REVIEW OF LEGISLATION.

I. Western Australia.

Introductory.

The third and final session of the Twenty-second Parliament opened on 7th August and closed in the early hours of the morning of 6th December 1958. The legislative output of this session, as compared with that of the two earlier sessions of the same Parliament, was substantially reduced; only 63 Acts found their way onto the Statute Book, and many of these effected relatively slight amendments to their principal Acts. The volume of rejected legislation, though below that of the preceding session, was greater than that of the first session (24 Bills rejected in 1956, 35 in 1957, 28 in 1958). A few of the rejects were, of course, hardy annuals whose defeat was probably forecast by their sponsors even before they were introduced. Into this class fall what has been described before now in this *Review*[1] as "the annual assault on the franchise for the Legislative Council",[2] Mr. S. E. I. Johnson's Bill to introduce a five-day week for bank employees,[3] and the attempt to authorize the State Government Insurance Office to transact all classes of insurance business,[4] all of which were defeated in the Legislative Council at the second reading stage. One could include also the various amendments to the Workers' Compensation Act contained in the Bill introduced by the Hon. W. Hegney[5] which, he said, had been submitted to Parliament in previous years. The attempt to introduce a uniform statutory framework for all local government,[6] whether rural or urban, perhaps falls into a different category, though it has been before Parliament almost as often as some of the other Bills mentioned;[7] this time, after being returned to the Assembly from the Council with amendments, it was no further proceeded with. A contributing reason for this may have been that during the year the local government organizations had retained the services of a Victorian expert on local government to report on the Bill. An attempt to anticipate one provision in the new local government legislation was made in the Municipal Corporations Act Amendment Bill

1 *Supra*, at 91, 261.
2 Electoral Act Amendment Bill (No. 2).
3 Bank Holidays Act Amendment Bill.
4 State Government Insurance Office Act Amendment Bill.
5 Workers' Compensation Act Amendment Bill.
6 Local Government Bill.
7 The Bill was first introduced in 1953: (1953) 136 PARLIAMENTARY DEBATES (Western Australia) (hereafter referred to as PARL. DEB.) 2957.

(which was introduced in the Legislative Council by the Hon. J. M. Thompson), seeking to protect mayors and councillors against disqualification because they sell goods to the Council in the ordinary course of business. The Bill failed to meet with favour as a means of dealing with this thorny topic.

The disadvantages of "tacking" were illustrated by the fate of the Factories and Shops Act Amendment Bill; the first Part was a further essay in the wholly admirable field of accident prevention, which sought to authorize the making of regulations to protect manual workers elsewhere than in factories; but the Bill was defeated in the Legislative Council apparently because the second Part contained a provision restricting the hours of trading of grocery warehouses.[8] One source of State revenue was cut off as a result of the rejection of the Land Tax Assessment Act Amendment Bill by the Legislative Council; the measure had sought to continue in operation the tax on unimproved rural lands which had ceased to be operative on 30th June 1958.[9] There were three unsuccessful attempts to amend the Industrial Arbitration Act 1912 in various particulars. One,[10] introduced in the Legislative Assembly by Mr. C. W. M. Court, sought to legislate against victimization for conscientious objection to union membership, and also to outlaw compulsory levies for political purposes; not surprisingly, but perhaps unfortunately, this was rejected by the Assembly. A Government measure[11] striking at the apparent evasion of awards in the building industry by letting out part of a building contract on a sub-contract basis, by giving the Arbitration Court power to determine whether a person engaged under contract is a worker or a sub-contractor, was defeated in the Legislative Council. A further amendment,[12] intended to give the Court the same power in respect of taxi- and other transport drivers, lapsed after a Select Committee had reported that the Bill should be laid aside but that the number of taxi plates issued in future should be proportioned to the population.[13] Two attempts to amend the Cattle Trespass, Fencing, and Impounding Act 1882—one to try to curb indiscriminate trespassing

8 (1958) 151 PARL. DEB. 2682-2695.

9 As a result of an amendment during its passage through the Legislative Council to the Bill which became the Land and Income Tax Assessment Act Amendment Act 1956: (1956) 145 PARL. DEB. 3559-3560.

10 Industrial Arbitration Act Amendment Bill.

11 Industrial Arbitration Act Amendment Bill (No. 2).

12 Industrial Arbitration Act Amendment Bill (No. 3), another Government measure.

13 A recommendation implemented by an amendment to sec. 8 of the Traffic Act 1919-1957: see sec. 2 (b), Traffic Act Amendment Act (No. 2) 1958.

on country properties,[14] the other to enable persons whose properties are divided from others' by a closed picket fence to obtain from adjoining owners contribution to needed repairs based on the cost of repair of the fence and not on the cost of repair of a "sufficient fence"[15]—were also unsuccessful.

In addition to the Electoral Act Amendment Bill (No. 2) already referred to, and its complementary measure, the Constitution Acts Amendment Bill (No. 2), there were four other unsuccessful attempts to amend the electoral laws. The Constitution Acts Amendment Bill (No. 3), introduced in the Council by the Hon. C. H. Simpson, sought to clarify section 15 of the Constitution Acts Amendment Act 1899 by setting out more clearly the qualification of electors for the Council, and in particular to abolish the possibility of plural voting by business corporations through their nominees under the "Enrolled on Local Authority Ratepayers' List" qualifications.[16] The Bill was rejected by the Council. Another amendment sponsored by the same gentleman, the Electoral Act Amendment Bill (No. 4), which sought to modify the postal vote facilities provided by the previous year's legislation and to secure a right of appeal for the establishment of polling places in scattered areas, though it found favour with the Council, was rejected by the Assembly. The Hon. A. F. Griffith's Electoral Act Amendment Bill met the same fate, though the Hon. H. C. Strickland stated in the course of the second reading debate[17] that the Government was prepared to accept one of the amendments made by the Bill.

Although the Council has, during the term of the Hawke Labour Government, been adamant in resisting any extension of the franchise for elections to it, one would have thought that it (or the Liberal-Country Party majority in it) would have raised little objection to the extension to those elections of the principle of compulsory voting. When, however, a Bill designed to do just that, the Electoral Act Amendment Bill (No. 3) came before it, the political merits of the proposal were not considered: instead, the Council devoted itself to

14 Cattle Trespass, Fencing, and Impounding Act Amendment Bill, introduced in the Legislative Council by the Hon. A.L. Loton. The proposal was to institute a penalty (in addition to damages) payable to the owner of the property trespassed upon, of between £2 and £10, and to make it an offence for a trespasser not to give to the owner of the property trespassed upon, his correct name and address, if demanded.

15 Cattle Trespass, Fencing, and Impounding Act Amendment Bill (No. 2), introduced in the Assembly by Mr. S. Heal.

16 Constitution Acts Amendment Act 1899, sec. 15 (5) and (6).

17 (1958) 149 PARL. DEB. 777.

the niceties of constitutional interpretation, and, on the motion of the Hon. A. F. Griffith, dissented from the President's ruling that the Bill did not effect a change in the constitution of the Legislative Council and did not therefore require the concurrence of an absolute majority of the whole number of members of either House, as required by the proviso to section 73 of the Constitution Act 1889.[18] Without being in any way disrespectful to the Council, the reviewer can hardly forbear from commenting that it does not seem the best-qualified body to decide a legal question of some difficulty[19] with no legal guidance other than that of an opinion of the Solicitor-General in favour of the President's ruling, parts of which were read to the Council by the Hon. H. C. Strickland. It is unfortunate that it was not possible to adopt the suggestion made by the Hon. H. K. Watson[20] and refer the question to the Courts for an advisory opinion.

The difficulty arises, of course, from the vagueness of the words "by which any change in the Constitution of the Legislative Council or of the Legislative Assembly shall be effected" in the proviso to section 73.[21] The unspoken assumption of the majority appeared to be that the Bill in question, by requiring persons who might not otherwise have exercised the franchise to cast their votes, created the possibility that candidates who might not have been elected under the original voluntary franchise would be elected under the compulsory franchise, and thus effected a change in the constitution of the Legislative Council. No doubt a body with (say) sixteen Labour members and fourteen Liberal members would have a different "composition" or "make-up" from a body with fourteen Labour and sixteen Liberal

18 The same question was raised in the Legislative Assembly, on a point of order, by Mr. W.S. Bovell; the Speaker stated that he had had the question examined, that the measure did not "fundamentally alter the Constitution" (it may be noted that the proviso to sec. 73 is not limited in its operation to "fundamental" alterations), and that a similar Bill in 1936, instituting compulsory voting for the Legislative Assembly, was passed without the requirement of a constitutional majority, and that this Bill did not require such a majority: (1958) 150 PARL. DEB. 1441.

19 *Pace* the Hon. E.M. Heenan, in whose opinion the question was "not far removed from being elementary" (*ibid.*, 1570).

20 *Ibid.*, 1572.

21 A further source of confusion in the debate in the Legislative Council arose from the fact that a misprint in the reprint of the Constitution Act 1889 appearing in the Standing Orders of the Legislative Council, 1952, at page 117, turned the word "effected" into the word "affected." Upon this latter word much of the Hon. A.F. Griffith's argument was based ((1958) 150 PARL. DEB. 1565); the Hon. E.M. Heenan employed it (*ibid.*, 1570), and the Hon. L.A. Logan devoted his speech to the meaning of the word, until the President drew members' attention to the misprint (*ibid.*, 1571).

members, and authority was cited in the Council for defining "constitution" as "composition" or "make-up".[22] But it may well be doubted whether it was the intention of the Legislature in passing section 73 to require an absolute majority for a Bill introducing the possibility of a change in the party composition of either Assembly or Council. Quite apart from this, however, there is, it is submitted, some judicial authority, in the decision of the Full Court of Victoria in *McDonald v. Cain*,[23] for the proposition that a Bill whose indirect result may be to effect an alteration in a constitutional provision is not a Bill which does effect such an alteration within the meaning of a legislative provision such as section 73. Of the other cases in which a provision similar to section 73 has come before the Australian courts *Taylor v. Attorney-General for Queensland*[24] merely supplies *dicta* giving alternative meanings of "constitution" which do not assist in answering the present problem, which turns on the meaning of the whole phrase "by which any change . . . . in the Constitution . . . . shall be affected." But in *Clydesdale v. Hughes*[25] (a decision on section 73 itself) there is a strong *dictum*[26] that a Bill to enact that no disability, disqualification or penalty should be incurred by any person at the time both a member of the Council and a member of the Lotteries Commission did not effect a change in the constitution of the Council within the meaning of section 73.[27] If a Bill which allows a person not previously qualified to become a member of the Legislature does not effect a change in the constitution of the Legislature, *à fortiori* a Bill which merely creates the possibility that some persons already qualified may be elected in lieu of others does not do so.

If one turns from judicial interpretation to an inquiry into "the intention of the Legislature" one may justifiably begin by looking at the debates of 1889 on the Constitution Bill. Unfortunately these give

22 *Dicta* of Barton J., and of Gavan Duffy and Rich JJ., in Taylor v. Attorney-General of Queensland, (1917) 23 Commonwealth L.R. 457, 468, 477, quoted in the Solicitor-General's opinion read by the Hon. H.C. Strickland ((1958) 150 PARL. DEB. 1569).

23 [1953] Victorian L.R. 411; see *per* Martin J. at 432, *per* O'Bryan J. at 446.

24 *Supra*, note 22.

25 (1934) 51 Commonwealth L.R. 518.

26 *Ibid.*, at 528.

27 The Bill became law as the Constitution Acts Amendment Act 1933. In fact it passed the second and third readings in each House by an absolute majority as required by sec. 73: it was however attacked on the ground (*inter alia*) that certain amendments made in the committee stage in the Legislative Council were accepted by the Legislative Assembly without such a majority. The High Court (Rich, Dixon, and McTiernan JJ.) held that the exact requirements prescribed by sec. 73 were complied with, but had already uttered the *dictum* referred to.

no assistance in deciding whether the words were intended to be applied to the precise circumstances before us or not; but it is apparent from the discussion on Clause 73 that the proviso was understood (or misunderstood) as requiring an absolute majority for all Bills "affecting the Constitution"[28]—not "the Constitution of the Legislative Council or of the Legislative Assembly" but "the Constitution" *simpliciter* —a misunderstanding which appears to persist to this day.[29] One is therefore driven to an inquiry into the history of representative government in the Australian States and in particular of the safeguards it has been thought fit to impose to protect various constitutional provisions against ill-considered amendment. It is submitted that the results of such an inquiry, though not themselves conclusive, weigh heavily in the balance on the side of the Speaker's and the President's rulings and against the view taken by the majority of the Legislative Council.

The first of the safeguards referred to is reservation for the Royal assent. By section 31 of the Australian Constitutions Act 1842,[30] Bills "altering or affecting the Divisions and Extent of . . . (electoral) Districts and Towns . . . , or establishing new or other Divisions . . . , or altering the Number of Members to be chosen by . . . Districts and Towns . . . , or increasing the whole Number of the Legislative Council, ... " were required to be reserved. By section 32 of the Australian Constitutions Act 1850[31] (section 9 of which authorized representative government in the form of a Legislative Council in colonies other than New South Wales, including Western Australia) the Legislative Council of any Australian Colony was authorized to alter the laws concerning the election of the elective members of the Council or the qualification of electors or elective members, or to establish a bicameral legislature, provided that every Bill for any of these purposes should be reserved. As advantage was taken in successive colonies of this power to set up bicameral legislatures, the second safeguard, that

28 See, for example, Mr. W. E. Marmion ((1889) 15 PARL. DEB. 167); the Hon. C.N. Warton (Attorney-General), *ibid.*, 169-170; Mr. W.T. Loton, *ibid.*, 226.

29 See, for example, the ruling of the Speaker referred to in note 18 *supra*, which speaks merely of altering "the Constitution", and the ruling of the President on the Constitution Acts Amendment Bill No. 2: "As this is an amendment to the Constitution Act, it requires an absolute majority" ((1958) 150 PARL. DEB. 1788). It is submitted, with respect, that this ruling is not only erroneous in form but in law. See also the Speaker's ruling on the second reading of the Natives (Status as Citizens) Bill: *ibid.*, 1004.

30 5 and 6 Vict. c. 76.

31 13 and 14 Vict. c. 59.

of the special majority, was introduced. Thus in New South Wales[32] and in Queensland[33] a two-thirds majority of both Houses was required for any Bill altering the number or apportionment of members in the Legislative Assembly, or for any Bill altering the provisions or laws concerning the Legislative Council, and in addition reservation was required of any Bill in the latter category. South Australia and Victoria, whose constitutions came immediately after that of New South Wales, both required[34] an absolute majority of each House for any Bill by which an alteration in the constitution of either House might be made, and in addition required reservation. By the time the Western Australian Constitution Act came to be drawn, New South Wales had dropped the requirement of the two-thirds majority[35] (though Queensland had retained it for Bills altering the law concerning the Legislative Council)[36] and the Victorian and South Australian models were followed, with two exceptions: First, that there was nothing corresponding to the provisions of section 51 of of the Constitution Act 1855 of Victoria, expressly authorizing the passing of laws (*inter alia*) altering the qualifications of electors and members of either House without the requirement of an absolute majority, and second that the class of Bills required to be reserved was substantially limited by section 73 to Bills interfering with the operation of certain of the financial provisions of the Act and those amending section 73 itself. But section 2 of the United Kingdom Act, the Western Australia Constitution Act 1890,[37] though it repealed the provisions of the Australian Constitutions Acts 1842, 1844, and 1850 which might be repugnant to the new Constitution, kept in force and applied to Bills passed by the newly-constituted legislature those provisions of the Acts of 1842 and 1850 which related "to the withholding of Her Majesty's assent to Bills, and the reservation of Bills for the signification of Her Majesty's pleasure thereon." Doubts must have existed as to how far these provisions, which referred in terms to the Acts affecting unicameral legislatures known as Legislative Councils, might apply to Acts affecting the body known as the Legislative Council which formed part of a bicameral legislature, as well as to Acts affecting the other chamber of that legislature: but these were set at rest by the passing by the United Kingdom Parliament of the Australian States Con-

32 Secs. 15 and 36 of the Constitution Act 1853 (New South Wales).

33 Secs. 9 and 10 of the Constitution Act 1867 (Queensland).

34 South Australia: sec. 34 of the Constitution Act 1855. Victoria: sec. 50 of the Constitution Act 1855.

35 By sec. 1 of the Act 20 Vict. No. 10 (New South Wales).

36 See sec. 1 of the Constitution Act Amendment Act 1871 (Queensland).

37 53 and 54 Vict. c. 26.

stitution Act 1907.

At the time when this Act was introduced the Constitutions of the various Australian States contained the following safeguards:

New South Wales:	reservation of Bills altering the provisions or laws concerning the Legislative Council.
Queensland:	a two-thirds majority of both Houses and reservation for similar Bills.
Tasmania:	apparently no limitations.[38]
Victoria and South Australia:	absolute majority of members of each House for Bills by which "an alteration in the Constitution" of either House "may be made", and reservation.
Western Australia:	absolute majority of members of each House for Bills by which "a change in the Constitution" of either House "shall be effected": *quaere* whether reservation was necessary.

Thus in four of the five States, all of whose constitutions had been approved by the Colonial Office, reservation and the provision of special majorities were seen as going hand-in-hand as safeguards of the Constitution. In the light of this the provisions of the Act of 1907 are of special interest. Section 1, subsection (1), requires reservation of any Bill which "alters the constitution of the Legislature of (any) State or of either House thereof." Subsection (2) provides (*inter alia*) that a Bill shall not be treated as such a Bill by reason only that it concerns "the election of the elective members of the Legislature, or either house thereof, or the qualifications of electors or elective members." This, it is submitted, is a clear indication that the safeguard of reservation was not thought necessary in respect of such legislation, and that it was unnecessary to strain the meaning of the words "alters the constitution of the Legislature of the State or of either House thereof" to include such legislation within the safeguard.[39] What is

38 See the Constitutional Act 1854 (Tasmania).

39 The Act was brought down because the existing state of the law was "most confused" (Mr. Winston Churchill, Under-Secretary of State for Colonies, (1907) 177 PARLIAMENTARY DEBATES (United Kingdom (4th ser.)) 243-244) and it was desired to discriminate between measures which fundamentally altered the constitutions of the States and those which dealt with purely electoral matters. The Earl of Elgin, the Secretary of State for the Colonies, told the House of Lords that the Imperial Law Officers held that the provisions for reservation applied to purely electoral bills, which the Colonial Law Officers (especially in New South Wales and (understandably, in the light of their sec. 51) Victoria) held those Bills free from reservation: (1907) 169 PARLIAMENTARY DEBATES (United Kingdom (4th Ser.) 1394-1395).

said of reservation applies *mutatis mutandis,* it is submitted, to the safeguard of the requirement of special majorities.

It is submitted therefore that both judicial opinion and a survey of the presumed legislative intention show that the rulings of the Speaker and the President were correct, and (with the utmost respect) that the dissent of the Legislative Council from the President's ruling was not well founded in law.

It may be noted that one reason given by the President for his ruling was that the Electoral Act Amendment Act 1936 (which introduced compulsory voting for Legislative Assembly Elections) was passed without the certification by either House of the necessary majority.[40] It does not appear to have occurred to members of the Legislative Council that if their dissent has produced a ruling correct as a matter of law, all Parliaments since the elections in 1938 have been elected under invalid legislation. Can we forecast in Western Australia litigation on the lines of the recent New Zealand case of *Simpson v. Attorney-General*?[41]

Probably the most socially important, and certainly the most controversial, of the rejected Bills was the Natives (Status as Citizens) Bill, which aimed at reversing the present status of aboriginal natives who are inhabitants of the State. At present such natives have no citizenship rights (though as a number of speakers were quick to point out they are saddled with a number of the burdens associated with citizenship, including the burden of taxation) but may apply to be granted the status of citizens, an application which will be granted if it is shown that they have reached a certain standard of education and conduct. The Bill proposed to confer citizenship rights on all natives automatically, but then to confer discretion on the Commissioner of Native Welfare or his officers to apply to a Stipendiary Magistrate to declare a native to be a protected native, and thus deprived of some of the liberties of full citizenship. Opposition to the Bill was based substantially on the three reasons on which the minority submissions to the Special Committee on Native Matters, opposing the indiscriminate grant of citizenship, were based, *viz.,* liquor, voting, and unreadiness. As to the first, it would be generally agreed that excess of liquor is bad for the aboriginal (as indeed it is for the white man); but the point was made that a good many aboriginals are able

40 Apparently the second and third readings in each House were passed on the voices: See (1936) 1 PARL. DEB. 1131, 1203 (Assembly); 2 *ibid.,* 1415, 1653 (Council).

41 [1955] N.Z.L.R. 271.

to obtain liquor, and liquor of the poorest quality, at the moment. It would seem, however, that there is a risk or possibility of increased disturbance, in country towns especially, if the granting of automatic citizenship meant free access to liquor for all natives; and in the absence of any clear policy for minimising this risk the opponents of the Bill were not prepared to take it, even if it should be the price of social progress. As to the second (with which the third is associated in part), while it is no doubt true that a substantial number of aboriginal natives would be incapable of exercising the franchise intelligently, the notorious fact that it is an advantage to any political party that its candidates should appear in the first place on the voting paper for the Senate suggests that the same thing could be said about a fair number of the white inhabitants of Australia. Admittedly it seems a little absurd to suggest that all natives, even those who are still wholly or partly nomadic, should be compelled to register and vote; but if there are substantial advantages to be gained from conferring citizenship upon all, as a token of man's fundamental equality, it would not seem inconsistent with this to exempt them from the compulsory provisions of the Electoral Act.

Of more legal interest was the rather naive attempt by the Hon. J.B. Sleeman, as his political swan song, to secure the passing of a measure (the Criminal Law (Onus of Proof) Amendment Bill) to provide that the burden of proof in offences under the Police Act 1892 or the Criminal Code should in all cases and at all times rest on the prosecutor. In support of his legislative innovation the Hon. Mr. Sleeman laid principal emphasis on the long-standing "gold- and pearl-stealing" provisions (secs. 76A to 76D) enacted as part of the Police Act 1892 by the Police Act Amendment Act 1902. Other speakers in the debate drew attention in general terms to what they called the increasing tendency in legislation of more recent years to place upon a defendant the burden of proving his innocence. The Minister for Police, the Hon. J.J. Brady, in defence of the so-called modern tendency, gave a number of specific examples of provisions in Western Australian legislation of the type complained of, most of which date back almost as far as the provisions cited by the Hon. Mr. Sleeman, and then proceeded to justify them on the ground that if they were removed from the Acts in question the task of the departments concerned in policing them would be one of the greatest difficulty. This attempt at a blanket justification appears, with respect, to be almost as naive as the Hon. Mr. Sleeman's attempt at a blanket prohibition and far more dangerous. The true criterion is whether in respect of each individual piece of legislation the administrative diffi-

culties arising out of the imposition of the burden of proof on the prosecutor substantially outweigh the burden imposed on the person who is required to prove his own innocence and the magnitude of the risk that he may find it impossible or extremely difficult to do so. It would be generally agreed that it would be absurd to require that every police officer in Western Australia who had authority to issue driving licences should be called to prove that an accused was not a licensed driver, when it is a simple matter for him to produce a licence and prove his innocence (see the effect of section 72 of the Justices Act 1902). On the other hand, it is difficult to justify the provision of section 94 of the Fremantle Harbour Trust Act 1902, to the effect that the averment that an offence was committed within the limits of the harbour shall be sufficient proof of such limits unless the contrary be proved, because one would think it much easier for the Trust to prove that the place where the offence was committed was within the limits than for the accused (who does not necessarily have any knowledge of these limits) to disprove it, and the administrative inconvenience of requiring such proof from the Trust seems relatively slight. What is needed, if members of the Legislature are anxious to strike a blow for the "rule of law", is a critical examination of the justification of each such provision presently in the legislation of the State, coupled with a willingness to bring down a specific amendment in all cases in which the provision is felt to be unjustified, together with a constant vigilance so that such provisions are not allowed to slip through unchallenged in the future.[41a]

Had all the rejected Bills been passed the Statute Book would have given even more of an impression of piecemeal amendment of legislation than it does. Even so, during the session no less than seven Acts were amended twice, and in respect of four of these both amendments were Government amendments. This multiplicity of legislation results partly, of course, from the almost unlimited facility for the introduction of private members' Bills, which itself results from the fact that there is less pressure on legislative time in this Parliament than in others. It would seem that this same ready availability of legislative time may produce a lack of legislative forethought in some Government Departments, so that small amendments are brought down as they are thought of and no very serious attempt is made to embody the year's legislative programme in a single Bill. This may also explain the phenomenon of successive annual amendments to certain Acts;

41a See also the Review of Commonwealth Legislation for 1958, *infra,* and note 99, *infra.*

one gets the impression that the administration of certain matters is in a state of constant experimentation. This may be no bad thing; and it may be salutary that such administrative experiments are conducted in the publicity of original legislation rather than in the comparative obscurity of delegated legislation; but one wonders whether if legislative time were more of a luxury encouragement would be afforded to more stable and perhaps better thought-out policies.

Volume 12 of the Reprinted Acts made its appearance during 1958. It is noted that according to the table of contents the Acts are arranged in "lexicographical" order, as they have been (with two exceptions) since the first volume appeared in 1949. This pretentious-seeming and inaccurately-used expression was abandoned in Volume 10, but made an unfortunate re-appearance in Volume 11. It is pleasing to note that it has disappeared from Volume 13, and it is to be hoped that it does not creep back again.[42]

I. CONSTITUTIONAL.

The sole piece of legislation affecting the Constitution to survive the rigours of the legislative process (including, despite the *dicta* in *Clydesdale v. Hughes*,[43] the requirements of section 73 of the Constitution Act 1889) was the Constitution Acts Amendment Act (No. 2 of 1958) which enables members of either House to be paid expenses as representatives of either House or of the Commonwealth Parliamentary Association without incurring disqualification.

II. ADMINISTRATION OF JUSTICE.

Local Courts.

The Local Courts Act Amendment Act (No. 56 of 1958), in addition to correcting an error in section 5 (b) of Act No. 10 of 1957,

42 It has been suggested that the person who first employed the word was concerned that the expression "alphabetical order" might not be apt to describe the order in which entries having the same initial letter of the alphabet are arranged according to the alphabetical order of their second letters, those with the same second letter according to the alphabetical order of the third letters, and so on. Other compilers of indexes, tables of cases, etc., do not appear to have been similarly concerned; and the compilers of the great Oxford English Dictionary themselves speak, in their Preface (Vol. I, p. vi) of "the subordinate entries of distinct forms of words which appear also in their alphabetical place." In any case, it is clear from the same work that "lexicographical" cannot bear the sense attributed to it; it refers rather to the art or skill of compiling a dictionary: see the entries in the Oxford English Dictionary, *s.v.* "lexicographical."

43 *Supra,* note 25.

(a.) increases from £20 to £50 the maximum amount (exclusive of costs) of a judgment which a magistrate may order to be paid by instalments (section 91 of the principal Act),

(b) replaces the proviso to section 126 of the principal Act (protecting certain goods from seizure under a warrant of execution) with a new provision. Protected goods are now as follows:—wearing apparel: man £50, wife £50, each dependent member of family £25; household furniture and effects: £150; implements of trade: £50; all beds and bedding; and family photographs and photographs and portraits.

Legal Practitioners.

The Legal Practitioners Act Amendment Act (No. 4 of 1958) vests the books, etc., in the Supreme Court Library in the Barristers' Board[44] and empowers the Governor to make regulations for the control and use of the Library (sections 2 and 3); enables a person who has passed the examinations prescribed for the LL.B degree of the University of Western Australia to sign articles before he has been admitted to the degree,[45] so long as he is admitted to it within six months of signing articles (sec. 4);[46] exempts persons seeking admission after five years' articles, or two years' articles following graduation, from payment of the 30 guineas admission fee (sec. 5); enables the Barristers' Board to consent, on conditions, to the employment by a practitioner of a person suspended from practice or struck off the rolls and not readmitted (sec. 6); and increases the maximum penalty for an offence under the principal Act from £20 to £50.

A second amendment, the Legal Practitioners Act Amendment Act (No. 2) (No. 27 of 1958), introduced by Mr. T.D. Evans,[47] transfers the power of consent to the holding of other employment by an articled clerk from the Barristers' Board to the individual principal. The employment must be outside the hours of 9 a.m. to 5 p.m.

44 The Board has, since 1898 if not before, exercised *de facto* control over the Library, has spent some £800 a year on it, and has always carried substantial insurance on the books, although *de jure* (under the Law and Parliamentary Library Act 1889) the control of the Library has been vested in the Judges.

45 The statute uses the colloquialism "taken the degree."

46 The practice has been for students successful at the examinations to be admitted to the degree *in absentia* at the first meeting of the Senate after the examination results become available, and to be presented for congratulation at the graduation ceremony some months later.

47 Who has been very zealous over the last few years in attempting to smooth the path of entry into the profession.

Monday to Friday; the articled clerk who is refused consent, or granted it on unsatisfactory terms, has the right of appeal to the Board, but the Board has no power to veto the giving of consent by the principal. Mr. Evans also took advantage of the provisions of Act No. 34 of 1957 to secure an amendment to the Rules of the Barristers' Board to provide that articled clerks whose principals' main office is 50 miles or more from the General Post Office need not attend University lectures.[48]

Maintenance Orders (Reciprocal Enforcement).

The operation of the Reciprocal Enforcement of Maintenance Orders Act 1929 may be extended as a result of the provisions of Act No. 5 of 1958. The Governor is empowered to extend the provisions of the Act to any country outside the Queen's Dominions, whether with (sec. 14 (3) of the principal Act, as amended)[49] or without reciprocal provisions having been made by that country.[50] The motive for the legislation was to enable enforcement provisions to be continued in respect of Commonwealth countries which cease to be part of the Queen's Dominions. It seems odd that the apparent abandonment of the requirement of reciprocity was not mentioned in the second-reading speeches of either the Hon. E. Nulsen or the Hon. R.F. Hutchison, both of whom speak specifically of "reciprocity".[51]

48 The amendment as originally introduced would also have exempted them (perhaps *per incuriam*) from passing examinations.

49 It is unfortunate that the opportunity was not taken to correct the bad drafting of sec. 14 (3), as enacted by sec. 5 (ii) of Act No. 29 of 1923; as a result of the current amendment the subsection now begins, "Where the Governor is satisfied that reciprocal provisions have been made or are about to be made by the legislature of any part of the King's Dominions or of any other country or other competent authority."

50 The power to extend the provisions of the Act to any country without reciprocal provisions having been made by that country is conferred by sec. 14 (7), added to the principal Act by sec. 11 (f) of the amending Act. But the amendments effected to the principal Act by the Reciprocal Enforcement of Maintenance Orders Act Amendment Act 1936 appear to contemplate the existence of reciprocity. The effect of the new sec. 14 (7) would appear to be that if the provisions of the Act are extended to a country which has not made reciprocal provisions, maintenance orders made by the courts of that country may be registered and enforced under sec. 3 of the principal Act; provisional maintenance orders may be made in the courts of this State for confirmation in the courts of that country under sec. 5 (query: Will subsections (4) and (5) of that section continue to operate in this case?); and provisional maintenance orders made in the courts of that country may be confirmed in the courts of this State under sec. 6; but the powers of variation or rescission under secs. 6A, 6B, 6C, and 6D will not apply, although it seems possible that those under sec. 6 (6) will still be available.

51 (1958) 149 PARL. DEB. 379 (the Hon. E. Nulsen); 582 (the Hon. R.F.

III. STATUS.

Natives.

The Natives (Citizenship Rights) Act Amendment Act (No. 58 of 1958), introduced following the defeat of the Natives (Status as Citizens) Bill "to remove certain anomalies and difficulties existent in the parent Act", relieves the native applying for citizenship of the need to state categorically that he has for two years prior to the application dissolved (*sic*) tribal and native associations except with certain close relatives (sec. 3 (a), amending sec. 4 (2)) and relieves the Native Welfare Board of the obligation to satisfy itself that for two years immediately prior to the application the applicant has adopted the manner and habits of civilized life and that he is not suffering from active leprosy, syphilis, granuloma, or yaws (sec. 4 (a) and (b), deleting sec. 5 (1) (a) and (d)). The applicant must now state the full names, sex, and date of birth of all children under the age of 21 years (sec. 3 (b), adding new sec. 4 (2) (c)), and the Board must include in the grant of citizenship rights the names of children not of full age of whom the applicant is the responsible parent—it has now no discretion and application need not be made specially (sec. 4 (c) amending sec. 5 (5)). The children retain this citizenship after they attain the age of 21 (sec. 5 (e), repealing the proviso to sec. 6).[52] A certificate of citizenship may no longer be suspended or cancelled (sec. 6, repealing sec. 7).

IV. PUBLIC HEALTH.

Health Education.

The Health Education Council Act (No. 30 of 1958), which constitutes the Health Education Council of Western Australia, composed of four Government nominees and thirteen nominees of a variety of bodies ranging from the British Medical Association and the University of Western Australia to the Perth Newspaper Proprietors' Association and the Western Australian division of the Australian

Hutchison). It is difficult to avoid the suspicion that the new sec. 14 (7) was never intended to have the effect outlined above, and is merely a product of the draftsman's habit (a dangerous one at times) of saying things more than once *ex abundanti cautela.*

[52] Was the cautious amendment to sec. 6 in sec. 5 (c) and (d) really necessary? Section 6 had provided that the holder of a certificate of citizenship and any child included therein should have all the rights, privileges, and immunities and be subject to the duties and liabilities of a natural-born or naturalized subject of Her Majesty. Is it likely that any court would hold that these words conferred the capacity of a person of full age upon a child?

Federation of Commercial Broadcasting Stations, is chiefly remarkable for the redundancy and occasional infelicity of its drafting.[53] Since

53 An attempt in committee by Mr. Ross Hutchinson to remove one provision both redundant and infelicitous (sec. 9 (2)) was unsuccessful. But there are earlier redundancies. Section 4 says, "A body constituted in accordance with the provisions of this Act has the functions and immunity prescribed by this Act," a provision which reads like a cross between a long title and a preamble but is surely out of place as a substantive enactment. Then sec. 7 (1) (b) provides, "By the publication of the first appointments, the Council is constituted a body corporate with perpetual succession, . . . , and has and may exercise the functions prescribed by this Act." (In passing, can one *exercise* a function; surely it is powers that are exercised?) Section 8 (1) specifies certain functions. Then the offending sec. 9 (2) reads (in part), "The functions, powers, and duties of the Council also include such other functions, powers, and duties as are prescribed in the Act. . . ." Why say in three separate sections that the body has the functions prescribed in the Act, and then prescribe them in a fourth? One is irresistibly reminded of Lewis Carroll's Bellman:

"Just the place for a Snark! I have said it thrice:

What I tell you three times is true."

("The Hunting of the Snark", Fit the First, v.2: THE COMPLETE WORKS OF LEWIS CARROLL (Nonesuch Press) 680.)

(By contrast, the draftsman of the Licensing (Police Force Canteen) Act 1958 has only said it twice.) In any case, if sec. 4, or the provision in sec. 7 (1) (b), or either of them, was necessary, surely it should also have mentioned the "powers and duties" first referred to in sec. 9, if not also the "discretions" which make their first appearance in sec. 10 (d). Incidentally, where in the Act is the "immunity" specifically referred to in sec. 4 as prescribed by the Act?

Sections 4, 5, and 7 (1) (b) could well have been combined in one brief section:—"There is hereby established a body corporate with perpetual succession and a common seal under the name of the Health Education Council of Western Australia": compare sec. 6 (1) of the Cancer Council of Western Australia Act 1958.

Section 10 (d) provides another example of a redundancy favoured not only in Western Australia but elsewhere:—"[The Council may] . . . delegate to a Committee such of its functions, duties, discretions, and powers . . . *and the Committee shall exercise and perform the functions, duties, and discretions, and may exercise the powers so delegated to it*" (italics added). What useful purpose do the italicised words serve?

Among other criticisms which may be made is the appearance, in sec. 6 (12), of the ambiguous form, "such reimbursements of expenditure, as the Minister from time to time determines and is hereby authorized to determine" (already noted in the Review of 1957 Legislation, *supra,* at 288, note 108). It is the "such" which creates the difficulty: the form without "such", exemplified by sec. 9 (2), is not ambiguous, though open to other objection. (Incidentally, the comma after "expenditure" is unnecessary, as is that after "make" in sec. 9 (2), and generally the drafting suffers from an excess of commas). It would seem that the Council, if it dismiss a member of a Committee, is not given power to appoint a new member in his stead (see sec. 10 (e) and (f) and the maxim *expressio unius. . . .*) unless sec. 34 of the Interpretation Act 1918 applies; but if it does apply

1956 there has been a "non-statutory" body of the same name composed of members of various citizens' organizations, working largely through and with the Department of Public Health, principally to publicise methods of safeguarding health in an effort to educate the public. It is not easy to see what advantages will accrue from setting up this body as a separate "autonomous" body corporate, except perhaps that funds and gifts in kind may be more willingly given to such a body than to a departmental committee.[54]

The regulation-making powers under the Act, which were the subject of a debate in the committee stage of the Legislative Assembly, remarkable neither for clarity of thought nor for quantity of information,[55] merit some comment. Section 9 (2) provides that the Council is to have "such other functions, powers, and duties as are prescribed . . . by regulations which the Governor may make, and is hereby authorised to make for the purposes of this Act." It is not clear whether this rather hole-in-the-corner conferment of regulation-making authority on the Governor is intended to enable him to make regulations generally for the purposes of Act, or only to make regulations prescribing other functions, powers, and duties of the Council. Section 17 (2) empowers the Council, "with the approval of the Governor", to make regulations "to assist the Council to carry out its functions or for better carrying out the objects and purposes of this Act." Is the Governor's approval to be to the proposed exercise of the power to make regulations or to the content of the regulations when made? If the latter, how is the approval to be signified, and is it intended that the proviso to section 36 (4) of the Interpretation Act (which speaks of a requirement that the regulations be confirmed by the Governor) should apply? Would it not have been better drafting practice to confine the whole of the regulation-making power to the Governor?

the paragraphs in question are redundant. There seems also to be a possibility of confusion in relation to ministerial responsibility for the Council; "Minister" is defined in sec. 3 as "the Minister of Public Health or any Minister of the Crown for the time being discharging the duties of the office of the Minister of Public Health." "The duties of the Minister" or "the office of the Minister" would be understandable but not the combination; however, the phrase appears (*s.v.* "Minister") in sec. 4 of the Interpretation Act 1918. Section 8 (2) speaks of "any duty, power, or function, of the Minister to whom the administration of this Act is committed by the Governor." Adoption of the standard practice based on the definition of "Minister" in sec. 4 of the Interpretation Act 1918 would have avoided this and saved six lines of print.

54 The Hon. E. Nulsen, Minister of Health, (1958) 149 PARL. DEB. 736, 792.

55 *Ibid.*, 795-798. The Hon. Mr. Nulsen conceded (at 795) in relation to sec. 9 (2) that he did not altogether understand it; he had previously said that it was "a technicality . . . drafted by a lawyer."

Cancer Council.

By comparison with the preceding Act, the Cancer Council of Western Australia Act (No. 43 of 1958) is relatively free from lapses of draftsmanship.[56] It sets up a sixteen-member council with a somewhat narrower objective, that of "co-ordinating, stimulating, promoting, and subsidizing research into the cause, diagnosis, prevention, and treatment of cancer and allied conditions" (to quote the long title) and considerably greater powers, including power to set up Cancer Institutes, each with its separate Board to manage it (Part IV of the Act). This Council too is the successor to a voluntary organization, the Anti-Cancer Council of Western Australia, to whose money, property, records, liabilities, and obligations it succeeds (sec. 18). Although the Council is to have a common seal (sec. 7 (1) (b)) the President or Deputy President is authorized by section 30 (1) to execute documents (apparently without restriction) on behalf and by authority of the Council.

Tuberculosis Control.

By the Tuberculosis (Commonwealth and State Arrangement) Act (No. 25 of 1958) authority is given for the execution of a new arrangement for joint Commonwealth-State participation in the campaign against tuberculosis, the arrangement entered into on 26th September 1949[57] having expired on 1st July 1958. The present arrangement is to be in force for five years in the first instance. The State will continue to be entitled to Commonwealth reimbursement of capital expenditure on land and buildings used in the diagnosis, treatment, and control of tuberculosis, and of the excess of "net maintenance expenditure" for the purposes of the campaign over that expenditure in the base year 1957-58.

56 Section 9 (1) (c), however, is subject to the same criticism as sec. 10 (d) of the former Act (*cf.*, however, sec. 9 (1) (d) of the Cancer Council of Western Australia Act with sec. 10 (e) and (f) of the Health Education Council Act.) The Council appears (oddly) to be constituted twice; firstly by sec. 6 (1), and secondly by sec. 7 (1) (b) when the first appointments are published. The words "and the Council shall give effect to the directions according to their tenor" in sec. 8 (1) (b) seem doubly redundant. The Council's obligation would seem to be implied in the cryptic phrase "Subject to the Minister" which begins sec. 8 (1) (a) and also sec. 6 (13); would not "Subject to any directions given by the Minister" be better? It is difficult, too, to see what effect could be given to the directions other than "according to their tenor."

57 See the Tuberculosis (Commonwealth and State Arrangement) Act (No. 13 of 1949).

V. CONTROL OF PRICES AND COMMODITIES.

Unfair Trading and Profit Control.

"A rose by any other name would smell as sweet" (or as foul),[58] and it was hardly to be expected that the substitution of the appellation "Monopolies and Restrictive Trade Practices Control Act 1956-1958" for the more provocative "Unfair Trading and Profit Control Act" effected by section 1 (3) of Act No. 47 of 1958 would meet with favour from the Opposition. Apart from consequential amendments rendered necessary by the altered name of the legislation, and some small amendments to one definition of "unfair trading methods", the Act provides (by sec. 6) a right of appeal from the decision of a Judge in Chambers to the Full Court, and from either to the High Court, and by section 7 inserts a new patchwork section 39A into the principal Act. Subsections (1) and (3) of the new section are directed against actual or threatened victimization of any person who invokes or has invoked the provisions of the Act as a protection against unfair trading; subsection (2) imposes a quite unrelated prohibition of collusive tendering,[59] as defined by new definitions inserted by section 4 of the amending Act; subsection (4) requires the approval of the Commissioner to any alteration of an agreement or arrangement in relation to trade or business if one of the parties to such an agreement has invoked any of the provisions of the Act for protection from unfair trading.

Primary Produce.

One suspects that the marketing schemes in relation to various primary products are here to stay. The current Egg Marketing Scheme, originally limited in operation to five years and twice extended for five-year periods, has been continued for a further ten years by the Marketing of Eggs Act Amendment (Continuance) Act (No. 33 of 1958).

58 *Cf.* the remarks of Mr. C.W.M. Court, Mr. Ross Hutchinson, and Mr. W.S. Bovell: (1958) 151 PARL. DEB. 2296.

59 This piece of legislative inelegance results from an amendment made during the committee stage in the Assembly; a provision in the original Bill to make collusive tendering a ground for setting in motion the machinery which would result in the offender being declared to be an "unfair trader" was deleted by the Assembly, and the present provision inserted where it now stands. Considering that the banning of collusive tendering was one of the principal objects of the Bill as introduced, one would have thought that the provision merited the dignity of a section on its own. It seems unfortunate that the draftsman of a Bill is apparently not given an opportunity to comment on the wording or placement of amendments such as this while the Bill is passing through the committee stage.

The Commonwealth having elected to continue the present wheat stabilization scheme for a further five seasons, and having chosen to do this by repealing and re-enacting, with savings and amendments, the earlier legislation,[60] the State has followed suit in the Wheat Industry Stabilisation Act (No. 31 of 1958), although the amendments in the legislation (apart from amendments in terminal dates resulting from the continuation) are few and the extension and revision could have been effected by a relatively short amending Act.

Rents and Tenancies.

The provisions of the Rents and Tenancies Emergency Provisions Act 1951 have been continued in operation for a further year (Act No. 42 of 1958).

VI. FISCAL.

By the Totalisator Duty Act Amendment Act (No. 28 of 1958) duty on "jackpots", "quinellas", and "doubles"[61] is reduced from $7\frac{1}{2}\%$ to $3\frac{1}{2}\%$ of gross takings, so as to increase the clubs' share of the amount "invested" to 10%.

VII. BUILDING, HOUSING, AND DEVELOPMENT.

Housing.

The Housing Loan Guarantee Act 1957 was amended twice during the session; the first of the two amendments (Act No. 3 of 1958) was intended to repair a defect in section 7 of the principal Act which resulted from an error made when amendments were being made to the Bill in the committee stage in the Council.[62] Section 7 (4) as finally printed and assented to enabled a second mortgage to be guaranteed even if the aggregate amounts of the first and second mortgages exceeded the limits imposed by subsection (3), provided that in that case the Minister consented to a greater rate of interest being charged on the second mortgage than on the first mortgage;

60 Wheat Industry Stabilization Act 1958 (Commonwealth), noted *infra*.

61 The legislation speaks of "wagering transactions known as 'jackpots' or as 'quinellas' or as 'doubles'," which suggests to a non-racegoer (such as the reviewer) that there is one type of transaction with three different names.

62 "Unfortunately an error was made when an amending Bill was before the Legislative Council last year. Many deletions and insertions had to be made, . . . , and it was unfortunate that one too many deletions was made:" *per* the Minister for Housing, the Hon. H.E. Graham, (1958) 149 PARL. DEB. 383.

and if the Minister so consented certain provisions of subsection (3) were not to apply. What was intended was apparently that the aggregate amount secured should in no case exceed the limit in question; that the provisions of subsection (3) should apply in all such cases; but that the interest rate on the second mortgage should not exceed that on the first mortgage unless the Minister consented to it.[63] Section 2 of Act No. 3 of 1958 purports to amend the section, as printed, to effectuate the intention.

An investigation of the way in which the error came about uncovers a problem of some nicety, which is apparently of purely academic interest but which, it is submitted, has practical implications. The relevant part of section 7 (4) of the 1957 Bill, as it reached the Council, read:—

> "(4) The foregoing provisions of this section extend to any loan secured by second mortgage of a new house, but
>
> (a) only if the rate of interest payable under the second mortgage does not exceed the rate of interest payable under the first mortgage;"

Two amendments were moved to this subsection by the Chief Secretary;[64] first, to delete paragraph (a); second, to insert after the word "mortgage" (the last word in paragraph (a)) the words "unless the Minister consents to a greater rate of interest being payable under second mortgage." Thus, when the second of these amendments was put it had been rendered meaningless by the passing of the first; and, if it be argued that the second amendment is to be interpreted as reading "insert after the place which would have been occupied by the word "mortgage" if the first amendment had not been passed" it is then arguable that this would make the additional words part of paragraph (a) and thus subject to deletion. Either way, if one demands of the legislative process the strict observance of niceties which, it is submitted, should always be demanded (even in the early hours of the morning, as this was[65]), the Council's "amendments" were nugatory; and the acceptance of them at an even later hour by the Assembly[66] was equally nugatory.

63 This last, according to the Hon. Mr. Graham, was "what has been agreed to by both Chambers": *ibid.*

64 (1957) 148 PARL. DEB. 3883.

65 Some little time before the committee stage was reached on this Bill in Council the sitting had been suspended from 12.18 to 12.33 a.m.: (1957) 148 PARL. DEB. 3878.

66 At some time after 2.11 a.m.: *ibid.*, at 3968, 3972.

No doubt there are few to whom this view of the matter will commend itself, and many who will say (as some of the persons concerned appear to have thought or said) that notwithstanding that the Council (and the Assembly) have said that the words quoted were to be inserted after the word "mortgage" it was quite clear what they meant. The trouble is that the decision to ignore what the Council and the Assembly said and to act on what they "meant" cuts two ways, because it can be argued with just as much force that by expressly resolving to insert, after the last word in a passage limiting the interest rate on second mortgages to that on first mortgages, a passage empowering the Minister to consent to a higher rate the two legislative bodies have clearly indicated that they did not *mean* to delete the first-mentioned passage from the Bill.[67] The reviewer repeats, with emphasis, that the attempted "amendments" were meaningless and nugatory. Nevertheless, as a result of what appears to be an unauthorized and unjustified assumption on the part of the officers of Parliament that they were entitled to determine the legislative intent where the resolutions of the Legislature were ambiguous,[68] a Bill of which section 7 (4) had the effect described above was presented for and received the Governor's assent. It follows from the arguments set out that what the Governor assented to is not what was assented to by either House. It is submitted therefore that the whole of section 7 (each section being a substantive enactment in itself)[69] is void, it never having received, in the form in which it appears in the Statute Book for 1957, the assent of the three component parts of Parliament. If this is correct Act No. 3 of 1958 is an ineffective attempt to amend a section which has no legislative existence; and the proper course would have been to "re-enact" with appropriate introductory words the whole of section 7 with subsection (4) as it was intended to be, and at the same time to validate all guarantees given and other acts done under the purported authority of section 7.[70]

67 In fact, in the view of the Hon. Mr. Graham (*supra,* note 63), this was the intention of the Legislature.

68 "Appears to be", because it is not certain that those responsible thought very deeply about what they were doing; the matter may have appeared to be quite routine, and it may have been thought to be an amendment "of a verbal or formal nature" within the meaning of Standing Order 211 of the Legislative Council (although it is most unlikely that this Standing Order was invoked).

69 Interpretation Act 1918, sec. 20.

70 Reliance will no doubt be placed by those who would defend the procedure adopted on the doctrine (or is it dogma?) that the Courts would refuse to go behind the Government Printer's copies of the Act, as officially supplied

Section 60A of the State Housing Act 1946 (as inserted by sec. 4 of the State Housing Act Amendment Act 1954) is amended by the State Housing Act Amendment Act (No. 16 of 1958) to enable the Commission to guarantee or advance on second mortgage a loan to enable a "worker" to complete a partially built dwelling house, or purchase a new house (as defined in sec. 3 of the Housing Loan Guarantee Act 1957) if the value of the house is no more than £3,000.

Land.

Section 8 of the Land Act 1933 (which empowers the Governor to acquire land for any purpose by purchase or exchange) requires the value of the property to be determined by the Land Purchase Board (subsec. (4)) unless the estimated value of the land is under £100. The Land Act Amendment Act (No. 12 of 1958), section 2, increases this figure to £200. The Land Act Amendment Act (No. 3), (No. 36 of 1958), by adding to section 29 (1) of the principal Act a paragraph (pa), enables the Governor to reserve land as sites for clubs and club premises.[71] The Bill was introduced in the Legislative Council by the Hon. L. C. Diver in order to correct a deficiency in the legislation which had come to light as the result of the refusal of a licence to the Wyalkatchem Club, which was built on a reserve set aside for the purpose under section 29.

Industrial.

The Industrial Development (Resumption of Land) Act Amend-

(or, in Western Australia, as deposited in the Registry of the Supreme Court under Order 7 of the Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly). (See CRAIES on STATUTE LAW, 5th ed. 1952, 37; Lord Campbell, in Edinburgh and Dalkeith Railway Co. v. Wauchope, (1842) 8 Cl. & F. 710, 725, 8 E.R. 279, 285; and also the Interpretation Act 1918, sec. 5 (3)). How far this doctrine would prevail in a flagrant case of non-correspondence between the Bill as passed by the constituent bodies of the Legislature and the Statute as assented to by or on behalf of the Crown is not clear; but in any case it is submitted that it is not applicable in an Australian State; see the remarks of Gavan Duffy J. in McDonald v. Cain, [1953] Victorian L.R. 411, 419, which, it is submitted, are applicable not only to "constitutional" legislation but to all legislation.

71 The marginal notes to Act No. 12 of 1958 (which was assented to on 29th September 1958) give the reference to the principal Act as "Reprinted Acts, Vol. 3, 1950"; the marginal notes to Act No. 36 of 1958 (assented to on 11th December 1958) refer to Vol. 12 of the Reprinted Acts. According to the printer's mark on the title page Volume 12 was set up for printing in May 1958 (though the University's copies did not arrive until October). The type for Act No. 12 was apparently set in June, while that for Act No. 36 was set in October. Surely a little "intelligent anticipation" in the marginal notes to Act No. 12 would have been permissible, or else the

ment Act (No. 52 of 1958) enables the Governor (1) to cancel a dedication of Crown land already dedicated to the purposes of the Act (new sec. 11 (1) (b)), a power necessary in cases where the land in question is not needed, or cannot (*e.g.*, because of town planning restrictions) be used, for industrial purposes; and (2) to purchase by agreement land for the purposes of the Act (new sec. 11 (1b)) and to deal with applications to acquire such land without referring them to a committee under section 12 (4) (new sec. 12 (7) and (8)).

The Industries Assistance Act Amendment Act (No. 18 of 1958) by repealing section 15 of the Industries Assistance Act Amendment Act 1917 (No. 16 of 1917) makes permanent the provisions of the principal Act, which provides the machinery for assisting persons, principally farmers, who have suffered as a result of some disaster.

Iron and Steel.

In recent years more than 50,000 tons of iron ore from Koolyanobbing have been used in each year for the production of charcoal iron and steel at Wundowie, in spite of the limitation in sections 3 and 4 of the Broken Hill Proprietary Steel Industry Agreement Act 1952. Those sections are now amended (by secs. 2 and 3 of Act No. 9 of 1958) to validate this action for the future.[72]

VIII. GENERAL.

Bush Fires.

Some further degree of flexibility in the operation of fire prevention and control in the State is afforded by the Bush Fires Act Amendment Act (No. 20 of 1958), which adds a new subsection 6 to section 38 of the principal Act. An approved local authority (*i.e.*, one whose standard of efficiency in fire prevention and control justifies the Bush Fires Board in approving it) may appoint its own fire weather officer and a deputy (the Board to approve these appointments), and an advisory Committee. This officer may authorize burning of bush, within the prohibited burning times or a bush fire emergency period, by a permit holder under section 18 of the principal Act notwithstanding that the Perth Weather Bureau's forecast for the day concerned[73] is "dangerous." The amendment in effect represents a recog-

trouble could have been taken to reset the marginal note before printing the fair copy of the Act.

72 One wonders why it was not thought necessary to validate the past unauthorized use of ore in excess of the statutory amount.

73 The amending Act says "specified in the notice" but does not say which notice; presumably the one under sec. 18 (2) of the principal Act is intended.

nition of the occasional superiority of local empirical meteorological knowledge over centralised scientific forecasting, as it is expected that a fire weather officer with his local knowledge will authorize some, if not all, burning operations in his own district notwithstanding the scientific forecast.

Child Welfare.

A variety of amendments to the principal Act are contained in the Child Welfare Act Amendment Act (No. 45 of 1958). The Minister is given power in particular cases to delegate to the Director of Child Welfare authority to depart from the recommendation of a Children's Court under section 20 (e) of the principal Act.[74] Under section 20B of the Act, which was added by Act No. 74 of 1957, a person charged with one of the specified offences against a child may be tried before a Children's Court constituted by a Special Magistrate who is also a Stipendiary Magistrate. By section 3 of the amending Act this is to obtain during the first 30 days only after the coming into operation of that Act; thereafter the Court is to be constituted by such a Magistrate and one other member of the Children's Court,[75] but the Magistrate's decision is to prevail. Section 4 inserts into the principal Act a new section 47A enabling the Minister to commit to the care of the Department any child who has been placed in the care of an institution or foster-parent and for whom maintenance is no longer being paid; notice is to be given to the person who so placed the child, to the person responsible for the payment of maintenance, and to the parents of the child, and the Minister is bound to consider their representations as to why he should not make the order. The parent or person responsible for placing the child in the care of the institution, or the foster-parent, may apply to the Children's Court for cancellation of the order and the release of the child from the care of the State, a procedure loosely described in subsection 2 as "appeal."[76]

74 A further step has been taken this year by sec. 5 of the Child Welfare Act Amendment Act (No. 15 of 1959), as a result of which the recommendations are no longer binding on the Department.

75 This provision was specifically requested by the women members of the Metropolitan Children's Court (*per* the Hon. H.C. Strickland: (1958) 151 PARL. DEB. 2329). It is difficult to see what advantage is to be gained by their presence at the trial of adults for offences under sec. 20B.

76 Apart from this looseness of wording, the subsection is also open to criticism as totally unnecessary: "Unless modified or cancelled on appeal brought under this section, an order made under subsection (1) of this section has effect according to its tenor." Why is it thought necessary to state the obvious? What is the point of the words "according to its tenor"? Do they make the obvious appear less obvious?

Education.

The College Street Closure Act (No. 13 of 1958) marks the end of an era[77] in the history of education in the State, its purpose being to provide room for the enlargement of Perth Modern School, which ceases to be a selective-entry high school and becomes a normal five-year high school.

The Hale School Act Amendment Act (No. 34 of 1958) contains a statement of the intention "that the School shall be and forever remain a Church of England School", and to that end reconstitutes the Board of Governors to comprise the Anglican Archbishop of Perth, four members appointed by the Diocesan Trustees, and four by the Old Haleians Association (Inc.).[78]

Inspection of Machinery.

In moving the second reading of the Bill which became the Inspection of Machinery Act Amendment Act (No. 29 of 1958) the Premier, the Hon. A.R.G. Hawke, said: "The Bill proposes to amend the Inspection of Machinery Act to provide for the appointment of an inspector of lifts." The Act does no such thing. It lays down as alternative qualifications for the position of inspector of machinery (at present service of an engineering apprenticeship of at least five years in the actual manufacture and repair of engines, boilers, and machinery, and subsequent engineering experience of a satisfactory character) practical and technical training in electrical, structural, and mechanical engineering and subsequent satisfactory practical experience in the erection and maintenance of lifts (sec. 2). No doubt a person so qualified can be fully employed in the inspection of lifts,[79] and no doubt he is better qualified to do so than persons qualified under the original provisions, but there is nothing except departmental policy to prevent him from making inspections of machinery which he is not qualified to inspect. Safety legislation of this kind should be much more precise in its terms, and more attention should have been

77 "[T]he first outward and practical action to close down officially an educational era"; Mr. R. Hutchinson, (1958) 149 PARL. DEB. 748.

78 It is perhaps unfortunate that both Mr. H.W. Crommelin [(1958) 151 PARL. DEB. 2285] and Mr. W.S. Bovell (*ibid.*, at 2286) perpetuate the historically and legally inaccurate statement that the school was founded by Bishop Hale. The true facts as to the origin of the school appear in the speech of the Hon. H.C. Strickland in the Council (*ibid.*, at 2257); and the nature of the link between this school and a school founded by Bishop Hale is also explained (*ibid.*, at 2258).

79 As was stated by the Hon. A.M. Moir (Minister for Mines): (1958) 150 PARL. DEB. 1806.

paid by the Assembly to the misgivings of Mr. G.P. Wild[80] and by the Council to the remarks of the Hon. G.C. MacKinnon.[81] If such a person is not to be permitted to inspect machinery other than lifts the Act should say so.

Licensing.

There seem to be "boom years" and "lean years" in amendments to the Licensing Act. 1956 was a boom year, with three amendments on the Statute Book (and two Bills brought down but lost); 1957 a lean year with no actual amendments, though three Bills were brought down and lost. 1958 falls somewhere between the two, with two successes and no failures. The Licensing Act Amendment Act (No. 39 of 1958) enables airport bars to be opened for passengers and crew of intra-state as well as of inter-state and overseas aircraft (sec. 2 (a) and (b) and sec. 3); enables liquor to be served with meals (i) in a room elsewhere on the airport than on the licensed premises (sec. 2 (c)) and (ii) during the whole of the hours in which liquor may be sold and disposed of on the airport, instead of only during limited hours prescribed by the Licensing Court as those in which meals shall be obtainable on the premises (sec. 2 (d)); but entitles the Court to impose conditions as to the manner in which liquor required for consumption with a meal is to be supplied and, if necessary, to grant a wayside house licence in relation to the airport dining-room or restaurant (sec. 2 (e)). The Licensing (Police Force Canteen) Act (No. 40 of 1958) amends both the Licensing Act 1911 and the Police Act 1892 and supplies the necessary statutory authority for the establishment of a Police Force Canteen in the City of Perth. The Bill as brought down originally gave authority for the establishment of "canteens", but as the Minister for Justice, the Hon. E. Nulsen, in moving the second reading, had stated that only one canteen was to be established at present, and that in the City of Perth, the Bill was amended so as to authorize only what was intended to be done immediately.[82] Section 4 of the Act appears to be totally unecessary.[83]

Long Service Leave.

The Long Service Leave Bill introduced by the Government in

80 *Ibid.*, at 1805-1806.

81 *Ibid.*, at 1919-1920.

82 An approach which could more appropriately have been adopted with respect to the Inspection of Machinery Act Amendment Act 1958.

83 *Cf.* sec. 4 of the Health Education Council Act 1958 (note 53, *supra*).

1957 was dropped at the end of the session because of the inability of the Parliamentary representatives of the two interests involved to agree on certain key principles. The Government had sought a ten-year qualifying period, together with the retention of existing long-service leave provisions in awards or industrial agreements and continuance of the Arbitration Court's power to include long-service leave provisions in any future award. The Bill was amended by the Opposition majority in the Council to require a twenty-year qualifying period, the cancellation of all existing long-service leave provisions in awards on the application of an interested party, and the limitation of the Arbitration Court's power in this respect for the future; these amendments were unacceptable to the Assembly. The Long Service Leave Act (No. 44 of 1958) bears some of the marks of a compromise. The Bill applies to employees not governed by any State award, but includes employees governed by Commonwealth awards which do not contain long-service leave provisions; but it excludes public servants, police, railwaymen, teachers in State schools, other classes of State employees who are already entitled to long-service leave rights, and permanent fire-brigadesmen. It includes persons engaged in domestic service[84] and industrial insurance collectors and salesmen (sec. 4, definition of "employee"). There is no limitation of the future powers of the Court of Arbitration; and an employer may under section 5 be exempt from the operation of the Act if he has in operation or proposes to bring into operation a long-service leave scheme which, in the opinion of the Board of Reference under the Act, is more favourable to the whole of his employees than the statutory scheme.

The basis of entitlement is thirteen weeks' leave after twenty years' continuous service; termination of employment (in certain specified circumstances only) after ten years' service will entitle the employee to a proportion of the leave period; but after fifteen years' service *pro rata* leave must be given except in the case of dismissal for serious misconduct (sec. 8). An employee may not accept other employment during his long-service leave, unless the leave follows the termination of his employment (sec. 27). Continuity of employment is defined by section 6, which sets out the classes of *de facto* interruptions which do not affect *de jure* continuity, and makes provision for cases of transmission of a business from one employer to another.

84 An attempt to limit this class to hotel workers and boarding-house employees was defeated: (1958) 150 PARL. DEB. 1581-1582. But the original intention of the Government to include also taxi-drivers and other transport drivers employed under similar conditions was frustrated: *ibid.*, at 1582-1583.

Section 7 contains the controversal "offset" provision (subsec. (4)) first inserted by the Council, persisted in in the face of the Assembly's rejection, and finally accepted by the Assembly (with other amendments) to save the legislation; it allows an employer to offset the cost of providing long-service leave under the Act against his own contributions to any other long-service leave scheme, superannuation, pension or retiring allowance scheme, provident fund, or the like. In effect, it may impose upon an employee whose employer provides such "fringe benefits" a choice between accepting long-service leave or some (it may be, quite small) reduction in his retirement benefits.[85]

Parts IV, V, and VI provide machinery for the interpretation and enforcement of the provisions of the Act. The quality of the drafting, which for the first ten sections is very good, deteriorates somewhat at this point; one wonders whether the Act is a composite product. Three sections (two of them unnecessary[86]) are taken to set up a Board of Reference, with a Chairman (who may be agreed upon by the organizations referred to below) appointed by the Court of Arbitration, and two other members, one appointed by the Employers' Federation and one by the Trade Unions Industrial Council (sec. 13 (1)); these members are to be "deemed not to have been appointed" unless their appointments are notified to the Court in writing within such time as the Court requires (sec. 13 (2))—in which case the Court is empowered to make the appointments. It is not clear whether it is to appoint a person who will be representative of the body in default, or whether it may appoint from persons at large.[87] The Board is to determine in the first instance, and subject to appeal to the Court of Arbitration, all questions arising as to rights and liabilities under the Act, including a number of specific questions set out in section 14 (a),[88] so long as such questions do not arise in the

85 It is possible, as suggested by the Hon. F.R.H. Lavery (*ibid.*, at 1587), that sick leave benefits (if they come within the scope of the offsetting provision) could be seriously curtailed; and provident funds might also be depleted.

86 Secs. 11 and 12: *cf.* secs. 4 and 5 of the Health Education Council Act 1958 and note 53 *supra*.

87 Subsec. 3 begins "where an appointment has not been made in accordance with the provisions of subsection (2)", and subsec. 5 authorizes appointment of deputy members "in the same manner as members are appointed"; it does not appear to have occurred to the draftsman that subsection (2) does not lay down the method of making an appointment, but the circumstances in which a person who has been appointed is to be deemed not to have been appointed. One suspects a feeling that it is improper to speak of an appointment being made by the giving of notice to the Court.

88 In which the draftsman has oscillated between the forms "questions and

hearing of a prosecution for an offence under the Act; but it has no powers of enforcement. It may hold inquiries, summon witnesses, and receive evidence on oath. The enforcement of the provisions of the Act (including the determinations of the Board) is entrusted to the Court of Arbitration, upon application by an aggrieved party within twelve months after the breach; and the Court is also empowered to try offences under the Act. It appears that the Bill as originally brought down conferred exclusive jurisdiction on that Court without appeal. Amendments brought down in the Council by the Hon. H.K. Watson to the clause in question (now sec. 25 of the Act) provide for appeals not only from a decision of an Industrial Magistrate (presumably when he has exercised the Court's powers and jurisdiction, under the authority of sec. 23) and from the Court to the Court of Criminal Appeal (sec. 25 (2) (b)). But by subsection (3), which was not altered, the proceedings of the Court may still not be impeached for want of form or removed by *certiorari* or otherwise challenged or called in question. Unfortunately the generality of the provision in section 25 (1) raises some doubt in the reviewer's mind whether the provisions concerning rights of appeal might not be interpreted as referring solely to determinations of the Court under that subsection.[89] Even if the doubts be unfounded the amendments have produced a confusing and inelegant set of provisions; either the Hon. Mr. Watson has been ill-served by his draftsman, or the "political" demands of the amending process have dictated an order of amendments which has been something less than perfect.

The remainder of the Act contains provisions for inspection and inquiry to ensure that the Act is being complied with (secs. 28 to 31), and for creating and punishing offences (secs. 32 to 36, the last of

disputes as to whether" and "questions and disputes whether"; the latter is more elegant.

89 Section 25 (1) (which retains the original and now misleading marginal note "exclusive jurisdiction") enables a person claiming to be entitled to a benefit under the Act, or a person against whom such a claim is made, to apply to the Court for a determination of his rights and liabilities, in addition to any other right or remedy he may have, and empowers the Court to make such orders and declarations as it thinks fit; subsec. (2) empowers the Court to remit any question or matter to the Conciliation Commissioner (*quaere,* does this refer only to a question or matter before it under subsec. (1), or to all questions and matters?); subsec. (3) confers the right of appeal. If it were not for the reference to the appeal from the decision of the Industrial Magistrate it is submitted that there would be little question but that the appeal referred only to matters before the Court under subsec. (1); as it is, this reference (which should have been appended to sec. 23) may be thought to invite the wider construction which the mover of the amendment no doubt intended.

which merely repeats provisions already in earlier sections of the Act); it allows parties to proceedings to be legally represented (sec. 37), and authorizes the making of regulations and the adaptation to the purposes of the Act of regulations and forms under the Industrial Arbitration Act 1912 (secs. 38 and 39).

Noxious Weeds.

Two small amendments were made to the Noxious Weeds Act 1950 during the year; one wonders whether with a little administrative forethought they could not have been combined. Act No. 11 of 1958 amends section 25 of the principal Act to enable a local authority (as well as the Agriculture Protection Board) to enter into an agreement with the owner or occupier of land for the supply of materials or appliances or services for the destruction of primary noxious weeds.[90] Act No. 54 of 1958 enlarges the regulation-making power to enable regulations to be made to control the use both from the air and from the ground of sprays for the destruction of weeds, so as to minimise the possibility of damage to growing crops from drifting spray material.

Plant Diseases.

Again two small amending Acts[91] have been passed when one could have been enough. Both deal with the registration of orchards. Act No. 7 of 1958 merely enables regulations to be made prescribing times for application for registration and periods of registration without inconsistency with the principal Act; it amends section 8 (3), which prescribed an annual period of registration, and required application on or before 1st July in each year. Act No. 60 of 1958 (i) enables fruit fly foliage baiting committees to be appointed for a minimum period of three years and to continue in operation after that period until a further poll is taken, and increases certain of the charges which can be made by such committees, and (ii) purports to fix new registration fees authorized to be imposed by regulation under section 39 (2) (c) of the principal Act; though the effect of this provision is complicated by other legislation which is worth examination.

Section 39 (2) (c) of the Plant Diseases Act 1914 (as reprinted in Vol. 2 of the Reprinted Acts) empowered the Governor to make

90 Why was this not thought of in 1957, when sec. 25A, empowering a local authority to enter upon public or private land in its district to control, destroy or eradicate primary noxious weeds, was inserted into the principal Act (by Act No. 48 of 1957)?

91 In fact, three Acts have been used to do the work of one, as appears below.

regulations fixing fees under the Act, but limited the fees for registration[92] of an orchard to one shilling (though other registration fees might be graded from two shillings and sixpence upwards according to the area of the holding required to be registered). From 1934 onwards representations were made for the increase of registration fees, in order to obtain more funds for policing fruit fly control, and in 1939 the Plant Diseases (Registration Fees) Act (No. 39 of 1939) was passed, authorizing the Governor, in spite of the limitation referred to above, to increase the registration fees for orchards. The Act (described in the long title as "An Act to authorize temporarily the prescribing of higher registration fees . . .") was to expire on 31st December 1942. Perhaps there was some point in effecting the temporary removal of the limitation by enacting a separate Act, instead of by amending the Plant Diseases Act; but in 1941, when the power to prescribe increased registration fees was (by Act No. 33 of 1941) made permanent, one would have thought that amendment of the Plant Diseases Act was the obvious way to go about it. Until 1958, however, the limitation of registration fees remained (though the amount of one shilling was raised by Acts Nos. 32 and 45 of 1952 to two shillings) but remained inoperative in its application to orchards larger than one acre as a result of Act No. 33 of 1941. From 1st July 1959 (the date on which Act No. 60 of 1958 comes into force) the Governor is authorized under section 39 (2) (b) of the principal Act to provide for the registration of orchards, and under section 39 (2) (c) to fix fees payable under the Act, provided that the fees for registration of orchards shall be:—two shillings for less than twenty-five trees or vines; two shillings for twenty-five or more trees or vines if less than four years old; five shillings for more than twenty-four and less than one hundred trees or vines; five shillings an acre for an orchard of an acre or more.[93] But the Legislature has also thought it necessary to amend section 4 of the Plant Diseases (Registration Fees) Act 1941 (by sec. 3 of Act No. 50 of 1958) to make it lawful for the Governor, notwithstanding this proviso, to fix by regulation the following registration fees:—" . . . for the registration of an orchard, in which there are planted less than twenty-five fruit trees or fruit vines

[92] And for transfer of registration of an orchard; this provision remains in sec. 39 (2) (c) although the provisions of sec. 8 (7) (8) and (9) requiring transfer of registration of an orchard were deleted by Act No. 4 of 1956, sec. 2.

[93] What fees would be charged for an orchard of ninety-nine trees covering one and a half acres? "Acre" does not appear to have the meaning under this section which it bears under sec. 4 (3) (a) of the Plant Diseases (Registration Fees) Act 1941, for the purposes of that section.

—a sum not exceeding two shillings; and for an orchard in which there are planted more than twenty-four and less than one hundred fruit trees or fruit vines—a sum not exceeding five shillings; and a sum not exceeding five shillings for each acre so planted and not exceeding five shillings for each additional part of an acre so planted";[94] and to provide that nothing in subsection (1) is to affect the fixation of the registration fee of two shillings for the registration under the principal Act of an orchard in which there are planted less than twenty-five fruit trees or fruit vines![95]

One wonders whether those responsible for the legislation had taken the trouble to ascertain the precise effect of the Acts they were amending.[96] If they had been trying to make the law appear ludicrous they could hardly have succeeded better. Unnecessary complexity in legislation, of which this is a good (or a bad) example, is one of the principal targets when the layman expresses his criticism and distrust of law and lawyers.[97]

94 Does "so planted" mean "planted with more than twenty-four and less than one hundred fruit trees or fruit vines"? And may the five shillings per acre be levied in addition to the five shillings for an orchard of between 25 and 99 trees or vines?

95 Nothing is said, it will be noted, about the orchard of twenty-five or more trees or vines less than four years old; but by proviso (A) (i) (b) to sec. 4 (1) of the Plant Diseases (Registration Fees) Act 1941 that subsection does not apply to an orchard of such trees or vines if its area is not less than an acre.

96 Mr. R.C. Owen conceded [(1958) 151 PARL. DEB. 2670] that the existence of the two Acts was "confusing." Other members of both the Assembly and the Council noted during the second reading debate that the two Bills were complementary, and that they achieved the same purpose; no one was vigilant enough to ask whether the duplication was really necessary. Those responsible might take to heart the remark of the Hon. H.C. Strickland (in the Legislative Council) in another connexion:—"We do not need two Acts covering the one provision, surely to goodness!"—(1958) 150 PARL. DEB. 1788. Sec. 4 of Act No. 60 of 1958 could substantially have been dispensed with, except for items (ii) and (iii).

97 One final comment may be made; although the Acts were proclaimed (Western Australian Government Gazette, 26th March 1959, at 820) as coming into force on 1st July 1959, regulations purporting to be made under the authority of the amendments were made on 20th March 1959 (Western Australian Government Gazette, 6th April 1959, at 887). Although the regulations are expressed as taking effect on 1st July 1959, it is submitted that they are *ultra vires*, the Governor not having had power to make them until that date. No doubt reliance is placed on sec. 11 of the Interpretation Act 1918; but it is submitted that since the sole operation of the amending Acts is to confer upon the Governor power to make regulations fixing the fees as set out therein (not, as perhaps is the official view, itself to impose or prescribe the fees), making the regulations at an earlier date is not "necessary or expedient for the purpose of bringing the Act into operation at the commencement thereof." It is submitted incidentally that the presence of those words in sec. 11 (and of their counterparts in the

Prevention of Cruelty to Animals.

By the Prevention of Cruelty to Animals Act Amendment Act (No. 22 of 1958) the requirement of section 24 of the principal Act, that a person setting a spring trap for certain animals shall inspect it from time to time, is extended to apply to persons setting snares or other devices; minimum penalties are abolished and certain of the maximum penalties are increased;[98] and the limitation to ten pounds of the amount which the Court may order to be paid as compensation for injury to animal, person or property caused by cruelty to an animal (sec. 5) is removed. The Act also recognizes the existence of more than one Society for the Prevention of Cruelty to Animals.[99]

Railways.

Minor amendments to the Government Railways Act 1904 were contained in two Acts passed during the session. The first (Act No. 17 of 1958) adds a possibly unnecessary subsection (3a) to section 8 of the principal Act. Subsection (3) (enacted by sec. 3 (a) of Act No. 37 of 1957) provides:—"The Commission shall consist of one person appointed by the Governor as Commissioner of the Western Australian Government Railways"; the new subsection (3a) empowers the Governor to appoint a "fit and proper" person to be Commissioner, and also, in apparent mistrust[100] of section 34 (d) of the Interpretation Act 1918, to appoint a fit and proper person to the vacant office on the happening of any vacancy. If subsection (3) was insufficient to authorize the Governor to appoint a Commissioner, then all the acts of the three-man Commission first appointed in 1948 must have been invalid, because the Act authorizing their appointment contained no more explicit authority to appoint Commissioners than the present subsection (3). If the Commissioner resigns, his resignation will not be effective until it is accepted by the Governor; this was

Commonwealth Interpretation Act 1901, sec. 4) is unnecessary and likely to lead to difficulties in cases such as the present.

98 In sec. 4 (b) the draftsman has used five lines of print and thirty-one words to delete from sec. 4 of the principal Act the passage "Minimum penalty: Ten shillings." By contrast, sec. 12 is elegantly terse and equally as effective.

99 This was the result of an amendment introduced in the Council by the Hon. E.M. Heenan, after an earlier amendment introduced by the Hon. J.M.A. Cunningham was negatived. The amendment specifically refers (unnecessarily, it is submitted) to the Eastern Goldfields Society for the Prevention of Cruelty to Animals (Inc.), the Royal Society with that object being already specified in the Bill, and includes any other incorporated society having the same objects. Are we to take it that mention in the Statute Book satisfies a similar social craving to that satisfied by mention in the social columns of the Sunday papers?

100 Or oversight?

intended, to adopt the words of the Royal Commissioner, quoted by the Hon. H.E. Graham,[101] to prevent a Commissioner whose conduct rendered him liable to dismissal from "beating the gun" by resigning. The provisions which forbid the Commissioner's participation in profits, commissions, etc. (secs. 8 (8) (a) (v); 10; and 86) are amended in order to permit the Minister to consent in writing to such participation.[102] In order to enable the Commissioner to be appointed or re-appointed for a term less than seven years a verbose section 8 (9) replaces the corresponding subsection as enacted in 1957.

The second of the two amending Acts (No. 38 of 1958) provides that the appeal rights of certain senior officers (those in respect of whose appointment, suspension, dismissal, etc. the consent of the Minister is required) should be rights of appeal to a Stipendiary Magistrate sitting alone, and not to an appeal board which would include a representative of members of their subordinate staff.

State Government Insurance.

The State Government Insurance Office Act Amendment Act (No. 2) enables the Office to write 24 hours-a-day and 365 days-a-year accident insurance for schoolchildren and students, in lieu of the limited-period accident insurance authorized by section 2 of Act No. 58 of 1954. Attempts by the Liberal Party[103] to make it a condition of the granting of this power to the State Office that all other offices wishing to write insurance of this type should have access to schools and other educational institutions equal to that enjoyed by the State Office were defeated in both the Assembly and the Council.

Surveyors.

A curious ambiguity in the Licensed Surveyors Act 1909 has come to light as the result of the conclusion two or three years ago of an agreement for reciprocal recognition between the Conference of Reciprocating Surveyors' Boards of Australia and New Zealand and the Royal Institution of Chartered Surveyors, London. Section 10 of the Act (which was substantially copied from the Queensland Land

101 (1958) 149 PARL. DEB. 803.

102 But the draftsman has forgotten to amend the second paragraph of sec. 10 (though he has deleted the proviso) and as a result, although the consent of the Minister will relieve the Commissioner of penalties, it will not avail the other party to the contract or agreement for the participation in profits, and he will still be guilty of a misdemeanour.

103 This appears to a New Zealander's eye peculiarly zealous in protecting private enterprise in the insurance field against State competition.

Surveyors Act 1908)[104] empowers the Surveyors' Board to enter into a reciprocal arrangement with the competent authority of "any State, Colony, or Dominion within His Majesty's Dominions." Does "State" refer to States of the Australian Commonwealth or to States generally?[105] It could be argued that the order of reference points to the former interpretation;[106] but if the qualifying phrase "within His Majesty's Dominions" applies to all three categories the application to States of the Australian Commonwealth seems pointless. If (as the Amending Act may be taken to imply) the phrase applies only to the word "Dominion", the word "Colony" by itself is vague and uncertain as to ambit. There is therefore room for argument that "within His Majesty's Dominions" qualifies all three words and that "State within His Majesty's Dominions" must include the United Kingdom. But the view of the Crown Law Department is that the words cannot be interpreted as referring to the United Kingdom; so section 2 of the Licensed Surveyors Act Amendment Act (No. 14 of 1958) settles the matter by enacting that the expression "Dominion within His Majesty's Dominions" shall be deemed to include and always to have included the United Kingdom. It is perhaps a pity that opportunity was not taken to bring the legislative expression into line with the realities of the new Commonwealth of Nations and the end of Dominion Status.

Superannuation and Pensions.

Four Acts falling to be classified under this general heading were passed during the year. The Acts Amendment (Superannuation and Pensions) Act (No. 19 of 1958) was passed in order to put right certain difficulties in the operation of the amending legislation passed in the previous year. Section 2 corrected an anomaly arising out of the operation of section 2, subsections (6) and (9), of Act No. 55 of 1957, whereby a contributor for less than eight units, entitled to retire

104 The draftsman of that day "improved" the drafting by adding to the Queensland form of words "State or Colony within His Majesty's Dominions" (which also suffers from the ambiguity of the word "State") the word "Dominion", and making consequential changes. Had the draftsman of 1909 been thoroughly familiar with the Interpretation Act 1898, under which he worked, he would have used the expression "British possession" (see sec. 17 of that Act) and then have been forced to consider whether the United Kingdom should be expressly included or not.

105 Oddly enough there is no statutory definition of the word; one would not expect it in the Interpretation Act of 1898, but no occasion since the foundation of the Commonwealth has been taken to define it.

106 If it could be said that a State of the Commonwealth is a less exalted member of the hierarchy of Empire than a Colony, as a Colony was less exalted than a Dominion.

before 31st December 1957 but actually retiring after that date, would be entitled to a lesser pension than if he had retired as soon as he was entitled to. Section 3 was passed to ensure that the adjustment according to the formula enacted by section 3 (3) of the same Act does not result in the reduction of any person's pension; but apparently reductions had occurred notwithstanding the proviso to paragraph (b) of the latter subsection.[107] Act No. 46 of 1958 authorized certain amendments to the City of Perth Scheme for Superannuation, principally to provide for superannuation to female officers, and to allow a person to elect to contribute for widow's benefit after he has become a contributor, instead of requiring the election at the time of joining. The Junior Farmers' Movement Amendment Act (No. 8 of 1958) (sec. 2) inserts into section 7 of the principal Act a new subsection (2) authorizing the provision of superannuation under the Superannuation and Family Benefits Act 1938 for officers of the Council of the Movement. The Parliamentary Superannuation Act Amendment Act (No. 51 of 1958) increases the annual contribution made to the fund by a member of Parliament from £78 to £130 per annum and increases the subsidy paid by the State from £6,240 to £10,400 per annum. As a result of these increases pensions payable out of the Fund are also increased; a member with an aggregate of fifteen years' contributory service will now be entitled to a pension of £13.10.0 per week for twenty years.

Swan River Conservation.

Complaints regarding pollution of the Swan River have been said to date back as far as 1870. In 1922 a conference on the problem of pollution in the river was held, and a recommendation emerged

107 The proviso, which was inserted into the Bill during the committee stage in Council [(1957) 148 PARL. DEB. 3027-3028, 3087-3088] was found, when submitted to examination by officers of the Crown Law Department, to be in fact of no legal effect at all (*per* the Hon. A.R.G. Hawke: (1958) 149 PARL. DEB. 605). It is unfortunate that this discovery could not have been made before the Bill of 1957 finally passed into law. Reference to the debates in the Council in 1957 (cited above) will show that the proviso originally moved by the Hon. A.F. Griffith on 13th November was regarded by the Chief Secretary, the Hon. G. Fraser, as "not good drafting"; but the Chief Secretary promised to have the amendment examined to see if it could be accepted. On the following day the Bill was recommitted (the Chief Secretary having been advised that the original amendment would have an unwanted effect); but, the Chief Secretary having had no further word from the Department concerned (other than that the previous amendment was defective), the re-drafted but still objectionable proviso was allowed to pass, although the reporting of the Bill was delayed for five more days presumably to enable the matter to be further examined by the Department.

that there be set up a conservancy board with statutory powers. Not until 1943 was any sort of body set up; and even then it was only a non-statutory voluntary body, the Swan River Reference Committee, with purely advisory powers only. In addition, a second advisory body, the Swan River Conservation Committee, comprising representatives of local governing bodies and other public bodies interested in the condition of the river, has been active for some years. In 1955 a special sub-committee of the former body made an investigation and issued a report which among other things recommended the setting up of a statutory body with administrative as well as purely advisory powers.[108] Legislation to set up such a body was introduced in the closing stages of the 1957 session, but, though passed by the Assembly, was rejected by the Council on the ground that it had been allowed insufficient time to consider the Bill. A similar Bill brought down in the 1958 session, though almost as late in its appearance as the other, became law as the Swan River Conservation Act (No. 53 of 1958).

The Act (which appears to have been drawn by the same hand as drafted the Health Education Council Act 1958 and Part II of the Long Service Leave Act 1958, as it contains the same peculiarities of drafting[109]) sets up a Swan River Conservation Board with a Government-appointed chairman and sixteen members or deputies, representing various interests ranging from the Perth City Council and the Local Government Association to sporting bodies and the Western Australian Aquatic Council. The Chairman of the Board is entitled to remuneration of £100 a year and other members to £3. 3. 0 per meeting with a maximum of £37. 16. 0; all are entitled to reimbursement of travelling and other expenses. Notwithstanding this, an office on the Board is not to be deemed an office of profit from the Crown so as to disqualify from membership of the Legislature,[110] nor an

108 See the brief review of the history of river pollution and efforts to check it; *per* the Hon. J.T. Tonkin (Minister for Works): (1957) 148 PARL. DEB. 3106-3107.

109 For example, it contains the same two unnecessary sections preliminary to to the actual setting out of the constitution of the Swan River Conservation Board. Curiously enough, it has not been thought necessary to repeat this device before setting up the Rivers and Waters Technical Advisory Committee. Again, sec. 5 recites that "a body" constituted under Part II has prescribed functions and immunity; the Act goes on to confer upon it functions and powers, but says nothing about any immunity.

110 In the light of this provision, should not the second and third readings of the Bill have been passed by absolute majorities of both Houses as required by sec. 73 of the Constitution Act 1889. (*Cf.* the comments on the Constitution Acts Amendment Act 1958, *supra,* at 454-459). A similar inquiry might be made concerning the Cancer Council of Western Australia Act 1958; see sec. 6 (17), inserted during the committee stage in the Council: (1958)

office of profit so as to disqualify from membership of a local authority.

The Board is given[111] general powers to carry out work (including the removal of algae) in order to enable it to maintain or improve the condition of the waters and of the foreshores; but it may not undertake river training (*sic*),[112] dredging, reclamation, and structural works, if by law some other instrumentality of the Crown is authorized to carry them out. It is given a variety of particular powers, including power to formulate and implement schemes for co-ordinated action for the abatement, control, and prevention of pollution, and for the beautification of the land and foreshores provided no expenditure by the Board is involved; but no greater area than ten acres of the river may be resumed or filled in without Parliamentary consent.[113] Permits issued by the Board will be required in future before persons can do or omit anything likely to result in pollution of the river, use any of the waters for industrial purposes, or begin any work in, on, over or under the waters or foreshores; and no rights over the waters or foreshores may be granted without the Board's approval. The Board may appoint inspectors for the purposes of the Act. An advisory committee, known as the Rivers and Waters Technical Advisory Committee, is constituted with the object, as its name implies, of advising the Minister and the Board on all matters relating to the giving of effect to the Act. The Board's expenses are to be met as to two-thirds out of the State Treasury and as to one-third by local authorities in the Swan River Conservation Region, which is to be defined by proclamation from time to time; 75% of the local authorities' contribution is to be apportioned *pro* rata according to their population and 25% is to be

151 PARL. DEB. 2049. If our legislators wish us to believe that they are sincerely upholding the Constitution when they insist on compliance with constitutional niceties when questions affecting the franchise are before them they should be equally meticulous when measures which approach more closely to effecting a change in the constitution of either House are before them.

111 The Act says "subject to the Minister", and this cryptic phrase (already criticized in note 56, *supra*) is given a rather curious definition: "subject to constitutional responsibility and duty of the Minister to direct whenever he considers necessary." The Board is not subject to the Minister's responsibility and duty (and any reference to them seems out of place in a statute) but to his directions.

112 A curious expression, not defined in sec. 4 (1), suggesting the attribution of some kind of personality to the river. Was it, like the definition of "sewage" (which is wide enough to include all household refuse, even ashes and old tins) borrowed from Californian legislation? Would the erection of dams or weirs constitute "river training"?

113 The Act says "until the consent of both Houses of Parliament has been given" (sec. 22 (a)) but does not lay down the procedure for giving such consent. Presumably a simple resolution of each House will suffice.

paid by riparian local authorities *pro rata* according to length of shore-line.[114] Offences against the Act are to be penalised by a maximum penalty of ten pounds if the offence is not a continuing offence and to a similar penalty with an additional amount not exceeding five shillings a day if the offence is a continuing offence. A body corporate may be found guilty of an offence against the Act, and the knowledge, intent or wilfulness of any officer shall be imputed to it.

Traffic.

The first of the two amendments to the Traffic Act during the session, the Traffic Act Amendment Act (No. 57 of 1958) was introduced by the Hon. L.C. Diver in order to provide some deterrent (additional to that already afforded by the civil law of trespass and section 13 of the Cattle Trespass, Fencing, and Impounding Act 1882, section 254 of the Criminal Code, and section 60 of the Traffic Act 1919 (as re-enacted by section 25 of Act No. 74 of 1956)), to the increasingly prevalent practice of parking without leave or licence on private property. Within a prescribed area, defined as any parking region constituted and defined pursuant to section 3 (2) of the City of Perth Parking Facilities Act 1956 and any area defined by the Governor for purposes of the new section 57A, it is an offence, punishable by a maximum fine of five pounds for the first offence and ten pounds for any subsequent offence, to park a vehicle on land not a road without the consent of the owner; and in addition power is given to a police officer or traffic inspector or to the owner or person in possession of the land or his employee, to direct the driver or person in charge of a vehicle[115] unlawfully parked to remove it if it is causing or likely to cause "an obstruction, or danger to traffic,"[116] or if no one is in charge of the vehicle to remove it himself.[117] Disobedience to such a direction is punishable by a fine of ten pounds; and the cost of removal or of exercising the power may also be awarded in favour of a complainant.

114 Both of these factors are to be estimated (by the Government Statistician and the Surveyor-General respectively) triennially: sec. 27 (4) and (5) (b).

115 If the driver has left sitting in the car a passenger who does not hold a driver's licence, will the passenger be regarded as being in charge of the car? If so, will he be placed in the dilemma of having to disobey either the direction or sec. 25 (1) (a) of the principal Act?

116 It is curious that the exercise of this power is limited to such cases. Why should the owner or person in possession of land not have the benefit of this power *whenever* a vehicle is parked on his land without his consent?

117 But sec. 60 of the Traffic Act 1919 already exempts a person who removes a "trespassing" motor vehicle from his land (whether or not he is the owner or person in possession of the land, or an employee, and whether or

The Traffic Act Amendment Act (No. 2) (No. 59 of 1958) begins with two amendments to section 8 of the principal Act, a section of which it may now fairly be said that the tail wags the dog. The amended first paragraph, which originally provided that a vehicle licence while in force should be effective throughout the State now provides additionally (as a result of section 2 (a) of the amending Act) that a vehicle licence may be cancelled on the application of the licensee. To this relatively brief general provision is appended a series of provisions relative to taxi-cab licences which were originally confined to setting out the limits of the operation of a taxi-cab licence but which now (as a result of section 2 (b)) go on to limit the number of taxi-cab licences which may be issued to one for each six hundred of the population of the metropolitan area from time to time, with a discretion in the Commissioner of Police to allow one additional licence a month if the circumstances of an applicant are such as to warrant it, and impose restrictions on the transfer of licences which culminate in a complete prohibition of such transfer after 30th June 1960. No one can doubt that the taxi industry is in a chaotic state and in dire need of some such restriction, but it is a pity that a more appropriate place in the Act could not have been found for it.[118]

Section 3 of the amending Act repeals and re-enacts section 11 of the principal Act; the effect is principally to tidy the drafting of a section which had become horribly overburdened with "provisos" as a result of successive amendments, but new provisions empower the reduction of licence fees to half in respect of trailers or semi-trailers used exclusively on roads outside the South-West Land Division, and make new provision for licence fees on tractors, harmonising the amendments made by Acts Nos. 49 and 76 of 1957. A new offence, that of falsely representing oneself to be a traffic inspector, is created by section 5. The provisions relating to the licensing of used car

not it is causing an obstruction, or danger to traffic) from any penalty under the Act; it is difficult to see the precise point of this new provision, especially as it lays on the person moving the vehicle the obligation of notifying a member of the Police Force. Is it likely to be regarded as effecting an implied repeal of the privilege conferred by sec. 60? It seems that, like some of the wonder drugs of modern medicine, the amendment is intended to do good but is likely to have harmful side-effects. It is unfortunate that the advice of the "appropriate department" (cited by the Hon. H.C. Strickland: (1958) 150 PARL. DEB. 1717-1718) that there was merit in the proposal but that it could not be accepted in the form in which it was submitted, did not go so far as to point out these side-effects.

118 One is admittedly hard put to it to suggest one; perhaps sec. 6 would have been the most appropriate resting place for provisions relating to taxi-cab licences.

dealers, inserted into the principal Act by Act No. 76 of 1957, have been filled out[119] by specifying that the security for the due perfomance of the licensee's obligations under the Act (sec. 22AC (3) (b)) shall be a fidelity bond. The conditions upon which the bond shall be defeasible are: (1) failing to pay the whole or any part of the price to the owner after selling the vehicle; (2) selling the vehicle on terms other than those agreed upon; (3) failing to transfer effectively the property in a vehicle; (4) deliberately misrepresenting the general efficiency or mechanical condition of a vehicle, as a result of which the person to whom the representation is made suffers damage; (5) fraudulently removing any parts or accessories from a used vehicle after selling it. Provision is also made for the mode and conditions of recovery of sums under such bonds and for the application of the moneys so received. The provisions for blood tests of drivers suspected of driving under the influence of alcohol, also inserted by Act No. 76 of 1957, have been amended because after the relevant sections had been enacted to provide that the determinations of blood alcohol percentages should be by weight the Government was advised[120] that the determination was by a combination of weight and measure; and the relevant section (sec. 32A) is amended accordingly. Section 43 of the principal Act is amended to enable measurements to be taken not only of the weight of the load on the vehicle but also of the gross weight supported by any axle, wheel or tyre, and the regulation-making power under section 47 (1) (vii) (g) is correspondingly enlarged. Under section 56 as amended a vehicle owner is liable in damages to any local authority for any damage or injury caused to its road by such vehicle instead of, as before, for extraordinary damage only.

IX. MISCELLANEOUS.

(1) A comprehensive Hire-Purchase Act (No. 55 of 1958) was passed during the session, but was not brought into operation, and has now been superseded by new legislation introduced in the 1959 session.

(2) It is now clear that an additional season will be required in order to treat all the areas known to be infested with Argentine ants; and accordingly the Argentine Ant Act 1954 is continued in operation for a further year by virtue of Act No. 10 of 1958.

[119] It does not speak well for those responsible for the preparation of the original scheme for licensing used car dealers that such important provisions were not in the original legislation, but appear as an afterthought in the succeeding year.

[120] Again it is pertinent to ask, why was this information not sought before the original legislation was enacted?

(3) Although the Perth City Council was authorized by the City of Perth Parking Facilities Act 1956 to provide parking facilities and many things ancillary to them, the draftsman of the Act apparently overlooked the need to provide specific authority for the erection of parking signs. This omission is remedied by the City of Perth Parking Facilities Act Amendment Act (No. 32 of 1958).

(4) As a result of the passing of the Mine Workers' Relief Act Amendment Act (No. 48 of 1948) asbestos miners already suffering from asbestosis, or who hereafter contract asbestosis, will receive the same benefits as those who have contracted silicosis.

(5) Among the amendments contained in the Town Planning and Development Act Amendment Act (No. 2) (No. 61 of 1958) is one giving the Town Planning Board power, with the approval of the Minister, to amend any town planning scheme. Another seeks to cure a defect introduced into section 20 of the principal Act by an amendment enacted in 1957 (sec. 2 of Act No. 79 of 1957) already noted in the Review of 1957 legislation.[121] It is intended that no one may without the consent of the Town Planning Board lease or grant a licence to use or occupy land except as a lot or lots for a period greater than ten years, or grant an option to renew the term or period of a lease for a less term of years so that the total period of the letting or licence exceeds ten years; but the words of the amendment still do not say this clearly, though it is clear that the selling or granting of an option to purchase land, except as a lot or lots, without such consent is forbidden.[122] Any consideration paid in respect of a transaction so forbidden may be recovered. The section in question is given retrospective effect from the commencement of the 1957 Act.

(6) In July 1957 the Agriculture Protection Board dissolved the Vermin Board at Port Hedland, which had been constituted under section 45 (1) of the Vermin Act 1918, by appointing the Road Board to be the Vermin Board, and re-constituted it under section 17 to include persons resident elsewhere than in the township. Doubts having been raised by the Crown Law Office whether the powers of the Protection Board included power to dissolve or abolish a vermin board if it had been so constituted, a new section 46 (2), inserted into the Vermin Act 1918 by Act

121 *Supra*, at 287.

122 The new subsection also forbids a person to "lay out, grant or convey a street, road or way, or subdivide" without the like consent.

No. 15 of 1958, validates this action and confers the necessary power for use in future cases.

(7) Following upon the bringing into effect of the Weights and Measures (National Standards) Act 1948 by the Commonwealth, the Weights and Measures Act Amendment Act (No. 26 of 1958) has substituted Commonwealth standards of weight and measure when prescribed and Commonwealth procedures for verification and re-verification for the State standards and procedures previously prescribed.

E.K.B.