise allocation it had been tentatively agreed with the Bank that of the loan moneys 17.2 million dollars would be allocated to agriculture and forestry, 12.8 million to road transport, 4 million to rail transport and 16 million to industrial development.[42] Interest on the loan is payable at the rate of $4\frac{3}{4}\%$ on outstanding withdrawals with a commitment charge of $\frac{3}{4}\%$ on such part of the principal as remains undrawn. The principal and interest is to be repaid under an "Amortization Schedule" by half-yearly instalments, the first payment being due on 15th January 1959 and the final payment on 15th January 1972. The terms are thus better than those under which the fourth (1955) loan was raised from the Bank.[43] As with the previous loans from the Bank[44] the Government considered this loan desirable to enable the import of capital equipment available only from the dollar area and necessary for the satisfactory development of Australia's economic resources.[45] The Opposition on the other hand—in their usual stand against the Government's borrowing policy—objected strongly to what Mr. Calwell (Melbourne) described as "the fifth of a long, sad series of measures of this kind in the 'borrow or bust' policy of the Menzies Government."[46]

41 See Art. II and Schedule 2 of the Agreement, a copy of which is set out as a schedule to the Act.

42 COMMONWEALTH PARL. DEB., H. of R. No. 1 of 1957, at 43.

43 See Act No. 8 of 1955 reviewed 3 U. WESTERN AUST. ANN. L. REV. 530-531.

44 This was the fifth loan from the Bank for general development purposes. The total borrowed by the Commonwealth from the Bank in these five loans, plus the loan from the Bank approved in the Loan (Qantas Empire Airways Limited) Act (No. 6 of 1957), amounted to $317,730,000. See COMMONWEALTH PARL. DEB., H. of R. No. 1 of 1957, at 42, 45.

45 See COMMONWEALTH PARL. DEB., H. of R. No. 1 of 1957, at 42.

46 COMMONWEALTH PARL. DEB., H. of R. No. 3 of 1957, at 467.

A further loan of $27,000,000 "to furnish part of the dollar funds required by Qantas Empire Airways Limited over the next three years for seven Boeing jet aircraft, four propellor-driven Super Constellations, and other ancillary equipment and spare parts"[47] obtained statutory approval in the Loan (Qantas Empire Airways Limited) Act (No. 6 of 1957). Of the total amount, $9,230,000 was borrowed from the International Bank[48] at the same rate of interest as the general loan and repayable half-yearly with the final payment due on 1st December 1966. The balance, $17,770,000, was raised from "a small group of institutional lenders"[49] under Serial Notes Agreements, the Notes carrying the same rate of $4\frac{3}{4}\%$ interest with only $\frac{1}{2}\%$ interest on the portions of the principal amount not withdrawn, and maturing at half-yearly intervals between 31st December 1960 and 30th June 1964. The Opposition did not test the measure by a vote partly because they wished "to see Australian air fleets . . . equipped with the latest and most efficient aircraft"[50] and partly because Qantas was to assume full responsibility for repayment of principal, interest and all costs. However some doubts were expressed as to whether the Boeings were the most suitable, the British Overseas Airways Corporation having selected the Britannia and the Comet, both British aircraft,[51] and Mr. Calwell did criticise the Bill as being "in keeping with [the] Government's policy of chasing around the world trying to get a few pounds here and there to help this country to keep going, although Australia [was] being advertised everywhere as being remarkably prosperous."[52]

There were also two statutes passed enabling the raising within the Commonwealth of funds which are required each year to assist the States with housing and war service land settlement.[53] The Loan (Housing) Act (No. 66 of 1957) authorized the Treasurer to borrow not more than £33,160,000 "for the purpose of making advances to

47 See COMMONWEALTH PARL. DEB., H. of R. No. 1 of 1957, at 44.

48 A copy of the Loan Agreement which is dated 15th November 1956 appears as a schedule to the Act.

49 COMMONWEALTH PARL. DEB., H. of R. No. 1 of 1957, at 45, *per* the Treasurer. There were three lenders (see sec. 3 of the Act) and each entered a "Serial Notes Agreement", a copy of which appears as a schedule to the Act. Mr. Calwell referred to the phrase "institutional lenders" as an "entirely euphemistic" way of referring to "J.P. Morgan and Company (Incorporated) and a number of their friends." COMMONWEALTH PARL. DEB., H. of R. No. 3 of 1957, at 455.

50 COMMONWEALTH PARL. DEB., H. of R. No. 3 of 1957, at 454.

51 See in particular the speech of Mr. Fairbairn (Farrer), COMMONWEALTH PARL. DEB., H. of R. No. 3 of 1957, at 458-461.

52 COMMONWEALTH PARL. DEB., H. of R. No. 3 of 1957, at 454.

53 See *supra*, at 144-145, and 3 U. WESTERN AUST. ANN. L. REV. 532-533.

the States in accordance with the [1957 Housing Agreement]" (sec. 4); and the Loan (War Service Land Settlement) Act (No. 67 of 1957) approved the borrowing of up to £8,000,000 for "financial assistance to the States in connection with war service land settlement" (sec. 4).

*Grants to States.*

The usual provision was made to supplement the amounts payable to the States under the tax reimbursement formula,[54] the States Grants (Special Financial Assistance) Act (No. 58 of 1957) making a sufficient amount available to take the aggregate grant to be divided among the States to £190,000,000, "almost £16,000,000 more than the total of [the previous] year."[55] It was estimated that the amount required for the supplementary grant would be about £23,800,000.[56]

Special grants were again[57] made to South Australia (£5,700,000), Western Australia (£10,150,000) and Tasmania (£3,650,000), on the recommendation of the Commonwealth Grants Commission, authority for the payment of the grants being given by the States Grants Act (No. 59 of 1957) which also authorized the Treasurer to make advances to these States of up to half the amounts of their respective grants during the first six months of the 1958-1959 financial year, i.e., until Parliament authorized the special grants for that year.

The States Grants (Universities) Act (No. 7 of 1957) "follows the same form and model followed by the 1951 Act and the other Acts up to and including that of 1956",[58] but the new Act makes grants for two years, 1957 and 1958, and the Prime Minister explained to the House of Representatives that the Murray Committee had been appointed and its investigation, which would "undoubtedly touch upon many aspects of university problems", was expected to last for about three months. "In the meantime, it [seemed] to the Government that, over the next two years, the universities should be able to count upon definite provision by the Commonwealth at least, in addition to their other revenues."[59] The reasoning is not altogether clear, though the result is of course quite unobjectionable. The total annual grant for which the universities can qualify—it is the same for each of the two

54 See *supra*, at 185, and 3 U. WESTERN AUST. ANN. L. REV. 533-534.

55 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1957, at 278, *per* the Treasurer.

56 *Ibid.*

57 See *supra*, at 146, and 3 U. WESTERN AUST. ANN. L. REV. 534.

58 COMMONWEALTH PARL. DEB., H. of R. No. 3 of 1957, at 452, *per* the Prime Minister, Mr. Menzies, and see *supra*, at 146.

59 COMMONWEALTH PARL. DEB., H. of R. No. 3 of 1957, at 452, *per* the Prime Minister.

years—is greater than the amount granted in 1956 and the Prime Minister when introducing the Bill sounded an encouraging note when he indicated that the amount appropriated for each of the years (expressed in the Act as the maximum payable) would be a guaranteed minimum.[60]

The maximum amount of the Commonwealth contribution to the Western Australian Agricultural Areas, Great Southern Towns and Goldfields Water Supply Scheme which had been increased from the original £2,150,000 to £4,000,000 in 1955 was increased to £5,000,000 by the Western Australia Grant (Water Supply) Act (No. 56 of 1957), to assist with the increased costs of the Scheme.[61]

*Commonwealth Aid Roads.*

As a result of the tax of 1/- a gallon on diesel fuel used by road vehicles which was introduced by the Customs Tariff (No. 3) and the Excise Tariff,[62] additional funds would become available for the construction and maintenance of roads. Assistance given to the States under the Commonwealth Aid Roads Act 1954 was to continue until 1959 and rather than amend this Act the Government introduced a separate measure for the distribution of the additional funds over the two years until 30th June 1959, the intention being that "the whole question of Commonwealth assistance for roads [would] be reviewed before that date."[63] The proceeds of the tax, it was estimated, would amount to £2,000,000 for the remainder of the 1957-1958 financial year and to £3,000,000 for the next year[64] but the Commonwealth Aid Roads (Special Assistance) Act (No. 83 of 1957) made £3,000,000 available in each year for distribution. The several amounts granted to the States and the Commonwealth in each of the two years are set out in the Schedule to the Act.

*Sulphuric Acid Bounty.*

The Sulphuric Acid Bounty Act (No. 12 of 1957) amended the 1954 Act, the object being the "further encouragement to an expansion of the use of indigenous materials in the production of sulphuric

60 *Ibid.*

61 See Agricultural Areas, Great Southern Towns, and Goldfields Water Supply Act (No. 63 of 1947, Western Australia) and 3 U. WESTERN AUST. ANN. L. REV. 534.

62 See *infra*, at 330.

63 COMMONWEALTH PARL. DEB., H. of R. No. 17 of 1957, at 1870, *per* the Treasurer.

64 *Ibid.*, at 1871.

acid."[65] The bounty is now payable—subject to the other restrictions—on sulphuric acid used for the production not only of fertilizers but of any commodity. The limitation of the total of the annual payments to £600,000 has been removed.

*Petroleum Search Subsidy.*

On introducing the Bill which became the Petroleum Search Subsidy Act (No. 90 of 1957), the Minister for National Development, Senator Spooner, gave the Senate some interesting information.[66] Australia was spending some £120,000,000 annually on the importation of petroleum and petroleum products and the consumption of petroleum products over the five years prior to 31st December 1957 had increased at the average rate of 10% per annum. Approximately £50,000,000 had been spent in the search for oil in Australia and Papua-New Guinea over the past fifty years and of this more than £33,000,000 had been spent since the discovery of oil at Rough Range in Western Australia in 1953.

The Government seemed convinced of the importance of finding oil in Australia,[67] and prior to the pasing of this Act had contributed to exploration in part indirectly, through concessions in income tax to encourage expenditure on the search for oil, and in part directly, by providing maps through the Division of National Mapping and the Bureau of Mineral Resources. It considered, however, that there was a need for more drilling and Cabinet had agreed to provide £500,000 per annum to subsidize stratigraphic drilling.

Under the Act, persons, including partnerships or syndicates, may apply for the grant of subsidy after the Minister has approved the proposed drilling operation. The Minister may then, "in his discretion" (sec. 7 (3)), enter into an agreement with the applicant for the grant of subsidy. " . . . Subject to the agreement, the subsidy will be an amount equal to one-half of the costs incurred . . . in and in connection with carrying out the drilling operation" (sec. 8 (1)) with the proviso that in the terms of the agreement certain items of the costs may be disallowed or not taken into account. Only drilling operations carried out between 3rd September 1957 and 30th June 1961 may be subsidized.

65 COMMONWEALTH PARL. DEB., H. of R. No. 5 of 1957, at 927, *per* the Minister for Air, Mr. Osborne.

66 See COMMONWEALTH PARL. DEB., Senate No. 18 of 1957, at 1572-1574.

67 *Ibid.*

The Minister is required at the end of each financial year to table in each House a report on the operation of the Act and the payment of subsidy.

## V. GENEVA CONVENTIONS.[68]

In 1949 four conventions were signed at Geneva by 61 nations. These conventions provided rules of International Law with respect to (1) the treatment of the wounded and sick in the field, (2) the treatment of wounded, sick and shipwrecked members of armed forces at sea, (3) the treatment of prisoners of war, and (4) the treatment of civilian persons in time of war. Broadly, the first three conventions revised, in the light of experience gained in World War II, the earlier Hague and Geneva conventions dealing with the same matters. The fourth convention, however, was new. The necessity for a body of rules for the protection of civilians in time of armed conflict or occupation was demonstrated by the experience gained in World War II. Much has been written on the content of these conventions,[69] which will not be dealt with in detail here. Although Australia took an active part at the diplomatic conferences in Geneva culminating in the conventions in 1949, no steps were taken until 1957[70] to implement ratification of the conventions which had been signed on her behalf. This question of delay was raised in the House of Representatives[71] but no answer appears to have been given. Perhaps the reason may be the same as that which caused the United States to delay its ratification until 1955.[72]

The Geneva Conventions Act (No. 103 of 1957) is a measure designed to implement certain articles of the conventions so that ratification of the conventions may be concluded by Australia. Each of the conventions contains provisions for the punishment of "grave breaches" of its terms.[73] The four conventions, copies of which are annexed to the Act in separate schedules, provide that "the High Contracting

[68] The reviewer is indebted to Mr. Ian McCall for the preparation of the review under this heading.

[69] See material listed in footnote (1) to Baxter, *The Geneva Conventions of 1949 Before the United States Senate,* (1955) 49 AM. J. INT'L. L. 550.

[70] Of the 61 nations party to the conventions in 1949, by 1957 Australia appears to have been one of the very few that had not ratified them.

[71] See the speech of the Leader of the Opposition, Dr. Evatt, COMMONWEALTH PARL. DEB., H. of R. No. 17 of 1957, at 2741.

[72] The conventions were apparently submitted to the United States Senate in April 1951 but hearings were not held at that time because the Korean conflict was in progress. The matter was not dealt with until 1955.

[73] See First Schedule, Art. 50, Second Schedule, Art. 51, Third Schedule, Art. 130, and Fourth Schedule, Art. 147.

Parties shall undertake to enact any legislation necessary to provide effective penal sanctions for persons committing . . . any grave breaches . . . " Also, as the first convention deals with the International Red Cross organisation it provides that the High Contracting Parties shall take measures (if necessary) to prevent abuses of the Red Cross emblem.[74]

It is mainly to give effect to these articles of the conventions that the Act was passed. It provides for trial of "grave offences" in the High Court and in the Supreme Court of the States—which are for this purpose invested with federal jurisdiction—but offences against the Act itself can only be heard by the High Court (sec. 10). The penalty for a person who, in Australia or elsewhere, and regardless of his nationality or citizenship, commits a "grave breach" of the conventions, is death or life imprisonment if the offence involves wilful killing: in other cases imprisonment not exceeding fourteen years (sec. 7). The use of the Red Cross and other similar emblems is restricted to persons authorized in writing by the Minister and a penalty of £50 is provided for the unauthorized use of such emblems (sec. 15). The remainder of the Act contains provisions relating to the procedure to be complied with in the case of legal proceedings taken against certain protected persons, being prisoners of war protected under the third convention, and internees interned in Australia protected by the fourth convention. These provisions contain safeguards relating to the conduct of the trial of these persons for offences alleged to have been committed by them, adequate notification of the charge to the protecting power and individual, legal representation before the tribunal, and appeals.

With the passage of this measure, which was unopposed and received unanimous support throughout both Houses of Parliament, Australia is now in a position to ratify the conventions. The Act, however, does not come into operation until proclaimed, and proclamation is not to be earlier than six months after the deposit of the instrument of ratification at Berne.

## VI. NATIONAL SERVICE.

Although the Government appreciated that the national service scheme, quite apart from its value to the services, had been of considerable social value, having "encouraged a sense of discipline and . . . improved the health standards of those who [had] come within its scope, . . . the changing pattern of defence needs [called] for adjust-

74 Schedule I, Art. 54.

ments in the structure of our forces." So, the Minister for Labour and National Service, Mr. Holt, informed the House of Representatives.[75] He went on to explain that the Navy and the Air Force now needed "permanent forces continually available." On the Army side, national service was absorbing more resources of personnel for training and more money than could be spared having regard to the priorities of Army needs. It was essential that the regular forces for speedy deployment as necessary should be increased and that the whole military force should be organized and composed "to provide a nucleus of trained and partly trained personnel against the requirements of an emergency, a prime element of which would, [the Government believed], be speed of mobilization and speed of deployment." To cope with the situation the National Service Act 1951-1953 was amended by Act No. 16 of 1957. National service training was confined to the Army and the total period of actual training was reduced from 176 to 140 days.[76] All male persons of the prescribed age groups resident in Australia—except those exempt under section 18—are still required to register but the numbers actually to be trained, so the Minister informed the House,[77] are to be reduced from 33,000 to 12,000 per annum, selection being made by a ballot of birthdays with "indefinite" deferment being granted to those whose birthdays do not fall on the dates drawn. The number selected by ballot will be supplemented by volunteers and by those who fail to register before the ballot is drawn and are unable to satisfy the registrar that the late registration had been unavoidable. A minimum penalty of £10 (the maximum is still £50) for failure to register has been introduced as some magistrates had apparently treated the offence too lightly, imposing fines of as little as 10/-. The section of the Act (sec. 46) dealing with the effect of service under the Act on contracts of apprenticeship has been amended and now unless the Minister otherwise directs periods of national service training served after 12th June 1957 will be deemed to be periods of employment under an apprenticeship contract.[78]

75 COMMONWEALTH PARL. DEB., H. of R. No. 5 of 1957, at 949-950.

76 The Minister for the Army, Mr. Cramer, stated that the 140 days is to be "divided into 77 days' initial training — that is basic training — and then 21 days in each of three years." COMMONWEALTH PARL. DEB., H. of R. No. 7 of 1957, at 1360.

77 COMMONWEALTH PARL. DEB., H. of R. No. 5 of 1957, at 949 *et seq.*

78 The National Service (No. 2) Act (No. 40 of 1956) recast sec. 46 (3) and (4) to clarify the intention. This second amending Act refers to the National Service Act 1951-1953 as amended by the National Service Act 1957 as the Principal Act, and only repeals sub-sec. (3), with the result that there are now two sub-sections numbered (4) in sec. 26, differently worded but each framed to achieve a similar intention.

There were several other incidental transitional and minor amendments made, including a not altogether elegant redrafting of the section (sec. 60) to permit service of documents by post not only at the registered address of the person to be served, but now also at "the address of that person last known to the person, being the Secretary or the delegate of the Secretary, who caused the document to be so served." How the Secretary or his delegate is to acquire this knowledge is not stated.

## VII. PRIMARY INDUSTRY.

*Cotton.*

The Cotton Bounty Act 1951-1955 was amended by Act No. 3 of 1957 retrospectively to 2nd January 1952, the date of commencement of the 1951 Act, to regularize interim payments of bounty including the payment which had already been authorized by the Government in January 1956.[79] Under the Act prior to the amendment the rate of bounty[80] depended on the amount paid by the processor to the grower and in practice this depends on the subsequent sale by the processor to the spinners, hence the processing and accounting necessarily precede the assessment. The amendment in effect permits an estimation by the Minister for purposes of calculating the rate of bounty, subject to subsequent adjustment, and enables advances to be made with recovery later if the bounty as finally calculated exceeds the advance.

*Dairying.*

The Dairying Industry Act (No. 31 of 1957) repealed the Act of 1952 which provided for the payment of bounties for butter and cheese production, and introduced a new five-year scheme incorporating "all the best features of"[81] the scheme under the repealed Act. The new Act follows the superseded one very closely though the fairly extensive preamble has been omitted. One of the most significant of the changes made empowers the use of the Stabilization Fund not only for raising returns on exported butter and cheese but also "for any

79 See COMMONWEALTH PARL. DEB., H. of R. No. 1 of 1957, at 47.

80 The Act provides (sec. 8) for a bounty to take the average price per pound of seed cotton up to a guaranteed minimum of 14d. And see 3 U. WESTERN AUST. ANN. L. REV. 548, where the guaranteed minimum price is stated, in error, to be 9½d. per lb.

81 COMMONWEALTH PARL. DEB., H. of R. No. 7 of 1957, at 1413, *per* the Minister for Primary Industry, Mr. McMahon.

other purpose approved by the Minister" (sec. 13 (b)) such as, it was contemplated, "research and sales promotion."[82]

*Flax Fibre.*

The Flax Fibre Bounty Act 1954 which would have expired on 31st October 1956 was amended first to extend its operation till 31st October 1957 by Act No. 32 of 1957 and then after "a comprehensive review by the Government"[83] for a further three years until 31st October 1960 by Act No. 101 of 1957, which prescribed the rates of bounty for specified periods subject to a sliding scale depending on the cost at which flax fibre of a type and quality corresponding to Australian standard Grade B could be purchased overseas and landed in Australia. Because of the depressed state of the world market for flax and the intense overseas competition the industry in Australia had been operating under difficulties and suffering considerable loss, and the Government had decided to bring to an end the operations of the Flax Commission which, apart from the co-operative company at Boyup Brook in Western Australia, had a monopoly of flax fibre processing in Australia. The period of the bounty was extended merely to cover the closing down operations of the Commission and give a measure of assistance to the purchasers of the Commission's mills, and also to give the Western Australian co-operative effort a chance to rehabilitate itself.

*Gold Mining.*

Further increases in the costs of mining and treating gold with no corresponding increases in the official price led the Government to increase the subsidies, Act No. 48 of 1957 amending the Gold Mining Industry Assistance Act 1954-1956 and raising the maximum amount of subsidy payable to large producers from £2 to £2.15.0 per ounce and the flat rate of subsidy payable to small producers from £1.10.0 to £2 per ounce. An increase was also made in the amount permissible as cost of development of the mining property for inclusion in the cost of production on which the subsidy payments are based.

*Trade Publicity.*

"As a result of light vintages in 1955 and 1956 adversely affecting the [Australian Wine] Board's income, together with the increased

[82] *Ibid.*, at 1414.

[83] COMMONWEALTH PARL. DEB., H. of R. No. 19 of 1957, at 2327, *per* the Postmaster-General and Minister for the Navy, Mr. Davidson. The particulars regarding the state of the flax industry given in the text are taken from Mr. Davidson's speech.

commitments for publicity[84] in the United Kingdom, the Board was obliged to suspend its Australian publicity campaign in 1956 for lack of funds",[85] notwithstanding that it had found that its publicity activities were producing good results. Act No. 41 of 1957 amended the Wine Grapes Charges Act 1929-1954 (under which the finances for the Board's activities are raised) to make the additional funds available. It increased, with effect from 1st January 1958, the maximum amount[86] of the charge that may be levied on fresh grapes from 10/- to 15/- a ton and on dried grapes from 30/- to 45/- a ton.

A similar amendment was made to the Apple and Pear Export Charges Act 1938-1947 (which provides the finances for the operations of the Australian Apple and Pear Board) by Act No. 8 of 1957. The maximum charge[87] which may be levied on each case of apples or pears exported was increased from 1d. to 2d. to give the Board, which was also "participating in the overseas trade publicity drive in co-operation with other statutory commodity boards and the Commonwealth Government",[88] the additional moneys required.

*Wheat.*

The Wheat Research Act (No. 22 of 1957) in the words of the Minister for Primary Industry, Mr. McMahon,[89] was "the outcome of negotiations in the Australian Agricultural Council and with the organised wheat-growers", and the plan it embodies, "expresses the determination of Australian wheat-growers to keep on producing wheat successfully in the face of all the competition that the world can bring." The Act established the Wheat Research Trust Account comprising in the main moneys collected under the Wheat Tax Act (No. 21 of 1957) which levied a tax of a farthing a bushel on wheat delivered to the Wheat Board on or after 31st October 1956,[90] plus

84 The Board is given wide powers as to the use of moneys in the Wine Export Fund (see sec. 22 of the Wine Overseas Marketing Act 1929-1954) including power to use the moneys "to promote the sale whether in Australia or elsewhere of wine or brandy."

85 COMMONWEALTH PARL. DEB., H. of R. No. 9 of 1957, at 48, *per* the Minister for Primary Industry.

86 Under sec. 3 (2) of the Principal Act a rate lower than the statutory maximum may be provided by regulation.

87 Sec. 4 (2) of the Apple and Pear Export Charges Act 1938-1957 has a similar provision for prescription of a lower rate by regulation.

88 COMMONWEALTH PARL. DEB., H. of R. No. 1 of 1957, at 47, *per* the Minister for Primary Industry.

89 COMMONWEALTH PARL. DEB., H. of R. No. 7 of 1957, at 1337.

90 The enactment of statutes having retrospective operation by the Commonwealth Parliament is not rare but the retrospective imposition of a tax

donations for research, for which wheat producers are to be given tax reduction under the Wheat Tax Act, and appropriations made by the Commonwealth Government. The moneys are to be used for "scientific or economic research in connection with, or likely to benefit, the wheat industry" (sec. 8 (a)), the training of persons for research, the dissemination of information and advice and the publication of technical reports and papers in connexion with the wheat industry, and all incidental matters. The intention is that this research should be in addition to the research already being carried out at the various institutions in the States. The Act set up a Wheat Industry Research Committee in each State to allocate the moneys for research, with a Wheat Industry Research Council—consisting of one member representing the Department of Primary Industry, one each from five States (Tasmania being excluded), one representing the Universities, one the C.S.I.R.O. and two representing the growers—to consult with the Committees "for the purpose of co-operation and avoiding duplication" in research (sec. 12 (a)) and also to make recommendations to the Minister for the expenditure of the moneys provided by the Commonwealth.

*Wool.*

Wool research had been financed from the Research Trust Account under the Wool Use Promotion Act 1945 which had proved totally inadequate and from the Wool Industry Fund (set up under the Wool Industry Fund Act 1946) which had dwindled from "a peak of £7,800,000 in June 1952, to £6,700,000 in June 1956, and an estimated £6,100,000 in June 1957."[91] The Wool Research Act (No. 26 of 1957) was passed to remedy the position and provide sufficient funds for scientific and economic research in the wool industry. It gave effect to "agreement already reached between the Government and Australian wool-grower organisations on this matter."[92] The moneys from the Wool Industry Fund were transferred into the Wool Research Trust Fund established by the new Act. Additional funds are to be provided annually by the wool-growers in the form of a tax

does call for comment and the Minister explained that "in this case retrospective action is meeting the express wishes of the growers who will meet the tax." It was expected that "in a normal season with deliveries of 160,000,000 bushels or a little more the tax [would] bring in about £170,000." For the 1956-1957 crop of 120,000,000 bushels, £125,000 was expected.

91 COMMONWEALTH PARL. DEB., H. of R. No. 7 of 1957, at 1407, *per* the Minister for Primary Industry.

92 *Ibid.*, at 1406.

of 2/- a bale,[93] and by a Government contribution of the same amount as the tax received plus a further 2/- a bale[94] (being the amount previously contributed to the Research Trust Account), and of course any other contributions plus interest on investments. The moneys in the Fund are to be available for scientific and economic research in connexion with the production and use of wool, the application of the results of the research, the training of personnel, the publication and dissemination of information and incidental purposes (see sec. 29), and are to be paid out for these purposes by the Minister on the recommendation of the Wool Research Committee set up under the Act and consisting of the Chairman of the Australian Wool Bureau,[95] a member of the Department of Primary Industry, two representatives each from the Woolgrowers' Council, the Wool and Meat Producers' Federation and the Associated Woollen and Worsted Textile Manufacturers, one representative from the Universities and one from the C.S.I.R.O. On the recommendation of the Committee persons may be appointed by the Minister to advise it.

The Wool Realization (Distribution of Profits) Act (No. 70 of 1957) empowered the Minister to fix a date not later than 1st July 1959 as the final date for distribution of the profits from the disposal of the wool accumulated during the war through the Joint Disposals Organisation.[96] A considerable amount of "dealer wool moneys"—about £2,200,000, the Minister for Primary Industry informed the House of Representatives[97]—was still available, distribution having previously been delayed because of the doubtful position between dealers and owners. But the doubts had been settled when the High Court had refused leave to appeal to the Judicial Committee of the Privy Council in the *Poulton Case*.[98] There was also some

93 New Wool Tax Acts (Nos. 1 and 2) (Acts Nos. 23 and 24 of 1957) were passed to provide for the levying of the tax simultaneously with the tax for the financing of wool use promotion, the Wool Tax Acts of 1952 being repealed by the Wool Tax Assessment Act (No. 25 of 1957). The rate of tax for research purposes is in fact 2/- a bale, 1/- a fadge or butt and 4d. a bag.

94 Or 1/- a fadge or butt or 4d. a bag.

95 Consequential amendments were made to the Wool Use Promotion Act 1953 by Act No. 27 of 1957 abolishing the positions of Commonwealth Wool Adviser and Deputy Commonwealth Wool Adviser, which were now unnecessary, and recasting the provisions relating to the constitution of the Wool Bureau.

96 A copy of the Disposals Plan appears as a schedule to the Wool Realization Act 1945.

97 COMMONWEALTH PARL. DEB., H. of R. No. 18 of 1957, at 2099.

98 Poulton v. Commonwealth, [1956] Argus L.R. 1060, and see 3 U. WESTERN AUST. ANN. L. REV. 553-554.

£300,000[99] for distribution on wool submitted through brokers, the owners not having been located or having failed to present their cheques for payment within the prescribed time. Any moneys remaining undistributed after this final distribution date will now be paid into the Wool Research Trust Fund.

The establishment of a wool testing service in Australia being considered overdue and the Government having ascertained that certificates relating to wool tests issued by a statutory authority would be acceptable to the International Wool Textile Organisation, "an affiliation of wool textile bodies in various countries which has adopted 'International Regulations for the Conditioning (or Testing) of Wool'," [100] the Australian Wool Testing Authority Act (No. 38 of 1957) was passed to set up the Australian Wool Testing Authority constituted by a nominee of each of the Australian Council of Wool Buyers, the National Council of Wool Selling Brokers, Wool Scourers, Carbonizers and Fellmongers' Federation, the Wool Bureau and the C.S.I.R.O., with an officer of the Department and one other person (an "additional Government representative recommended by the Minister for Primary Industry"[101]). The primary function of the Authority is "to carry out tests of wool and wool products being, or intended to be the subject of trade and commerce with other countries or among the States" (sec. 14 (a)). Certificates issued by the Authority are to be evidence (presumably within the Commonwealth) for all purposes of the matters stated in relation to the tests carried out and of the correctness of the results of such tests and all courts, judges and persons acting judicially (again presumably within Australia only) are required to take judicial notice both of the common seal of the Authority and of the special seal it is authorized to use for sealing certificates. It is intended that the Authority will ultimately be self-financing but the statute appropriated £40,000 for its initial capital (sec. 24).

## VIII. SALARIES, SUPERANNUATION AND PENSIONS.

*Salaries.*

Public Service salaries had been increased considerably as a result of the decision of 16th December 1955 of the Commonwealth Court

99 See note 97 *supra.*

100 COMMONWEALTH PARL. DEB., H. of R. No. 8 of 1957, at 1753, *per* the Minister for Primary Industry.

101 *Ibid.*, at 1752.

of Conciliation and Arbitration.[102] These increases, which were retrospective to 23rd December 1954, did not apply to salaries of officers of the First Division. The Salaries (Statutory Offices) Adjustment Act (No. 39 of 1957) compensated these officers, though only from 1st July 1957, from which date £500 was added to the annual salaries of the Auditor-General, Commonwealth Railways Commissioner, Chairman and Members of the Public Service Board, the Public Service Arbitrator, and the Commissioner and Second Commissioner of Taxation. The Act also amended the Income Tax and Social Services Contribution Act Assessment Act 1936-1956 and appropriated an additional £8,000 to enable increases of £750 per annum to be made to the salaries of the Chairmen and Members of the Taxation Boards of Review, the new salary levels to be respectively £4,500 and £4,000.[103] The Government intended to increase the remuneration and allowances of the Chairman and Members of the Commonwealth Grants Commission as well and the Commonwealth Grants Commission Act 1933-1951 was amended by Act No. 43 of 1957 which repealed the section in which the salaries and allowances had been fixed and substituted—in keeping with the "modern trend" —a section enabling the Governor-General to determine the remuneration and allowances. A similar amendment was made to the High Commissioner (United Kingdom) Act 1909-1952 by Act No. 14 of 1957 leaving the determination of the High Commissioner's remuneration also, to the Executive.

*Pensions and Retirement Benefits.*

Pension payments were increased by the Superannuation Act (No. 94 of 1957), the first fortnightly payment at the higher rate being made on 31st October 1957. A sliding scale of increases depending on the date of retirement was adopted. Those who retired before 14th May 1942 qualify for an increase of ten thirty-fifths of their pensions with the rate of increase decreasing until those who retired after 5th April 1947 qualify only for a seven thirty-fifths increase. The pension rate for children was also increased from £26 to £52 per annum with the annual rate for orphaned children going up from £39 to £78. Children of members of the permanent defence services obtained similar benefits under the Defence Forces Retirement Benefits Act (No. 95 of 1957) which also introduced, as an encourage-

102 Commonwealth Public Service Board v. Telegraphists and Postal Clerks' Union, (1955-1956) 83 Commonwealth Arbitration R. 64, and see the review of the Salaries Adjustment Act (No. 18 of 1955) in 3 U. WESTERN AUST. ANN. L. REV. 554.

103 See COMMONWEALTH PARL. DEB., H. of R. No. 9 of 1957, at 53.

ment to members to re-engage after their initial six year period of service, a new gratuity rate of £210 to be paid after a total engagement period of nine years, and an extra £30 for each completed year after the first six in those cases in which an individual engages for a further six years after the initial six but retires on reaching a prescribed retiring age before completing his twelve years service. The rates of pension payable under the Repatriation Act were increased too, (Act No. 44 of 1957 amending the Act of 1920-1956), the rate for total and permanent incapacity going up by £2.10.0 a fortnight, and the general rate and war widows' pensions by 15/- a fortnight. The Seamen's War Pensions and Allowances Act 1940-1955 was amended by Act No. 45 of 1957 to apply the benefits of the increases in the rates for general pension and war widows' pensions, in cases of seamen incapacitated by war injuries—the rates for the totally and permanently incapacitated have applied automatically to them since 1952.[104]

*Social Service Benefits.*

In introducing the Bill for the Social Services Act (No. 46 of 1957)—a Bill "designed to bring additional comfort to the aged, to the sick and to the afflicted",[105] the Minister for Social Services, Mr. Robertson, pointed out that in "every fiscal year since 1949, without a single exception, the Government [had] brought down legislation of this description and, during that comparatively short space of time, [the Government had] made greater progress towards social security than at any other period in our history since federation. It [was] a very great achievement."[106] The Opposition was not impressed. It was "concerned about the inadequacy of [the] increases"[107] in this comfort for the aged, sick and afflicted. As a result of the Act the Widows' pension rate is increased from £221 to £240.10.0 per annum, and like increases are made in the age and invalid pensions; unemployment and sickness benefits go up from £1.10.0 to £1.15.0 per week for unmarried persons under eighteen years of age, from £2 to £2.7.6 a week for unmarried persons from eighteen to twenty, and from £2.10.0 to £3.5.0 per week in other cases. Additional benefits for a dependent wife or unpaid housekeeper are increased by 7/6d. a week and for the first child by 5/- a week. The means test minimum weekly income in

104 See sec. 22A of the Seamen's War Pensions and Allowances Act 1940-1957.
105 COMMONWEALTH PARL. DEB., H. of R. No. 13 of 1957, at 889.
106 *Ibid.*
107 *Ibid.*, at 1034, *per* Mr. Thompson, Member for Port Adelaide.

case of unmarried persons of under twenty-one years of age is raised to £1 and in other cases to £2.

*Native Members of the Forces Benefits.*

The Native Members of the Forces Benefits Act (No. 89 of 1957) gives "legal authority for the repatriation benefits which [had] previously been provided as an act of grace"[108] for "male aboriginal [natives] of the Territory of Papua or the Territory of New Guinea or of an island in Torres Strait or the Pacific Ocean who served during the war in the Defence Forces at a rate of pay less than . . . [that] . . . of a member of the Australian Military Forces . . ." (sec. 3). The Act validates pension, compensation and other benefit payments already made, and confers on the Executive "blank-cheque" type regulation-making power regarding future benefits, as the Government considered—and the Opposition did not object—that the Executive could better deal with the details as due regard had to be given "to the social and economic conditions of the community in which the various classes of persons to receive these benefits live and to the changing nature of those conditions which vary from time to time and from place to place."[109] The Minister to be responsible in relation to the natives of Papua, New Guinea and the Pacific Islands is the Minister for Territories, and in relation to the Islands of the Torres Straits, the Minister for Repatriation (sec. 3).

## IX. TAXES AND TARIFFS.

*Income Tax.*

Some concessions were introduced by the Income Tax and Social Services Contribution Assessment Act (No. 65 of 1957). The deduction for the maintenance of a spouse, daughter-housekeeper, parent (and now parent-in-law too) was increased from £130 to £143. Similar increases of £13 each were made in deductions for the maintenance of children. The list of institutions to which donations attract exemption from taxation was added to, and the residents of Nauru Island are to enjoy the same privilege as those of Papua, New Guinea and Norfolk Island—the income they derive from sources within the Island will now be tax free. Amendment was also made to the provision relating to the tax allowance for depreciation, the rate of depreciation under the diminishing value method of calculation being increased by 50% to bring the allowance more into parity with the depreciation allowance calculated by the prime cost method. The taxpayer was at the

108 COMMONWEALTH PARL. DEB., Senate No. 18 of 1957, at 1577, *per* the Minister for Repatriation, Senator Cooper.

109 *Ibid.*, at 1578.

same time given the opportunity of electing which method should be applied to his assets subject to a change to the prime cost method applying only to future purchases. The taxpayer is also to be given an option when a depreciable asset has been disposed of, lost or destroyed of having any consideration received in excess of the written down value of the asset, set off against a replacement asset or other assets subject to depreciation instead of it being included as a balancing charge in the assessable income of the year in question.

The Income Tax and Social Services Contribution Act (No. 62 of 1957) raised the limit of the amount of income on which exemption from tax is to be allowed to an aged single person, from £390 to £410, and to an aged married couple, from £780 to £819. The tax on any excess over these amounts up to a limit of £50 in the case of the aged individual and £278 in the case of the aged couple is not to be more than nine-twentieths of such excess.

The imposition of the tax and the declaration of the rates by separate statutes for companies and individuals introduced in the previous year[110] was not continued, the previous practice of making provision for both in the one one statute being reverted to. No change was made in the rates of tax payable by individuals but the rates payable by companies were reduced by 6d. in the pound.

Definitions of the terms "adopted child" and "child" were introduced into the Income Tax and Social Services Contribution Assessment Act 1936-1957, the Gift Duty Assessment Act 1941-1957 and the Estate Duty Assessment Act 1914-1957,[111] to ensure that the same benefits will accrue in respect of adopted children and ex-nuptial children as are available in respect of the taxpayer's own children. The amending Estate Duty Assessment Act (No. 60 of 1957) also added a list of institutions to which gifts will be exempt from duty and introduced "quick succession rebate" provisions under which if assets are twice subjected to estate duty within a period of five years, a rebate of 50% of the duty will be allowed on the assets concerned calculated at the lesser of the average rates applicable to the estates of the two deceased persons if the second death occurs within one year of the first. This percentage of rebate is reduced by ten for each additional year separating the two dispositions.

*Pay-roll Tax Assessment.*

The pay-roll tax was introduced in the financial year 1941-1942 by the Pay-roll Tax Assessment Act 1941 to help finance child endow-

110 See *supra*, at 154.

111 By Acts Nos. 65, 57 and 60 of 1957 respectively.

ment. It was a tax of 2½% on all pay-rolls over £1,040 a year. This exemption limit was increased to £4,160 a year from 1st October 1953 and to £6,240 a year from 1st September 1954. Act No. 68 of 1957 raised the limit from 1st September 1957 to £10,400 a year. The Treasurer informed the House of Representatives when introducing the amendment that it would "involve a loss of revenue of £2,750,000 in a full year . . . [and] . . . relieve approximately 16,000 employers from liability to pay-roll tax, as well as allowing a greater margin of exemption to all employers who remain liable to pay the tax."[112]

*Sales Tax.*

The Sales Tax (Exemptions and Classifications) Act 1935-1956 and the nine Sales Tax Acts were amended[113] to give effect to the reductions proposed in the Budget. Among other items which attracted the reduction were household furniture and equipment, on which the tax was reduced from 10% to 8⅓%, and handbags, travelling bags, attaché cases and baskets of various kinds, on which the tax was reduced from 25% to 12½%. Exemption from taxation was granted on several additional items including industrial gasses and the gas cylinders, industrial equipment used in servicing and repairing ships or railway rolling stock, fire extinguishers and fire-fighting equipment, and "non-alcoholic beverages containing not less than 5% by volume of" Australian fruit juices (sec. 6 (k) of the amending Exemptions and Classifications Act). "A number of other amendments [were made] with the object of removing anomalies and administrative difficulties and with a view to clarifying certain provisions of the law."[114]

*Stevedoring Industry Charge.*

The Stevedoring Industry Charge which provides the revenue for the Stevedoring Industry Authority had been increased from 6d. to 1/7d. per man-hour with effect from 30th October 1956,[115] but because the number of man-hours worked in 1956-1957 had been less than was estimated[116] the revenue received had been insufficient. Act

112 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1957, at 253.

113 By the Sales Tax (Exemptions and Classifications) Act (No. 71 of 1957) and the Sales Tax Acts (Nos. 1 to 9) (Nos. 72 to 80 of 1957).

114 COMMONWEALTH PARL. DEB., H. of R. No. 10 of 1957, at 254, *per* the Treasurer.

115 See Act No. 83 of 1956, reviewed *supra,* at 165.

116 36,500,000 had been the estimated number of man-hours. The actual figure was nearer 34,000,000. See COMMONWEALTH PARL. DEB., H. of R. No. 7 of 1957, at 1401.

No. 30 of 1957 amended the principal Stevedoring Industry Charge Act 1947-1956 in order to remedy the position and provide the additional revenue required by increasing the charge to 2/- per man-hour with effect from 21st May 1957.

*Customs and Excise Tariffs.*

Several statutes were enacted to bring into being the tariff proposals for the year.

The United Kingdom-Australia Trade Agreement had been signed at Canberra on 26th February 1957,[117] after negotiations had taken place between the governments of the two countries, to replace the Ottawa Agreement of 1932. The Customs Tariff (Act No. 53 of 1957) amended the schedule to the principal Act and reduced the ad valorem margins accorded to the United Kingdom over a wide range of items to 7½% in accordance with the Agreement. The Australian manufacturers who depend on imported machinery and other goods for their business will reap the initial benefit.

Customs Tariff (No. 2) (Act No. 54 of 1957) introduced as a result of the Tariff Board recommendations increased duties on some items (*inter alia* furnishing and upholstery fabrics, substitutes for cotton, canvas and duck, taxi meters) and reduced them on others (including some types of women's hosiery, base metal buckles, clasps and slides). The Customs Tariff (New Zealand Preference) (Act No. 55 of 1957) is a complementary measure reducing the New Zealand preference on the textile items from 25% to 22½%.

Customs Tariff (No. 3) (Act No. 81 of 1957) and the Excise Tariff (Act No. 82 of 1957) imposed duties of 6½d. a gallon on aviation turbine kerosene and 1/- a gallon on diesel fuel and gave "effect to the Government's decisions that airline companies using aviation kerosene should contribute further to the heavy cost of providing airports and air route facilities and that operators of diesel-driven road vehicles should make a reasonable contribution to the cost of building and maintaining roads."[118] Provision was subsequently made[119] for the issuing of certificates exempting diesel fuel used otherwise than in

117 For the Agreement see Treaty Series (Australia) 1957 No. 2—1656/57. For a discussion and explanation of the Agreement see the speech of the Minister for Trade, Mr. McEwen, on the motion for the approval. COMMONWEALTH PARL. DEB., H. of R. No. 4 of 1957, at 646-652.

118 COMMONWEALTH PARL. DEB., H. of R. No. 17 of 1957, at 1873, *per* the Minister for Air, Mr. Osborne.

119 By the Diesel Fuel Tax Acts (Nos. 1 and 2) (Nos. 96 and 97 of 1957) and the Diesel Fuel Taxation (Administration) Act (No. 98 of 1957).

propelling vehicles on public roads from the duty and for the rebate of any such duty paid prior to the issue of a certificate on fuel which qualified for the exemption, and also for the recovery by the Department of an equivalent tax if fuel purchased exempt from duty is in fact used for the propulsion of a vehicle on a public road.

Customs Tariff (No. 4) (Act No. 84 of 1957) increased duties on various items including metal-working grinding machines of certain types, insecticide and weed-killing chemicals and cycle saddles. It also increased the tariff on rubber and rubber substitutes from 2d. to 4d. per lb. but by the removal of the 10% ad valorem primage duty reduced the over-all import duty payable.[120] The Customs Tariff (Papua and New Guinea) (Act No. 64 of 1957) served to maintain the tariff at 2d. on the rubber and rubber latex produce of Papua and New Guinea, while the Customs Tariff (New Zealand Preference) (No. 2) (Act No. 63 of 1957) maintained the position of no tariff on insecticides for agricultural purposes produced or manufactured in New Zealand.

*Customs Tariff (Industries Preservation).*

The Government had power under the Customs Tariff (Industries Preservation) Act 1921-1956 to protect Australian industries against subsidized overseas competition by imposing special duties on goods dumped on the Australian market. The Customs Tariff (Industries Preservation) Act of 1957 (Act No. 91) extended this power to enable imports from third countries to be protected against subsidized dumping on the Australian market. The amendment was prompted by the United Kingdom-Australia Trade Agreement[121] and was aimed primarily at the protection of goods imported from the United Kingdom. It was in the nature of a reciprocal measure, the Parliament of the United Kingdom having passed the Customs Duties (Dumping and Subsidies) Act[122] earlier in the year.

## X. MISCELLANEOUS.

*Acts Interpretation.*

The Acts Interpretation Act 1901-1950 was amended by Act No.

120 See COMMONWEALTH PARL. DEB., H. of R. No. 17 of 1957, at 1873.

121 See note 117 *supra*. By Article 12 the Governments "declare their intention to introduce legislation at the earliest possible opportunity which will enable them, consistently with their international obligations, to impose anti-dumping or countervailing duties . . . [and] . . . after consultation . . . to consider taking action . . ." to remedy injury or prevent threatened injury.

122 5 & 6 Eliz. 2, c. 18.

69 of 1957. Reference in any Act now to the Governor of a State will include any other chief executive officer or administrator of the Government. The opportunity was taken to alter as well the definition of Governor-General to include in the appropriate case a deputy appointed by him.

*Aged Persons Homes.*

Under the Aged Persons Homes Act 1954 as amended by Act No. 47 of 1957 "the capital cost" in case of an approved home erected or to be erected will include an amount determined by the Minister in his discretion in respect of the land, the cost or value of which had previously been expressly excluded. The maximum amount of grant that can be made under the Act has also been increased. The grant is now to be either three quarters (instead of half) of the capital cost or twice (instead of an amount equal to) the amount expended by the organization itself—whichever is the less.

*Air Force (Canteens) Regulations.*

The Air Force (Canteens) Act (No. 88 of 1957) assented to on 12th December 1957 validated the Air Force (Canteens) Regulations which "through inadvertence . . . [had] not been laid before each House of Parliament." The regulations have been given force retrospectively to 1st September 1957, the date on which they were originally made to come into operation.

*Commonwealth Police.*

The Commonwealth Police Act (No. 85 of 1957) established the Commonwealth Police Force to take over the functions previously performed by the Commonwealth Investigation Service established by administrative action in 1917[123] and the Peace Officers' Guard set up as a result of the Peace Officers Act 1925. The officers of the force are to be appointed by the Attorney-General, the only prescribed qualifications being that the individual concerned must be a British subject, must have passed a medical examination of a standard approved by the Attorney-General and must take an oath or make an affirmation in the prescribed form. The personnel of the two superseded bodies were merged into the new force, provision being made in the Act to protect the existing and accruing rights of persons who im-

123 Particulars from the speech of the Minister for National Development, Senator Spooner. COMMONWEALTH PARL. DEB., Senate No. 6 of 1957, at 590.

mediately before appointment to the force were officers of the Public Service of the Commonwealth.

*Explosives.*

The Explosives Act (No. 33 of 1957) amended the Act of 1952 in order to clear doubts and ensure that regulations empowering the making of orders relating to berthing of "a vessel in which Commonwealth explosives are, or are to be loaded" (sec. 6 (1) (b)), may empower the directing of the vessel to a berth which is suitable for handling the cargo.

*High Commissioner (United Kingdom).*

Under the High Commissioner (United Kingdom) Act (No. 14 of 1957)—which also dealt with the question of the High Commissioner's remuneration[124]—the High Commissioner is now empowered, subject to regulations (and not the instructions of the Minister as previously), to engage temporary employees in addition to appointing officers. The Act also specifically empowers the appointment by the Governor-General of an Acting High Commissioner during the absence from duty of the High Commissioner.

*Lands Acquisition.*

The Lands Acquisition Act (No. 4 of 1957) amended the 1955 Act in order to ensure that the power of the Minister and the Attorney-General to delegate their respective functions would cover delegations of functions in respect of the disposal of land acquired under the 1906-1936 Act, and to validate any such delegations made since the passing of the 1955 Act. The amending Act also empowers officers of the Attorney-General's Department authorized by the Crown Solicitor to certify the copies of notices of acquisition required to be lodged at the Titles Offices of the States concerned. Prior to this amendment the Crown Solicitor himself had been required to do the certifying—"merely a mechanical [function] . . . its importance . . . lessened by the fact that the original notice of acquisition is publicly available in the 'Gazette'."[125]

*Lighthouses.*

Act No. 9 of 1957 extended the operation of the Lighthouses Act 1911-1949 to the Cocos (Keeling) Islands.

124 See under heading *Salaries, supra,* p.

125 COMMONWEALTH PARL. DEB., H. of R. No. 1 of 1957, at 48, *per* the Minister for the Interior and Minister for Works, Mr. Fairhall.

*National Health.*

The National Health Act (No. 92 of 1957) amended the principal Act of 1953-1956 by increasing the amount of additional benefit per day payable by the Commonwealth from 4/- to 12/- in cases in which the patient is a contributor to a registered hospital benefits organization from which he is entitled to not less than 16/- a day. If his contribution entitles him to less than 16/- a day but not less than 6/- a day the Commonwealth additional benefit rate of 4/- a day will continue, the Government's policy in this regard being "to help those who help themselves, to assist individuals to make provision for expenses they may incur. . . . It is in fact subsidized insurance, a partnership between the government and the people."[126] The amending Act also introduced a waiting period of two months after initial contribution except in those cases in which benefits are payable under the rules of the organization itself without any waiting period, for example in case of hospitalization after an accident. The schedules of medical benefits were also revised "at the request of the medical benefit insurance organisations who [were] experiencing certain mechanical difficulties in processing claims under the [previous] schedules."[127] The revision involved some change of medical services to take in new techniques as items but no changes of substance to the amounts of benefit involved.

*Public Service.*

The amendments brought about in the Public Service Act 1922-1955 by Act No. 13 of 1957 were mainly administrative, and include an express extension of the application of the Act to areas "both within and without the Commonwealth" (sec. 78) thus clearing any doubts as to its application to officers and employees located outside Australia; an increase in the period for which a temporary employee may be engaged from three months to one year with the extension period similarly increased, and now in addition in the appropriate case a possibility of further extension; an extension of the regulation power to enable regulations to be made allowing deductions of salary for periods of unauthorised absence from employment; and increases in the maximum pecuniary penalties that may be imposed by the Chief Officer on officers for offences committed by them (sec. 55) in the case of minor offences from 5/- to 10/- and in other cases from £5 to £20.

126 COMMONWEALTH PARL. DEB., H. of R. No. 17 of 1957, at 1935, *per* the Minister for Health, Mr. Cameron.
127 *Ibid.*

*Stevedoring Industry.*

The Stevedoring Industry Act 1956 was amended by Act No. 93 of 1957 because the Government believed that "having regard to the majority view in the *Builders' Labourers' Case*,[128] there [was] now a distinct possibility that the High Court might hold that jurisdiction to deal with [appeals by waterside workers against decisions of the Stevedoring Industry Authority involving disciplinary action could] not validly be given to a court of law."[129] A new section 37 was therefore enacted substituting the Commission for the Industrial Court as the appellate tribunal in such cases but the new section is only to be brought into operation and substituted for the previous one by proclamation when and if the previous one is declared invalid. Similar provision was made for a new section 35 dealing with the cancellation and suspension of the registration of employers as this section was also in possible danger.

*Trading with the Enemy.*

The Trading with the Enemy Act 1939-1952 was amended by Act No. 1 of 1957 which increased from £25,000 to £45,000 the share of the proceeds of the realization of Japanese assets to be distributed amongst the civilian internees, the realized value of the assets having considerably exceeded the originally estimated value.

ERIC J. EDWARDS.*

128 The Queen v. Spicer; Ex parte Australian Builders' Labourers' Federation, (1958) 31 AUST. L.J. 670, [1958] Argus L.R. 1, in which the High Court (Dixon C.J., McTiernan, Kitto and Taylor JJ., Williams and Webb JJ. dissenting) held that sec. 140 of the Conciliation and Arbitration Act 1904-1956 was outside the judicial power of the Commonwealth and invalid as an attempt to confer non-judicial power on a Court established under Chapter III of the Constitution.

129 COMMONWEALTH PARL. DEB., H. of R. No. 21 of 1957, at 2822, *per* the Minister for Labour and National Service, Mr. Holt.

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