II. Commonwealth.

Introductory.

In 1958 the twenty-second Parliament of the Commonwealth, during its third and last session, passed 83 statutes, of which, amongst a mass of detail, only a small proportion appear important as affecting changes in "lawyers' law." The tenor of the debates of the session, as they are reported in Hansard, whilst not exactly suggesting the atmosphere of Versailles before the tumbrils called, frequently reflected the imminence of a general election. Before embarking upon a detailed analysis of the legislation of the session, it would perhaps be meet to make a few comments of a general nature.

The standard of draftsmanship in the majority of the Acts, once granted the difficulties of legislating within the framework of a limited and written constitution, is fairly good. There is at times a tendency to be over-cautious and to enact the obvious, and it is perhaps this failing which has produced some sections of fantastic intricacy. There are, almost inevitably, a few sections, which appear to the reviewer to contain bad errors, and these will be picked out in the course of the review. The reviewer confesses that he has no liking for the technique of drafting which makes numerous alterations to an existing statute by means of a succession of deletions[1] and insertions. In some instances, notably in the Migration Act and the Wheat Industry Stabilization Act, it has been thought better to repeal and re-enact the legislation under review rather than to embark upon a host of complicated amendments; and one wonders why this principle could not be more generally applied. The Navigation Act 1958, for example, contains 208 sections amending an Act of 425 sections, and the result is that the effect of those amendments can scarcely be ascertained without the assistance of the 1956 reprint, and then only by a laborious process of comparison.[2] Statutes are surely intended to be precise and intelligible, but in many cases a search through several volumes of the Commonwealth Acts is necessary to grasp the purpose and effect of an amendment. It is submitted that it would make for a tidier Statute Book and an easier task for lawyers, if amendments could take the form of a re-enactment, where appropriate, of an entire Act, and in other cases of the particular sections under review.

[1] Surely a more apt word than "omissions".

[2] A number of sections of the Navigation Act 1953 were brought into operation on 26th June 1959, only to be amended or repealed by the coming into effect of many sections of the Navigation Act 1958 on the following day.

A tendency that was commented upon adversely in this review last year[3] is again in evidence in the 1958 legislation. This is the practice of delegating extremely wide powers, both legislative and administrative in character, to the Executive. In some instances the delegation of wide powers and discretions may be justified, but in many cases these powers and discretions are conferred when a more limited delegation would be adequate for the purposes for which the government indicates that they are required.[4] In such cases the government is generally asked to give an assurance that the powers will not be used for purposes other than those which have been explained, and on receiving this assurance, Parliament apparently rests content. It is suggested that assurances of this nature are not an adequate protection for the rights of individuals. The power has been conferred, and ministerial assurances are subject to no legal control, or, since the doctrine of ministerial responsibility has largely been superseded by the authority of the party whips, to very little political control. Again, one wonders why in many instances it should be considered necessary that a person, who is a defendant before the Courts at the suit of a government department, should be subject to many grave disadvantages, largely concerning the onus of proof, which do not normally beset litigants.[5] Another, perhaps related, characteristic of the 1958 legislation is that in many instances ministers who are responsible for the passage of a Bill through Parliament are not sufficiently conversant with the terms and effect of the Bill but are forced to rely on departmental memoranda. In the result, at least two measures have become law although many members of Parliament admittedly did not understand what they were enacting, and in spite of suggestions that the sections be referred to the draftsman for redrafting and clarification.[6]

These tendencies are disturbing in that they represent a drift away from the concepts of Parliamentary government and of the Rule of Law, and a surrender by Parliament of many of its functions into the hands of government officials. When members of Parliament themselves cease to believe in the system and are no longer jealous of their rights and of the liberties of the individual, there may be ground for thinking that the system is in jeopardy.

3 *Supra,* at 301.

4 See, for example, sec. 9 of the Dairy Produce Levy Act 1958, or numerous sections of the Migration Act 1958, *infra.*

5 See Dairy Produce Levy Act 1958, sec. 11 (2); Migration Act 1958, sec. 55.

6 See, for example, sec. 82E of the National Health Act 1958, and various sections of the Tariff Board Act 1958, and the debates thereon, *infra.*

I. CONSTITUTIONAL.

There was no legislation passed under this heading in 1958.

II. JUDICIAL AND ADMINISTRATIVE.

Australian Capital Territory Supreme Court.

An amendment[7] to the Australian Capital Territory Supreme Court Act 1933-1957 was rendered necessary by the proposal of the judge of that Court to take leave of absence on medical grounds and by the need to provide for the carrying on of the work of the Court during the absence of the judge. Section 8 (2) of the principal Act authorized the Governor-General, in the event of the absence of the judge, to appoint as acting judge any judge of the Federal Court of Bankruptcy, the Commonwealth Industrial Court or the Commonwealth Court of Conciliation and Arbitration, to hold office during the absence of the judge. However, doubts were felt as to the constitutional validity of such an appointment being other than for life. The amending Act therefore repeals and re-enacts sections 7, 8, and 8A of the principal Act and provides that the Court shall consist of one regular judge and one or more additional judges appointed by the Governor-General by commission. The additional judges shall be persons who already hold commissions as judges of other Commonwealth Courts and, instead of being given temporary acting appointments, they are to be given commissions for life as judges of the Supreme Court, although without any additional remuneration. The jurisdiction of the Court will continue, as before, to be exercised by one judge only, who will normally be the regular judge, but it is left to the judges themselves to make the necessary arrangements as to who is to exercise the jurisdiction of the Court from time to time.

Bankruptcy.

Amendments have been made to the Bankruptcy Act[8] as a result of the decision in *James v. Deputy Commissioner of Taxation*[9] in which the High Court drew attention to a number of deficiencies in the existing legislation.

In the first place, the High Court pointed out that the power conferred on the Court by section 27 (2) (c) to extend or abridge a time limited by the Bankruptcy Act was a judicial power and could not therefore be exercised (as had been the practice since 1928) by

7 By Act No. 43 of 1958.
8 By the Bankruptcy Act (Act No. 13 of 1958).
9 (1957) 97 Commonwealth L.R. 23.

the Registrar who was not an officer of the Court. In consequence, it was necessary to validate the proceedings taken in all those cases in which a Registrar or a Deputy Registrar had purported to exercise that power.[10] The High Court had also criticized the practice of intituling documents, used in proceedings in courts exercising federal bankruptcy jurisdiction, in the form "In the Court of Bankruptcy", on the ground that there was properly no such Court. Accordingly, section 7 (3) provides that in State courts exercising federal jurisdiction the expression "Court of Bankruptcy" shall be deemed to refer to the State court in which the proceedings were instituted.

A further amendment (of sec. 51 of the principal Act) provides for the taking of shorthand notes in proceedings before the Registrar. This had been the practice from 1928 to 1954 when the definition of "the Court" was amended and a reference to the Registrar deleted. This amendment accordingly restores the previous practice. The costs incurred in procuring the taking of a shorthand note, including the costs of any copy of the transcript of the notes for the use of the Registrar, are deemed to be costs awarded by the Court out of the estate of the bankrupt, subject to any other order of the Court.

It was felt that the existing law did not make adequate provision for a debtor who wished to establish a counter-claim, set-off or cross-demand greater than or equal to the debt claimed by the creditor, and who might find that he had committed an act of bankruptcy before he had had an opportunity to establish his claim.[11] Section 5 of the 1958 Act therefore ensures that a debtor, who takes steps by filing an affidavit with the Registrar to establish his counter-claim, etc., will not commit an act of bankruptcy without first having his claim determined by the Court. In all such cases, the time is deemed to be extended until the day on which the court determines the validity of the debtor's claim.

Finally, an amendment of section 210 (1) (g) of the principal Act makes it an offence for a bankrupt to fail to account to the Registrar for the loss of a substantial portion of his estate within one year immediately preceding his bankruptcy. As the expression "the Court" in section 210 now excludes the Registrar, every examination

10 Though not, it should be observed, with reference to the case of Mr. James who had succeeded in establishing his rights before the High Court—sec. 7 (1) and (2).

11 Rule 147 (2) of the Bankruptcy Rules, which authorizes an extension of time by the Registrar until the claim has been heard by the Court, is probably invalid as a result of the decision in James's Case.

in bankruptcy would, but for the amendment, have to be undertaken by the courts themselves.

Judges' Pensions.

The rates of pension payable to members of the federal judiciary have been increased by the Judges' Pensions Act 1958,[12] to remove the anomalous situation whereby judges of the High Court qualified for lower pensions than members of the Supreme Court of New South Wales. The measure, however, attracted considerable criticism from the Opposition on the grounds that no case had been made out for an increase at that time and that the new proposal favoured one particular class of pensioners. The maximum pension rate is increased from 40 per cent. to 50 per cent. of the retiring salary[13] and judges will now qualify for the maximum pension on attaining the age of 60 after serving for not less than 10 years, instead of 15 years as in the past. The pension of a widow of a judge is increased likewise from 20 per cent. to 25 per cent. of the salary of the judge at his death, and, in the case of the widow of a retired judge, her pension will remain as before at half the pension paid to the judge. Two particular aspects of the Act came in for a certain measure of criticism in Parliament. The provision that a proportionate part of the pension should be paid to a judge, who retires before attaining the age of 60 or who has not served 10 years, provided the judge obtains a certificate from the Attorney-General that his retirement is due to permanent disability or infirmity, was criticized by Senator Wright[14] on the ground that a judge's entitlement to his pension should not depend upon the adjudication of any Minister, and a comparison was drawn with the practice of the federal courts of the United States. Finally, the fact that pensions at present being paid to retired federal judges or their widows are not affected by the Act but are to be increased by administrative action and subsequent parliamentary appropriation, was criticized in both Houses as being an usurpation by the Executive of the functions of Parliament.[15]

12 Act No. 9 of 1958. The debate in the House of Representatives involved allegations and charges of a political character against some members of the judiciary, to an extent which the reviewer feels is hardly seemly or proper.

13 It had been reduced from 50 per cent. to 40 per cent. by the Judges' Pensions Act of 1948 if the judge elected to come within the provisions which provided a widow's pension.

14 (1958) 12 COMMONWEALTH PARLIAMENTARY DEBATES (hereafter referred to as COMMONWEALTH PARL. DEB.) (Senate) 937.

15 *Ibid.*, at 937; 19 COMMONWEALTH PARL. DEB. (H. of R.) 1533.

Public Service.

The Public Service Act 1922-1957 and the Commonwealth Employees Furlough Act 1943-1953 authorize the granting of furlough to persons employed under those Acts for a maximum period of 12 months after 40 years' service. They contain no provision for furlough entitlement in respect of service exceeding 40 years. On the recommendation of the Public Service Board, these Acts have now been amended[16] to enable an officer or employee to acquire an entitlement to furlough in respect of each year of service, and to authorize the granting of furlough in respect of each year of service in excess of 40 years on the same basis as that for which it may be granted in respect of any other year of service. The Statistics (Arrangements with States) Act 1958[17] makes similar arrangements in respect of former State public servants who transferred to the Commonwealth public service following the integration of Commonwealth and State statistical services.

Service and Execution of Process.

Section 16 of the Service and Execution of Process Act 1901-1953 provides for the service interstate of a subpoena or summons to a witness to appear and give evidence "in any civil or criminal trial or proceeding." Doubts having arisen as to whether the proceedings in a coroner's court could properly be described as "a civil or criminal trial or proceeding", the Service and Execution of Process Act 1958[18] was passed to ensure that a subpoena or summons of a coroner might also be serived interstate under section 16. The Act itself, however, gave rise to some interesting discussion in both Houses[19] as to whether proceedings before a coroner could be properly described as "a court" for the purposes of *placitum* (xxiv) of section 51 of the Constitution, under which this legislation was passed. In spite of these doubts, the Bill became law, although one hopes that the comment of Senator Vincent did not on this occasion represent the considered attitude of the government.[20]

Tariff Board.

The Tariff Board Act 1958[21] amends the Tariff Board Act

16 By the Public Service Act (No. 11 of 1958) and the Commonwealth Employees' Furlough Act (No. 12 of 1958).

17 Act No. 76 of 1958.

18 Act No. 6 of 1958.

19 (1958) 18 COMMONWEALTH PARL. DEB. (H. of R.) 842 *et seq.*, 12 COMMONWEALTH PARL. DEB. (Senate) 304 *et seq.*

20 (1958) 12 COMMONWEALTH PARL. DEB. (Senate) 305: "But we are going to give it a fly!"

21 Act No. 14 of 1958.

1921-1953 by making various changes in the constitution, powers, and functions of the Tariff Board which was established to advise the government on a number of matters affecting tariffs and bounties. These changes are designed firstly to remove a number of ambiguities from the principal Act,[22] and secondly to eliminate delays in the hearing of references and to clear up the accumulation of inquiries which had not been dealt with. Perhaps the most sweeping change concerns the duties of the chairman and makes him specifically responsible for the administration and general working of the Board as well as for the control and direction of the Board's staff. The Act also provides for the appointment by the Governor-General of a permanent Deputy Chairman who is to have all the powers, duties, and functions of the Chairman during the illness, suspension or absence[23] of the Chairman in addition to any power, duty or function which may be expressly delegated to him in writing by the Chairman.[24] In the event of the illness, suspension or absence of both the Chairman and the Deputy Chairman, the Governor-General may appoint one of the other members to be the Acting Chairman until the Chairman or Deputy Chairman is again available.[25] There are

22 These are more in the nature of difficulties that have been experienced in the operation of the Act rather than ambiguities in the interpretation of its language. For examples of these, see (1958) 18 COMMONWEALTH PARL. DEB. (H. of R.) 271.

23 Absence from what?

24 Is it really necessary, after the new section 9 (1) authorizes the Chairman to delegate his powers, duties, and functions to the Deputy Chairman, for section 9 (2) specifically to authorize the Deputy to exercise and perform such delegated powers, etc.? For example, a power is simply a lawful authority to act. If it is delegated, the delegate then has that lawful authority and it is repetitious for the Act to confer on him a further lawful authority to do that which is already authorized. This appears to be fairly standard drafting practice, but is it anything more than an excess of caution?

25 Difficulties again arise over the meaning of the word "absence". It is intended that the Board shall meet in two sections. If the Chairman and Deputy Chairman are both sitting in the same section, are they thereby "absent" from the other section so as to enable the Governor-General to appoint an Acting Chairman for that other section? Again, if the Chairman and the Deputy Chairman preside over different sections, does the Deputy Chairman have the powers, functions, and duties under section 7 (3) which are given to him during the illness, suspension or *absence* of the Chairman, or does he require an express delegation under sec. 9 (1)? These and other questions concerning the powers of the Chairman and Deputy Chairman were raised in committee in the Senate and received such an answer that drew from Senator Wright the comment that, "we, by this process of legislation, do not arrive at parliamentary judgment but only at bureaucratic viewpoints . . ." (1958) 12 COMMONWEALTH PARL. DEB. (Senate) 961-971. The confusion can be further illustrated as follows:— Under sec. 12, at a meeting of the Board, the Chairman and three other

amendments to section 12A of the principal Act, which authorizes a committee of the Board to deal with matters referred for inquiry and report, designed to enable the Board to work in two sections and to conduct two inquiries simultaneously. The Act further provides that during the illness, suspension or absence of a member of the Board, the Governor-General may appoint an acting member (instead of a deputy as before) to hold office during the pleasure of the Governor-General. In addition, the appointment of a temporary eighth member of the Board was permitted until 31st December 1958, to assist in clearing the back-log of work. Wide powers are given to the Minister, which he may delegate to the Chairman, to determine questions concerning the granting of leave of absence to members and the remuneration to be paid to them during such leave. A number of alterations were rendered necessary as a result of the government's departmental re-organisation in 1956. Before that date the administration of the Tariff Board Act was the responsibility of the Minister for Trade and Customs. Since 1956 it has been the responsibility of the Minister for Trade, and accordingly the opportunity has now been taken to permit the Minister for Customs and Excise to have the benefit of the services of the Board by authorizing him to refer various matters to the Board for inquiry and report. Similarly, the requirement that at least two members of the Board should be officers of the Department of Trade has been modified so that now they need only be members of the Public Service of the Commonwealth. The only other amendment of any substance is that the annual report of the Board must now be tabled before Parliament within fifteen days instead of seven in order to afford some relief to an overworked government printer.

III. FISCAL.

Bounties.

Commonwealth assistance has been extended during 1958 to the copper industry as a result of recommendations of the Tariff Board.[26] The Board proposed a sliding scale of duty varying inversely with

members form a quorum. Sec. 12A (1) and (2) authorizes the Chairman to determine in respect of any particular inquiry and report that the powers of the Board may be exercised by the Chairman and such other members as he specifies, not less than two nor more than four in number. Section 12A (3) provides that for the purposes of such inquiry and report the Board shall be deemed to consist of the Chairman and the members specified in the determination. Sec. 12A (4A) provides that, notwithstanding sec. 12, at a meeting of the Board constituted in accordance with sec. 12A (3), two members constitute a quorum. It is not clear how these provisions are to be reconciled.

26 See Tariff Board's Report on Copper, 22nd November 1957.

changes in world copper prices, to stabilize the Australian price at a minimum of £330 per ton of refined copper compared with a world price of £220. However, the government preferred to render this assistance, to the extent of £110 per ton, partly by tariff[27] and partly by direct bounty. Accordingly, whilst the tariff alterations should secure a landed duty-paid cost of copper not less than £285 per ton, the Copper Bounty Act 1958[28] authorizes payment of a bounty on refined copper produced in Australia and sold for use in Australia at a rate of £45 per ton provided the world price does not exceed £275 per ton. However, the bounty will be reduced by £1 for each £1 increase in the world price above £275. The period for payment of the bounty is from 19th May 1958 to 30th June 1960. The customary net profit limitation of 10% per annum on the capital used will be applied to major producers and bounty payments to them will be reduced by the amounts of any excess. However, this is not to apply to minor producers (*i.e.*, those producing less than 50 tons of refined copper per year) as the records kept by such producers and the nature of their operations do not lend themselves to proper capital and profit calculations. It is a condition precedent to the payment of bounty that it may be withheld from any producer who places on the domestic market a greater tonnage than is considered reasonable having regard to sales made in a previous representative period and to all other relevant circumstances. For this purpose, section 9 of the Act authorizes the Minister to determine the 'fair share' of the market for any producer and to withhold bounty from a producer who exceeds that share.[29] This provision has been rendered necessary as copper production has increased to an extent that creates problems of finding an outlet for a large proportion of the production on the export market, and the purpose of the bounty is not so much to encourage the expansion of local production, which is already sufficient to meet domestic requirements and to leave a substantial surplus, as to maintain the major mines in operation during a period of depressed world prices. The Act contains a number of detailed machinery provisions concerned with the calculation and payment of bounty, offences, regulations, and returns for Parliament. It is expected that the maximum expenditure under the Act will be £1,500,000 per year.

27 See Customs Tariff (No. 3) 1958, which permits the import of copper free of duty when the world price exceeds £275 per ton, but imposes duty at the rate of £1 for each £1 by which the world price is less than £275.

28 Act No. 78 of 1958.

29 But why is it necessary to enact that "the determination shall have effect according to its tenor"—sec. 9 (1)? Could it possibly be argued that the effect of the section would be any different if these words were omitted?

The Cotton Bounty Act 1951-1957, which guarantees to the Australian cotton-growing industry an average price of 14d. per lb. of seed cotton and which was due to expire on 31st December 1958, has been extended for a further period of five years by the Cotton Bounty Act 1958.[30] The cellulose acetate flake bounty and the tractor bounty, which were also due to expire last year, are being considered by the Tariff Board with a view to their extension. However, as an interim measure, the Governor-General has been empowered to continue them by proclamation for a further period not extending beyond 30th June 1959.[31]

Customs and Excise Tariffs.

The Customs Tariff (No. 2) 1958[32] makes a number of amendments to the Customs Tariff 1933-1952 in order to simplify the work associated with Customs Tariff alterations. The most important change is the repeal and re-enactment of sections 9 and 9A of the principal Act. Those sections provided that the Governor-General by proclamation might declare that the rates of duty in the British Preferential Tariff and Intermediate Tariff columns of the Schedule should apply to goods listed in the proclamation which were the produce or manufacture of certain specified countries. This meant that whenever tariff proposals were introduced in Parliament, it was almost invariably necessary and frequently inconvenient to summon a special meeting of the Executive Council so that a proclamation applying the British Preferential or Intermediate Tariff could be made and published not later than the day following the introduction of the proposals. Accordingly, the amendment will now allow these rates to be applied by ministerial order published in the *Gazette* instead of by proclamation. In revising those sections, the opportunity has been taken to deal with a further difficulty concerning the legality of the application of the British Preferential and Intermediate Tariffs to goods specified in customs tariff proposals. The repealed sections 9 and 9A applied only to items in the Schedule to the Act and not to items specified in tariff alterations proposed to Parliament; yet the practice (of doubtful legality) has been followed of purporting in the proposals to authorize proclamations applying those tariffs and to validate the proclamations later when an Act is subsequently passed to give effect to the provisions in the proposals.[33] Accordingly, the

30 Act No. 24 of 1958.

31 Cellulose Acetate Flake Bounty Act (No. 64 of 1958); Tractor Bounty Act (No. 65 of 1958).

32 Act No. 20 of 1958.

33 See, for example, Customs Tariff 1958, secs. 4 and 5.

new sections expressly authorize the order to declare that those rates shall apply to proposed items or to existing items under amendment. A new section 9B very nearly, but not quite,[34] wins the medal for legislative obscurity in 1958. Reduced into simple terms and shorn of their caveats and cautions, the first 5 subsections involve the following propositions: (i) an order under sections 9 and 9A "has effect according to its tenor";[35] (ii) orders in respect of proposed alterations have effect from the date specified in the order, provided the proposal in fact becomes law, "but shall not otherwise have effect in relation to that item"; (iii) the minister may vary an order from a specified time and date, and an order so varied has effect as varied from that time and date;[35] (iv) the minister may revoke an order from a specified time and date, and an order so revoked shall cease to have effect from that time and date;[35] (v) the specified date is not to be earlier than the date of the publication of the order in the *Gazette*. Orders made by the minister under sections 9, 9A, and 9B are specifically excluded from the operation of the Rules Publication Act 1903-1939, but are brought within the application of sections 48 and 49 of the Acts Interpretation Act 1901-1957 which relate to the tabling of regulations before Parliament and their disallowance by resolution of either House. Other amendments to the principal Act are of a purely machinery character.

Corresponding amendments to the Customs Tariff (Primage Duties) 1934-1950 are made by the Customs Tariff (Primage Duties) 1958.[36] Accordingly, variations in the rates and incidence of primage duty will in future be effected by ministerial order instead of by proclamation.

Changes in the method of collection of excise duties on beer are made by the Beer Excise Act 1958.[37] In the past this duty has been collected by selling to brewers beer duty stamps of appropriate denominations which were affixed to the vessels in which the beer was contained or, in the case of bottled beer, to the brewer's cart note. This procedure was regarded as both costly and cumbersome to administer and accordingly this Act gives effect to an agreement

34 See National Health Act 1958, particularly sec. 82E.

35 How else? Is it really necessary to devote three subsections to enacting that an order shall have effect according to its tenor, unless it is varied, when it shall have effect as varied, or unless it is revoked, when it shall cease to have effect? Words do mean what they say, and little is gained by adding dictionary definitions in the form of substantive enactments.

36 Act No. 21 of 1958.

37 Act No. 23 of 1958, amending the Beer Excise Act 1901-1957.

between the Department and the breweries by abolishing the necessity for buying and selling beer duty stamps and providing that the brewer shall pay to the Department by cheque duty based on the amount of beer he proposes to deliver. In the result, the same duty collection procedures will apply to beer as to other excisable commodities. Under this system, brewers' cart-notes will become the prime documents in revenue collection and are therefore made subject to departmental control over their acquisition and use, but there will not otherwise be any disturbance of the record systems now operating at breweries. The Act also authorizes the removal of beer 'under bond' from point to point, within certain limits (*e.g.*, from a brewery to a delivery store), prior to the payment of duty.

The Excise Act 1958[38] makes four amendments to the Excise Act 1901-1957. Part VIII of the Act is repealed and re-enacted to enlarge the power to pay drawback of duty—*i.e.*, to refund duty when goods on which excise duty has been paid are subsequently exported. The existing authority did not provide for drawback to be paid when excisable goods are used in conjunction with other goods in manufacturing processes, thus losing their identity as excisable goods, and the manufactured goods are then exported. This deficiency is now remedied and regulations are to be drawn governing the procedure for payment of drawback, similar to the customs procedure in respect of imported goods. Section 6 of the Act amends section 100 of the principal Act by authorizing an officer of customs or police to arrest without warrant a person whom the officer has reasonable ground to suspect of assaulting an officer in the execution of his duties, in addition to the other grounds for arrest without warrant contained in that section. Section 101 of the principal Act, which requires an officer effecting an arrest to give the person arrested as soon as practicable a written statement of the reason for his arrest, is repealed as it is felt that State laws on this point, which would apply by virtue of section 68 of the Judiciary Act, adequately cover the ground. On similar grounds, sections 147, 147A, and 149 of the principal Act, which relate to the treatment of offenders by the courts and gaolers in the event of non-payment of penalties imposed for offences against the Excise Act, are repealed.[39]

A number of alterations to the customs and excise tariffs affecting a wide range of goods were made in the course of the year as a result

38 Act No. 49 of 1958.

39 *Cf.* Customs Act 1957, sec. 11, which made a similar amendment in respect of the treatment of offenders under the Customs Act.

of recommendations of the Tariff Board. The only important change in the method of calculation, as distinct from changes in the rates of duty, is in connexion with motor vehicles.[40] In the past there has been no single set of customs duties in respect of motor vehicles as such, but the duty payable has been the sum of the duties on all parts, with various methods of computation applying to different parts. The new tariff structure is designed to protect the production and assembly of motor vehicles in Australia and is divided into three groups. In respect of complete vehicles of less than 10 tons gross weight the duty will be at 35% (25% British Preferential Tariff) reducing to 32½% (22½% British Preferential Tariff) if certain specified parts, such as batteries, bumper bars, tyres and tubes, windscreen wipers, etc., are not supplied by the overseas manufacturers. Over 10 tons gross weight, the duty is 22½% (12½% British Preferential Tariff). In respect of original equipment components, imported for inclusion in vehicles manufactured or assembled in Australia, the duty rates vary from free of duty to 42% (35% British Preferential Tariff) depending on whether such components are being supplied in commercial quantities by an Australian industry. Replacement parts are subject to duty at rates up to 37½%, depending on whether they are reasonably available from Australian sources. Other amendments to the customs tariff include provision for the free admission of goods brought into Australia only for industrial processing and return to the country from which they were imported, *e.g.*, colour films exposed abroad and imported for processing and re-export.[41]

Income Tax.

Several changes in the assessment of income tax and social services contribution, which were outlined in the course of the budget speech, were given effect by the Income Tax and Social Services Contribution Assessment Act 1958.[42] The first amendment concerned the depreciation allowances to primary industries. Since 1952 deduction of depreciation has been permitted at an annual rate of 20 per cent. on plant and structural improvements used for agricultural and pastoral purposes. That arrangement, which would have ceased to operate on 30th June 1959, has been extended until 30th June 1962 and will include improvements in the course of construction on 30th June 1962 provided they will be completed in the following year. At

40 Customs Tariff (Act No. 15 of 1958).

41 Cusotms Tariff Proposals No. 6; See Customs Tariff Validation Act (No. 79 of 1958).

42 Act No. 55 of 1958.

the same time, this depreciation allowance is extended to plant used solely in the fishing and pearling industries and to structural improvements used wholely and exclusively in the pearling industry (including housing provided for employees, tenants, and share-farmers, but subject to the same maximum on which the 20 per cent. is allowable as in the case of pastoral and agricultural industries, *viz.*, £2,750—expenditures on housing above this figure remaining subject to depreciation at normal rates). This special allowance applies to plant acquired for use or installed ready for use after 30th June 1958 and before 1st July 1962. A further concession to the fishing and pearling industries is that individual taxpayers carrying on those businesses will now be classed as primary producers for the purposes of the averaging provisions, with the result that, subject to certain limitations, the rate of tax payable for each year will be determined by reference to the average taxable income of the current year and the preceding 4 years. The first year to be taken into account for the averaging provisions will be 1958-1959 and averaging will therefore commence in 1959-1960. Such taxpayers may elect at any time permanently to withdraw from the averaging provisions.

A further amendment concerns the development of rural land as part of a profit-making undertaking. Under the previous law, taxpayers so engaged might be allowed deductions in the year of expenditure for the costs of clearing, draining, and otherwise preparing the land for agriculture or pasture, etc. However, where such land was sold as part of a profitmaking plan, any profit derived from the sale was taxed. Section 10 of the Act will now permit any developmental expenditure to be set off in calculating the taxable profit in such cases. This will apply to sales of land during 1958-1959 and subsequent years.

There are also in the Act concessions to encourage the investment of Australian capital in companies engaged in the search for oil in Australia or in Papua-New Guinea. Prior to the 1958 Act, deductions were allowed in respect of one-third of the calls paid on shares in such companies. In respect of shares allotted after 1st October 1958 a deduction of the full amount of calls as well as of application and allotment moneys will be allowed, subject to the companies agreeing to forego their exemption of profits to the extent of deductions allowable to shareholders. Special zone deductions granted to residents of remote areas of Australia and to members of the Defence Forces serving at declared localities overseas are increased by 50 per cent. plus a further amount to be based on the dependants' deductions allowable to the particular taxpayer.

The rates of income tax and social service contribution remained the same as in the financial year 1957-1958.[43]

An Agreement between the Government of Australia and the Government of Canada, entered into on 1st October 1957, for the purpose of avoiding double taxation and preventing fiscal evasion with respect to income tax, has been given effect by the Income Tax (International Agreements) Act 1950.[44] The new Agreement is similar in effect to the Conventions of 1948 and 1953 entered into with the Governments of the United Kingdom and the United States respectively and embodied in the Income Tax (International Agreements) Act 1953, which the new Act amends. In respect of some classes of income, double taxation is avoided by the country in which the income arises agreeing to forego its tax and leaving the country in which the recipient resides to levy tax in full. Other classes of income may be taxed in both countries on the basis that the country of origin shall collect its tax in full, but if the country of residence also imposes tax it must allow a credit in respect of tax paid in the country of origin. On this basis the total burden of tax will therefore be limited to the amount of the higher of the taxes imposed by the two countries. Tax on dividends paid by a company resident in one country to a shareholder in another is generally limited to 15 per cent. of the dividend, in addition to any tax which may be payable on the profits out of which the dividend is paid. In addition to making a number of other minor alterations to the 1953 Act, the new Act provides for the exchange of information between the two countries for the purposes of the operation of the Agreement, the prevention of fraud, and the administration of the provisions against the avoidance of tax.

Loans.

The Loan (Housing) Act 1958[45] authorizes the Treasurer to borrow a maximum of £35,810,000 for the purpose of providing financial assistance to the States for housing purposes during 1958-1959, in accordance with the agreement executed in pursuance of the Housing Agreement Act 1956.[46] The States are to allocate 30% of the total advances to building societies for private home building, and the balance is to be available for the erection of dwellings by the States. The total figure is £2,650,000 more than in the previous year, but the measure was criticized by the Opposition on the ground that

43 Income Tax and Social Services Contribution Act (No. 56 of 1958).
44 Act No. 25 of 1958.
45 Act No. 50 of 1958.
46 Act No. 43 of 1956.

whereas the share of the building societies is increased by about £4,000,000, the State housing authorities will receive approximately £1,500,000 less than in the previous year. Western Australia's share of the total is £3,000,000.

The Loan (War Service Land Resettlement) Act 1958[47] authorizes the borrowing of £7,000,000 to provide financial assistance to the States in connexion with war service land settlement. It is anticipated that this will be supplemented by a further £4,330,000, arising chiefly from repayments of expenditure of previous years, giving a total of £11,330,000 of which Western Australia will receive £3,120,000.

A considerable measure of financial assistance was provided during the year to various airline services. The Loan (Qantas Empire Airways Limited) Act 1958[48] approved the lending to Qantas of 13 million dollars borrowed by the Commonwealth from the Chase Manhattan Bank of New York, the money to be used by Qantas for the purchase of five Lockheed Electra aircraft. However, as the result of an agreement concluded with the New Zealand Government under which Qantas will use the excess capacity of TEAL'S aircraft, only four Electras are in fact required. Accordingly arrangements are made[49] whereby one of the Electras will be purchased from Qantas by the Australian National Airlines Commission.

The placing of orders by Trans-Australia Airlines and Ansett-Australian National Airways for more than £18,000,000 of aircraft equipment gave rise to financial problems which were soluble only with government assistance. Accordingly the Airlines Equipment Act 1958[50] makes such assistance available to both operators on terms and conditions designed to secure the stability of the domestic air transport industry and to promote the objectives of the Civil Aviation Acts 1952 and 1957. Assistance to the Australian National Airlines Commission is provided by repealing section 31 of the Australian National Airlines Act 1945-1956 (which authorized loans by overdraft from the Commonwealth Bank of Australia to the extent of £1,000,000) and substituting a new section 31 under which the Commission may borrow from the Commonwealth (or from other sources, supported by a Commonwealth guarantee) such sums as the Treasurer certifies are necessary for meeting its obligations and discharging its functions, subject to a maximum owing at any time of £3,000,000. Moneys borrowed

47 Act No. 51 of 1958.
48 Act No. 72 of 1958.
49 By the Airlines Equipment Act 1958, sec. 7, *infra*.
50 Act No. 70 of 1958.

under this section will be used initially for the purchase of two Vickers Viscount 800 aircraft and some Fokker Friendship aircraft. In addition the Commission may borrow up to three million dollars from the Commonwealth for the purchase of a Lockheed Electra aircraft, spares, and equipment.[51] The purchase of a further Electra from Qantas (referred to in the previous paragraph) is approved, and the Commission may accept credit from Qantas, without prejudice to its other borrowing powers, to the extent of 2,250,000 dollars.

The financial assistance for Australian National Airways Proprietary Ltd., which was provided by the Civil Aviation Agreement Act 1952,[52] has been rendered inadequate by the increased prices of aircraft. Accordingly the Airlines Equipment Act 1958 authorizes the Treasurer to guarantee loans of up to £3,000,000 to Ansett Transport Industries Ltd. or to Australian National Airways Proprietary Ltd., for the purchase of two Electras, spares, and equipment, the loan to be repayable within seven years. In addition, a further guarantee of up to £2,000,000, repayable within six years, is authorized for the purchase of six Fokker Friendship aircraft. These guarantees are subject to conditions concerning the terms on which the money is borrowed, the security taken by the lender, insurance, the transfer of the lender's security to the Commonwealth if the guarantee is enforced, etc. The companies must also undertake to comply with the requirements of Part IV of the Act for so long as any part of the loan is not repaid.

Part IV contains provisions for the rationalization of aircraft fleets and sets up machinery to secure that the two airlines do not provide excess capacity. The conditions imposed by this Part will bind Ansett-A.N.A. so long as any part of the loans referred to above are not repaid, and they will bind the Commission for as long as Ansett-Australian National Airways is bound. Nothing in the Act affects the existing rationalization machinery under the Civil Aviation Agreement Act, which will still be used to determine routes, time-tables, fares, freight rates, etc.

State Grants.

The States Grants (Additional Assistance) Act 1958[53] provided

51 The borrowing of this money by the Treasury from a number of United States banks and the re-lending to the Commission is approved by the Loan (Australian National Airlines Commission) Act (No. 71 of 1958).

52 Act No. 100 of 1952, which authorized the borrowing of £4,000,000 for the purchase of aircraft to maintain parity with the Commission.

53 Act No. 8 of 1958.

additional assistance of £5,000,000 to the States for the financial year 1957-1958 towards meeting the States' budget deficits for that year. Of this sum, £4,000,000 was distributed according to the tax reimbursement formula, and £1,000,000 was divided equally between New South Wales and Queensland as the States most affected by drought and the increase in unemployment.

The grants payable under the formula in the States Grants (Tax Reimbursement) Act 1946-1948 for the financial year 1958 to 1959 were supplemented to the extent of £30,400,000 by the States Grants (Special Financial Assistance) Act 1958,[54] which brought the total tax reimbursement grant for that year up to £205,000,000 or £15,000,000 more than in the previous year. The total grant to Western Australia was therefore £16,165,000 as against £14,965,000 in 1957 to 1958. In addition to these amounts, extra assistance was provided to Western Australia (£11,100,000), South Australia (£5,250,000) and Tasmania (£4,400,000) by the States Grants Act 1958,[55] less in each case amounts advanced pursuant to section 4 of the States Grants Act 1957.

A special grant was authorized to be paid to Western Australia, for the development of that part of the State lying north of the 20th parallel of latitude, by the Western Australia Grant (Northern Development) Act 1958.[56] The Act authorizes the Treasurer to pay to the State, during the five years commencing on 1st July 1958, sums totalling not more than £2,500,000 provided he is satisfied that it is to be spent on projects which will contribute to the development of the north-west and which could not be carried out within that period except with Commonwealth assistance. The main criticism of the measure was that the amount was sufficient only for the development of a deep-sea port at Black Rocks, of the Wyndham jetty, and of jetty facilities in the Napier-Broome bay, and would provide nothing for projects such as the Ord River dam or road development.

The recommendations of the Murray Committee for financial assistance to the States in respect of their Universities for the triennium 1958-1960 were implemented by the States Grants (Universities) Act 1958[57] which provides for a maximum of Commonwealth expenditure

54 Act No. 54 of 1958.
55 Act No. 66 of 1958.
56 Act No. 28 of 1958, which in the Senate provided perhaps the most thoughtful and serious debate of the year, notwithstanding one brief and defiant secessionist speech.
57 Act No. 27 of 1958.

of £21,370,000. The basis of this assistance is the condition that the States should themselves maintain at least the existing level of expenditure on universities in order to qualify for grants from the Commonwealth. Provision is made for general and emergency grants for recurrent expenditure, grants for expenditure on university building projects,[58] and grants for expenditure on residential college buildings. As the States Grants (Universities) Act 1957[59] had already made provision for recurrent expenditure during 1958, it was necessary to delete from that Act all references to the year 1958 and to limit its operation to 1957. The 1957 Act was also amended to make provision for the South Australian School of Mines and Industries for the year 1957.

IV. DEFENCE.

Re-establishment and Employment.

The war service moratorium provisions in Part X of the Re-establishment and Employment Act 1945-1956 have been repealed, subject to certain savings, by the Re-establishment and Employment Act 1958.[60] These provisions were originally passed to meet the case of men who enlisted in war-time and had little opportunity to order their affairs. In fact few of the provisions were still effective in 1958 as the only servicemen then "on war service" within the meaning of the Act were those who enlisted prior to 28th April 1952. Members of the forces in Korea and Malaya ceased to be on war service on 20th April 1956 and 1st September 1957 respectively. Accordingly, apart from servicemen in the first category, the only persons who would have been protected by the moratorium after 1st September 1958 were those in the second category, and then only by the five years' delay in respect of the compulsory acquisition of land provided by sections 118 and 120 of the Act.

All the moratorium provisions are now repealed, subject to a

58 Sec. 9, which provides assistance for particular University building projects, confers on the Minister a discretion to vary particular amounts. In connexion with this discretion, the Prime Minister stated [(1958) 19 COMMONWEALTH PARL. DEB. (H. of R.) 1469] that this was necessary because the estimates of costs of buildings were provisional and approximate, and he "would accept without question any variation up to 15 per cent. of the estimated cost." However, as the *total* amount payable in respect of a particular University is not to be exceeded, this 15 per cent. variation would be a matter for internal adjustment among the various projects. This therefore appears to be the sort of provision calculated to promote some measure of inter-faculty discord.

59 Act No. 7 of 1957.

60 Act No. 7 of 1958.

saving in respect of mortgage payments postponed under section 109 of the Act, which is designed to prevent a person having to pay a number of postponed payments at once.

The Re-establishment and Employment (No. 2) Act 1958[61] extends for a further period the entitlement to preference in employment enjoyed by ex-servicemen under the principal Act. This was due to expire on 2nd September 1958 but has now been extended to 30th June 1960. However, as the Act did not receive the royal assent until 1st October 1958, its provisions have had to be made retroactive, subject to certain saving clauses to prevent injustice arising from this retroactivity.

A complementary provision is contained in the Tradesmen's Rights Regulation Act 1958[62] which extends until 30th June 1960 the preference in respect of engagement and dismissal which was given to recognized tradesmen under the Tradesmen's Rights Regulation Act 1946-1955. However, this preference will in future operate only in favour of those who were recognized tradesmen on 2nd September 1958. The machinery of central and local committees, established by the principal Act, with power to issue tradesmen's certificates to those who satisfy certain criteria, is continued, and in particular these committees will continue to deal with problems concerning the assimilation of migrants. However, the 1958 Act extends the range of people, to whom tradesmen's certificates can be granted, to include men in the permanent forces who have received their trade training during their service. One innovation, which gives rise to some concern, is the power conferred on the central committee by an amendment to section 34 to enlarge, subject to the approval of the Minister, the classes of persons to whom tradesmen's certificates may be granted—in effect, therefore, to amend the principal Act without parliamentary supervision.

V. INDUSTRIAL RELATIONS.

Conciliation and Arbitration.[63]

The Commonwealth conciliation and arbitration system had functioned with reasonable success after its major overhaul in 1956.[64]

61 Act No. 52 of 1958.

62 Act No. 53 of 1958.

63 The reviewer is indebted to Mr. E.J. Edwards for contributing the review under this sub-heading.

64 See *supra,* at 132 *et seq.*

["The] first full year following the 1956 legislation[65] produced fewer working days lost through industrial disputes than any earlier year since 1942."[66] Some further adjustments were nevertheless considered desirable and to give effect to these the Govrnment introduced an amending Bill which, as was to be expected with a measure in this field, met strenuous objection from the Opposition before it was passed as Act No. 30 of 1958.

Included in the amending Act were provisions framed to bring into operation the recommendations made by the Hon. Mr. Justice R.C. Kirby, President of the Commission, in his first annual report.[67] Under the new definition of "the Commission in Presidential Session", the President is now to nominate the presidential members who are to constitute the Commission for each matter. The Opposition expressed considerable concern at this amendment. To them, it was an unwarranted departure from the practice of permitting the members of a court to decide for themselves whether or not they would sit on a full bench, and it was apparent that the Government's object was to enable the Commission to "stacked" to deal with certain matters.[68] By way of contrast reference might be made to the statement since made by the President of the Commission himself: "This amendment merely gave sanction to past practice but it should make, and in my opinion has made, it easier for all members in that the responsibility for resolving vexed questions of competing priorities" [*i.e.*, between a member's work in his particular industry and the work on the full bench] "is now clearly placed on the one person."[69] Pursuant to the President's recommendations the Act was also amended to enable the period of appointment of an acting Deputy President to be extended beyond the period of absence of the deputy he was replacing, the main purpose being to enable him to complete the hearing of any matter he has commenced; and the requirement that the President summon a conference of members of the Commission not less frequently than

65 There were in fact two amending acts passed in 1956, No. 44 and No. 103. Act No. 44 was the one which brought about the major changes. Parts of it came into operation on 30th June 1956 and the rest on 14th August 1956.

66 So Mr. Holt, Minister for Labour and National Service, informed the House of Representatives when introducing the 1958 amending Act: See (1958) 19 COMMONWEALTH PARL. DEB. (H. of R.) 1602.

67 Parliamentary Papers (Commonwealth) No. 45 [Group H]—F6337/57. Section 70 of the principal Act requires the President to furnish an annual report to the Minister for presentation to Parliament.

68 See particularly the speech of Mr. Ward (East Sydney): (1958) 19 COMMONWEALTH PARL. DEB. (H. of R.) 1767.

69 Second Annual Report: Parliamentary Papers (Commonwealth) No. 13 [Group H]—F3138/59 at 3-4.

once in every four months—experience having shown that there was no need for such frequent conferences—was relaxed. Conferences are now to be summoned as considered desirable by the President, but not less frequently than once a year.

But the "principal purpose" of the amending Act concerned the jurisdiction of the Industrial Court. The validity of certain sections had "been brought into question, by either decision or comment by the judges of both the High Court and the Industrial Court."[70] The whole of section 140 (requirements as to rules of organizations) and parts of sections 143 (applications for cancellation of registration) and 144 (entitlement to membership of organizations) have therefore been reframed. Greater emphasis has been placed on setting conditions and requirements in the statute itself, leaving to the Court the function of deciding whether these fixed standards have been satisfied. But because the Government did not "feel complete confidence that the validity of what [it was] setting out to do [would] in every case be upheld if challenged . . . " a somewhat novel provision[71] was included in section 143 enabling the Commission in Presidential Session to act if so empowered by proclamation, the intention being that if at any time the portions of the section conferring powers on the Court should be held invalid as an attempt to confer non-judicial power on the Court, the Commission would then be empowered by executive action to exercise such powers. During the course of the debate one of the members[72] suggested an extension of similar provisions to the whole of the Act. And indeed there is much to be said for some such device to deal with difficulties in those cases in which there is clearly power but, because of the Constitution, it is separated into mutually exclusive jurisdictional areas, the limits of which are not easily and readily ascertainable in any particular case except on reference to the High Court.[73]

70 *Per* the Minister for Labour and National Service: (1958) 10 COMMONWEALTH PARL. DEB. (H. of R.) 1603. In The Queen v. Spicer and Others; *Ex parte* Australian Builders Labourers' Federation, [1958] Argus L.R. 1, the High Court (by a majority) declared sec. 140 invalid as an attempt to confer non-judicial power on the Industrial Court. Doubt was cast on the validity of sec. 138 though this section was not directly before the Court for consideration.

71 (1958) 19 COMMONWEALTH PARL. DEB. (H. of R.) 1603, *per* the Minister for Labour and National Service.

72 Mr. Snedden (Bruce): See (1958) 19 COMMONWEALTH PARL. DEB. (H. of R.) 1792.

73 Section 33 of the Act solves the question of disputes as to jurisdiction between the Commission in Presidential Session and the Commission functioning in any other capacity, leaving to the Commission in Presidential

The Court's power under Part IX of the Act, which relates to disputed elections in organizations, has also been amended. Inspection of ballot papers, lists, and other documents prior to an inquiry into an election by the Court are to be undertaken by the Registrar of his own motion now, the Court only being empowered to authorize such inspection after an inquiry has been instituted and in any case, before it authorizes such inspection, must give any interested party an opportunity of objecting to the proposed action. The Court is also now empowered, if it finds there has been irregularity in an election, to make an order directing the Registrar to arrange with the Chief Electoral Officer of the Commonwealth for the conduct of a new election or for the completion of an incomplete election.

Other changes which have resulted from the amending Act include the following: Presidential members of the Commission now have the same rank and designation (in addition to the same status and precedence), and all members of the Commission the same protection and immunity, as judges of the Court. The power of the Commission or the Court to permit a party to intervene in any matter no longer depends on the prior intervention of the Attorney-General. The Registrar may now refer matters or questions other than questions of law to the Commission, which is also empowered to grant leave to appeal from his decisions in similar cases. The Registrar retains the right to refer questions of law to the Court. Provision has been made to ensure that any member of an organization will be able to obtain a copy of its rules at a price not exceeding two shillings. And the regulation-making power has been extended to the making of regulations to ensure that auditors of organization accounts are qualified persons. It is interesting to note, too, the appeal to the Privy Council in the *Boilermakers Case*[74] having been dismissed, that the provisions in the Act relating to the termination of the jurisdiction of the Court by proclamation (sec. 107 (5) and sec. 110 (4)) have been repealed.

Stevedoring Industry.

A number of factors, such as a reduction in the tonnage handled, increased efficiency in handling techniques, and increases in the total payments of attendance money, resulted in the Stevedoring Industry Authority's being faced with a grave financial crisis in the early part

Session the settlement of such dispute, but the division of jurisdiction in this sphere being purely statute-created, does not have to face the test of constitutional validity before the High Court.

74 Attorney-General for Australia v. The Queen and the Boilermakers' Society of Australia, [1957] A.C. 288, (1957) 95 Commonwealth L.R. 529.

of 1958. "The authority is faced with the necessity of securing not only sufficient revenue to meet its outgoings, but also sufficient additional funds to bring its finances back on an even keel. If the current position is not remedied, the authority will be in deficit to the extent of £650,000 by 30th June [1958]."[75] Accordingly, the Stevedoring Industry Charge Act 1958[76] increased the rate of the stevedoring industry charge from two shillings to two shillings and sixpence per man-hour, plus a temporary surcharge of sixpence per man-hour from 1st April 1958 to 30th June 1959, in order to finance the operations of the Authority in respect of the payment of attendance money, sick leave, etc., to waterside workers. At the same time, the Stevedoring Industry Charge Assessment Act 1958[77] cured a number of defects of a technical nature in the Stevedoring Industry Charge Assessment Act 1947-1953 (which provides the machinery for the collection of the charge) which were caused by the repeal of earlier legislation by the Stevedoring Industry Act 1956.

VI. TRADE AND COMMERCE, AND INDUSTRIAL PROPERTY.

Bills of Exchange.

A "bank holiday" is a "non-business day" for the purposes of the Bills of Exchange Act 1909-1936, section 98 (3), and, as such, is excluded in computing time whenever the Act imposes a time limit of less than three days or whenever something is to be done in connexion with a bill of exchange, a cheque or a promissory note on a certain day that happens to fall on a "non-business day." However, some doubt has been felt as to whether the definitions of "bank holiday" and "bank half-holiday" in section 98 (4) and (5) of the Act would include a declaration of a bank holiday made by or under an Ordinance of the Australian Capital Territory or of the Northern Territory. The section therefore is amended accordingly[78] to ensure that a "bank holiday" is a "bank holiday", and a "bank half-holiday" is a "bank half-holiday" in the Territories of the Commonwealth as much as in the States.

Life Insurance.

The Life Insurance Act 1958[79] amends the Life Insurance Act

75 (1958) 18 COMMONWEALTH PARL. DEB. (H. of R.) 389, per Mr. Harold Holt, Minister for Labour and National Service.
76 Act No. 4 of 1958.
77 Act No. 5 of 1958.
78 By the Bills of Exchange Act (No. 10 of 1958).
79 Act No. 3 of 1958.

1945-1953. The first amendment resulted from legal advice that the business carried on by funeral funds came within the definition of "life insurance business." The Act as originally passed was not intended to cover such funds, which are considered to be a matter for the States, to be supervised together with such organizations as friendly and co-operative societies. Accordingly the definition of "life insurance business" in section 4 of the principal Act is amended by adding funeral benefit business to the list of businesses specifically excluded from the definition. However, if such activities are carried on as an appendance to other forms of life insurance business, they will remain within the Act. Section 94 of the principal Act, which authorizes a person to effect a life insurance policy on his own life for the benefit of his spouse and/or children so as to create a trust in favour of the objects named, is amended by extending the definition of "children" to include adopted children, stepchildren, and "ex-nuptial children."[80] This amendment will apply to policies effected after the date of commencement of the Act, *viz.*, 3rd April 1958. Finally, section 14 of the principal Act, which provides that a person other than a company registered under the Act shall not carry on any class of life insurance business in Australia except on behalf of such a company is amended by adding a subsection declaring it to be an offence against the Act to carry on a business in contravention of section 14.

Navigation.

Substantial amendments to the Navigation Act 1912-1956 were made by the Navigation Act 1958,[81] with the object of providing a general revision[82] of the principal Act.[83] The introduction of a considerable amount of new matter in this Act has been made possible firstly by the clarification of the respective legislative powers of the

[80] *Sic.* See note 150, *infra.*

[81] Act No. 36 of 1958.

[82] For example, by putting the definition section into alphabetical order.

[83] In fact the 1958 Act contains some 208 sections amending a principal Act of 425 sections! Surely, if ever there was a case for a repeal and re-enactment, instead of a "jig-saw puzzle" amendment, it was in this instance. In the result, the new amendments are virtually incomprehensible without the assistance of the 1956 reprint, and even with such assistance, it is a long and tedious process to ascertain their effect. In this instance, too, little assistance is gained from the reports of the debates in Hansard. In both the Senate and the House of Representatives the second-reading introductory speeches lasted a mere 12 minutes, of which nearly half was devoted to a review of the history of the principal Act. Even members of Parliament were in this case denied the usual explanatory memorandum that is circulated with amending Bills of any consequence, and were left to make such progress as they could with a copy of the 1956 reprint.

Commonwealth and the States in respect of shipping,[84] and secondly by the adoption in 1942 of the Statute of Westminster which now enables the Commonwealth to pass legislation inconsistent with the Merchant Shipping Acts of the United Kingdom. The main purpose of the Act appears to be to ratify and to give effect to a number of maritime conventions and recommendations of the International Labour Organization. These include conventions concerning the minimum age for going to sea,[85] the certification of able seamen,[86] the certification of ships' cooks,[87] the medical examination of seafarers,[88] and the repatriation of seamen.[89] A detailed study of all the new provisions can not be undertaken in a review of this nature, but some of the more important innovations are as follows:—

The Act applies some of the provisions of the Navigation Act (in respect of salvage matters, division of loss in case of collision, and limitation of liability) to naval ships and to vessels owned or operated by other government departments of both the Commonwealth and the States, and in some cases of other governments of the British Commonwealth. Restrictions on migrants serving as officers on ships are eased in respect of new Australians, domiciled in Australia but not yet naturalized. The functions of courts of Marine Inquiry are restated, omitting those functions of a judicial character in order to avoid the possibility of an adverse decision of the High Court on the ground of constitutional invalidity. Many penalties imposed by the principal Act are increased, some because of changes in money values, others on grounds of principle, and procedures for the logging of seamen for offences are clarified and in some respects modified. There are a number of alterations, both modifications and extensions, in respect of a shipowner's liability for medical expenses and wages in the case of a seaman who is sick or injured.[90] The provision for relief

84 Since the decision of the High Court in The Newcastle and Hunter River Steamship Co. Ltd. v. Attorney-General for the Commonwealth, (1921) 29 Commonwealth L.R. 357, it has been clear that the Commonwealth power in respect of shipping is derived from its power over trade and commerce and is limited to the same extent as that power is limited.

85 I.L.O. Convention (No. 7) 1920, as revised in 1936.

86 I.L.O. Convention (No. 74) 1946.

87 I.L.O. Convention (No. 69) 1946.

88 I.L.O. Convention (No. 73) 1946.

89 I.L.O. Convention (No. 23) 1926. It was not possible to ratify the Convention on accommodation of crews (No. 92 of 1949) as the States had not brought their own legislation into line with the requirements of the Convention, but in fact secs. 135-138B of the principal Act as amended do comply with the Convention.

90 It may now be some comfort to seamen to know that, by virtue of the new sec. 127 (2), ". . . where a seaman suffers from a venereal disease, that

and repatriation of distressed Australian seamen abroad was previously governed by United Kingdom regulations. This will now be changed as the Commonwealth is now able to provide these facilities itself. The procedures by which foreign ships are permitted to engage in the Australian coastal trade have been simplified and restated. The defence of common employment is abolished in respect of damage or injury suffered by a seaman, and a new section 410B deals with the liability of the master or owner of a ship under pilotage, by providing that the master is not relieved from responsibility for the conduct and navigation of his ship by reason of such pilotage, but that both the owner and master shall remain liable for any loss or damage caused by the ship or by a fault of navigation, as if the pilotage were not compulsory.

The reforming zeal exemplified in the Act is modified by sec. 2 which provides that only the sections of the amending Act dealing with short title and citation should come into operation on the receipt of the royal assent; the remainder of the Act is to await a more appropriate moment to be signified by proclamation.[91]

Overseas Telecommunications.

The Overseas Telecommunications Act 1946-1952 authorized Australian participation in a British Commonwealth partnership governing the conduct of external telecommunication services by radio and cable, and defined the powers, functions, and duties of the Overseas Telecommunications Commission (Australia) which is Australia's national body for the purposes of the partnership. The Overseas Telecommunications Act 1958[92] makes a number of amendments to this legislation, which for the most part are concerned with formal and administrative matters and are comparable with amendments in other Commonwealth legislation concerning statutory bodies. Among the more important alterations, the remuneration of the Commissioners, which has been at a fixed rate since 1946, is now to be such as the Governor-General determines. A reconsideration of the status of statutory business corporations has led to the conclusion that there is no valid reason why such bodies, conducting commercial undertakings, should not have to meet the same business charges as private enterprise. Limited effect is given to this good resolution by a new section

disease shall not be deemed to be due to his wilful act or default or to his misbehaviour." Incidentally, one wonders whether the draftsman in fact meant that it "shall not be deemed to be due to his wilful act . . ." etc. or whether he meant that it "shall be deemed not to be due . . ."

91 In fact the date of commencement of many of the sections has now been proclaimed as 27th June 1959: See (1959) 38 *Commonwealth Gazette* 2301.

92 Act No. 26 of 1958.

50 which provides that the Commission shall be subject to taxation (other than taxes on income) under the laws of the Commonwealth, but shall not be subject to any tax of a State or a Territory to which the Commonwealth is not subject. There are amendments to the provisions which ensure secrecy in respect of the contents of telecommunications. The only penalty under the principal Act imposed on an officer who wrongfully divulged information was dismissal for misconduct; such conduct is now made an offence punishable by a fine or imprisonment.[93] Finally, a new section 78 gives immunity from suit to the Commission, and to officers and employees of the Commission, in respect of anything done or omitted to be done in respect of a telecommunication.

Trade Marks.

Section 10 (2) of the Trade Marks Act 1955 (which came into operation on 1st August 1958) provided that the Commissioner of Patents was also to be the Registrar of Trade Marks. Having regard to the normal avenues of promotion in the public service, it was desired to appoint the Deputy-Commissioner of Patents to be Deputy-Registrar of Trade Marks so that he might act in the absence of the Commissioner and might gain experience of trade mark matters. However, the Public Service Act does not authorize the appointment of one officer to two positions under that Act. Accordingly, special legislation was required and was provided by the Trade Marks Act 1958.[94]

VII. PRIMARY PRODUCTION.

Dairy Produce.

A request from the dairy industry for legislation to provide for a sales promotion campaign for butter and cheese in Australia and for research into the problems of the industry ranging from production and manufacturing to distribution and marketing, resulted in the passing of the Dairy Produce Research and Sales Promotion Act 1958.[95] The Act establishes a Dairy Produce Research Trust Account under the control of a specially constituted and representative Dairy Produce Research Committee, and a Dairy Produce Sales Promotion Fund under the control of the Australian Dairy Produce Board. To

93 Section 33A (1) imposes a penalty of £250 or imprisonment for one year. Subsection (4), which can only relate to the same offence, imposes different penalties depending upon whether the offence is prosecuted summarily or on indictment. Could it be that the draftsman did not read over what he had written?

94 Act No. 42 of 1958.

95 Act No. 73 of 1958.

finance these accounts, the Dairy Produce Levy Act 1958[96] imposes a statutory levy on all butter and cheese manufactured in Australia, subject to a maximum of 3/16d. per lb. on butter and 3/32d. per lb. on cheese. The actual rates will be prescribed by regulations on the recommendation of the Dairy Produce Board and the Board will recommend the proportions of these rates to be prescribed for purposes of research and sales promotion respectively.[97] This levy is payable by the manufacturer, unless he is exempted by the Minister after report to the Minister by the Board, and such exemption may be unconditional or subject to such conditions as are specified by the Minister.[98] The amount of levy is recoverable as a debt due to the Commonwealth and, in any proceedings for the recovery of any amount of levy, a statement or averment in the complaint, claim or declaration of the plaintiff is evidence of the matter so stated or averred.[99]

96 Act No. 75 of 1950.

97 It may be (although the reviewer would not presume to know) that the form of sections 6 and 7 of the Dairy Produce Levy Act are dictated by the need to conform with the Constitution; but to a mere Englishman it seems odd that fidelity to a written constitution should be allowed to produce an absurdity in drafting of the type that is found in paragraphs (a) and (b) of each of those sections. The purposes of those paragraphs are to be gleaned only by references to sec. 7 (1) and sec. 18 (3) of the Dairy Produce Research and Sales Promotion Act and, until that cross-reference is made, the paragraphs appear to be merely a piece of meaningless reiteration.

98 Sec. 9. This exemption power is intended to be exercised only in favour of farms making butter for their own consumption: (1958) 13 COMMONWEALTH PARL. DEB. (Senate) 801, *per* Senator Paltridge. If that is the case, it should not have exceeded the powers of the draftsman to say just that, instead of conferring upon the Minister extraordinarily wide and arbitrary powers. The reviewer feels that wholesale abandonment of power to the Executive is one of the worst and most dangerous features of current Australian legislation.

99 When this subsection was challenged in the Senate, it was defended by Senator Paltridge as being "similar to those included in other taxing legislation, and follows the form adopted in such measures" [(1958) 13 COMMONWEALTH PARL. DEB. (Senate) 802], and thereupon, apart from the lone voice of Senator Wright protesting in the wilderness, the matter was allowed to rest and the clause became law. In fact although the subsection is similar to sections in earlier legislation (*vide* Customs Act 1901, sec. 255; Excise Act 1901, sec. 144; and more recently, Diesel Fuel Taxation (Administration) Act 1957, sec. 16,—but was it mere legislative inadvertence that caused its omission from the Wheat Tax Act 1957?), and even if this could conceivably be regarded as a justification, its form has now undergone considerable modification. Whereas originally the section was detailed, precise, and limited, it is now short, sweeping, and general, and the addition of just one more word would be sufficient to confer absolute power on the Executive. If Parliament is not sufficiently alert or courageous to stifle infringements of the "rule of law" of the type which appear in this statute,

As far as the Research Account is concerned, in addition to sums payable into that account from the levy, the Commonwealth will contribute further sums equalling half the amounts from time to time paid out of that account. Moneys in the account are to be used *inter alia* for promoting scientific, technical, and economic research into the production and distribution of dairy produce, the training of persons for purposes related to the production and distribution of dairy produce, and the dissemination of information and advice in connexion with such matters. The expenditure of money will require the approval of the Minister acting on recommendations of the Board in connexion with proposals submitted by the research committee.

The Sales Promotion Fund is to be financed by the industry itself, largely by means of the levy, without any assistance from the government, and the Dairy Produce Board is authorized to take any action by itself or in collaboration with any other Board or Authority to promote the sale of dairy produce in Australia, to expand existing markets, and to secure new markets in Australia.

Consequential amendments were made to the Dairy Produce Export Control Act 1924-1954[100] to enable the Board to engage in these new activities and to make provision for the appointment to the Board of a special member with responsibility for the general administration and co-ordination of the scheme. There were also a number of minor amendments of a purely administrative nature, *e.g.*, to transfer the power of appointing members of the Board from the Governor-General to the Minister.

Wheat.

Attention was given during 1958 to the disposal of certain sums of money held by the Australian Wheat Board. These moneys were the residual amounts left from the war-time wheat pools, being moneys that would have been paid to growers—if it had been practicable—as payment for wheat acquired by the Commonwealth. Legally the money belonged to the Commonwealth as money received from the sale of wheat which had been acquired by the Commonwealth, but the strong moral claim of the growers was recognized by the Wheat Acquisition (Undistributed Moneys) Act 1958[101] which authorized

then surely there is a case for invoking the attention of the International Commission of Jurists.

100 By the Dairy Produce Export Control Act (No. 74 of 1958).

101 Act No. 29 of 1958.

the transfer of the money to the Wheat Research Trust Account.[102] The money, totalling £284,418, is apportioned among the States, the share of Western Australia being £50,477.

A new plan for a stabilization scheme for the Australian wheat industry for a third five-year period, commencing with the 1958-1959 wheat season and covering five wheat crops, was introduced by the Wheat Industry Stabilization Act 1958,[103] which repealed the earlier legislation. Although the new scheme is essentially similar to the earlier schemes, it was thought better to repeal and to re-enact the Act of 1954 rather than to embark on a host of amendments to the existing Act.[104] Under the new Act the Commonwealth will guarantee a return of fourteen shillings and sixpence to growers on up to 100,000,000 bushels of wheat exported from the crop in the first year of the plan. This guarantee will be adjusted in each of the succeeding years in accordance with movements in costs based on a cost index established by a survey conducted by the Bureau of Agricultural Economics. The Australian Wheat Board is continued as the sole constituted authority for the marketing of wheat within Australia and for the marketing of wheat and flour for export from Australia for the period of the plan.[105] The guarantee is provided in the first instance out of the Wheat Prices Stabilization Fund. The balance in the fund

102 Established by the Wheat Research Act 1957 and consisting of moneys contributed each season by growers for purposes of research.

103 Act No. 58 of 1958.

104 "This will enable the plan to be outlined in a self-contained Act and to be more easily understood"—*per* Mr. McMahon, Minister for Primary Industry, (1958) 21 COMMONWEALTH PARL. DEB. (H. of R.) 1380. But why can this excellent principle not be applied generally instead of only in this particular instance? And even here, the draftsman lags somewhere behind the Minister and is unwilling to sacrifice more than one section of the earlier legislation. In this connexion, sec. 3 (2) (repeal and savings) is as nice an example of legislative obscurity as one could wish for. The Wheat Industry Stabilization Act 1954 repealed the Wheat Industry Stabilization Act 1948 and the Wheat Marketing Act 1953, but provided that notwithstanding those repeals the provisions of those Acts should continue in force in relation to wheat harvested before 1st October 1953. Now sec. 3 (1) of the 1958 Act repeals the 1954 Act, but sec. 3 (2) continues in force, in relation to wheat harvested before 1st October 1958, not only the provisions of the repealed 1954 Act, but also the provisions of the Acts that were repealed by that Act, and, moreover, apparently continues them in relation to crops of wheat to which they never in fact applied. One will approach with some trepidation the wording of sec. 3 (2) of the next Wheat Industry Stabilization Act.

105 The draftsman, normally so meticulous and cautious, has by a shoddy piece of grammar in sec. 8 (1) apparently authorized the Minister to remove from office a member of the Board on the bankruptcy or insolvency, etc., *of the Minister*.

established under the 1954 Act is carried forward into this Fund, and further payments to the Fund will be provided by an export tax imposed by the Wheat Export Charge Act 1958.[106] The export tax will be a tax collected on wheat exported, equivalent to the excess of returns from export sales over the guaranteed return, but subject to a maximum rate of tax of one shilling and sixpence per bushel. The maximum size of the Fund is estimated at £20,000,000, and any excess over that figure will be returned to growers. Whenever the average export realizations fall below the guaranteed return, the deficiency will be made up by drawing on the Stabilization Fund in respect of up to 100,000,000 bushels from each crop. When the fund is exhausted, the Commonwealth will meet its obligations under the guarantee.

In similar fashion, the home consumption price for 1958-1959 was established at fourteen shillings and sixpence per bushel, bulk basis, f.o.r. ports, and there will be annual adjustments in following years.

Provision was also made for a loading on the price of all wheat sold for consumption in Australia to the extent necessary to cover the cost of transporting wheat from the mainland to Tasmania (which is not a wheat producer) in each season. Similarly, a premium is to be paid from export realizations on wheat grown in Western Australia in recognition of the natural freight advantage enjoyed by Western Australia due to its proximity to the principal overseas markets. This premium will be at the rate of threepence per bushel.[107]

In order to give full effect to the scheme, the States are to bring down complementary legislation.[108]

VIII. INTERNATIONAL ENGAGEMENTS, ETC.

Civil Aviation.

The Civil Aviation (Damage by Aircraft) Act 1958[109] has two main purposes. In the first place it approves the ratification by Australia of the 1952 Rome Convention[110] on damage caused by foreign aircraft to third parties on the surface, making various alterations in the existing law to give effect to its terms, and secondly it extends the main provisions of the Convention to aircraft engaged in international

106 Act No. 59 of 1958, replacing the Wheat Export Charge Act 1954.
107 It may be pertinent to inquire whether Western Australia receives similar individual attention in respect of her natural freight disadvantages.
108 See Wheat Industry Stabilization Act 1958 (W.A.) (No. 31 of 1958).
109 Act No. 81 of 1958.
110 Replacing the earlier Convention of 1933.

flights over Australian territory which are not otherwise subject to the provisions of the Convention.

The basis of the Convention is one of strict liability (coupled with limits on the amount of compensation payable) for any damage to persons or property on the surface.[111] and including damage caused by any person or thing falling from an aircraft in flight.[112] The only exceptions to this liability are (1) where the damage was caused solely through the negligence or other wrongful act or omission of the person suffering the damage, (2) where the damage resulted from armed conflict or civil disturbance, (3) where the operator has been deprived of the use of his aircraft by act of a public authority. The contributory negligence of the person suffering the damage will result in the compensation normally payable being reduced to the extent to which such negligence contributed to the damage.[113] The Convention applies to damage caused on the surface of a contracting state by an aircraft registered in another contracting state, and in such cases liability attaches to the operator of the aircraft. "Operator" is defined in Article 2, subject to certain qualifying and limiting provisions, as "the person who was making use of the aircraft." Fortunately, however, for anyone who may have to invoke the terms of the Convention, the registered owner of the aircraft is presumed to be the operator until, in proceedings to determine his liability, he proves that some other person was the operator and takes appropriate steps to make that other person a party to the proceedings.

Article 11 of the Convention places pecuniary limits upon the over-all liability of the operator, which increase in proportion to the weight of the aircraft. These limits, at present, are generous and exceed the actual damage in any civil accident so far.[114] Within those limits there is a further limitation of approximately £A15,000 in respect of the death of or personal injury to any one person. One half of the

111 If an aircraft crashes, is a passenger in the aircraft who is injured a "person who suffers damage on the surface" and therefore within the Convention?

112 If an aircraft crashes, and five minutes later explodes, damaging property, is it still "in flight" for the purposes of the Convention?

113 Articles 5 and 6. It is perhaps fortunate that actions under the Convention are likely to be rare. The language of many of the Articles is sufficiently imprecise to provide days of legal casuistry. Although the person on the surface may be guilty of a failure to mitigate his damages, it is difficult to see how he can be guilty of contributory negligence except by shooting the aircraft down.

114 It might be otherwise if a modern airliner were to come to grief in the heart of a metropolitan area. Perhaps it was this haunting fear which induced the operators of aircraft to support the Convention even at the expense of incurring strict liability.

over-all limit is to be set aside to meet claims for loss of life or personal injury, but to the extent to which it is not absorbed it is available to meet claims in respect of damage to property. An operator will lose the benefit of these limitations if it is proved that the damage was caused by the deliberate act of the operator himself, or of his servant or agent acting within the scope of his employment and authority, and done with intent to cause damage.

The Convention also contains a number of provisions, which are detailed but not mandatory, concerning the insurance of operators against liability arising under the Convention. It is left to each contracting state to decide whether it wishes to impose upon foreign aircraft entering its territory the obligation to insure against damage on the surface. If a state does impose this obligation, then it must accept as satisfactory any policy of insurance which complies with the conditions prescribed by the Convention. In particular the financial responsibility of the insurer must be verified either by the state of registration of the aircraft or by the state where the insurer resides or has his principal place of business. As far as Australia is concerned the liability of operators to insure is to be dealt with by regulations under the Act.

Part II of the Act is intended to give effect to the provisions of this Convention. Section 9 provides that actions may be brought only in a court which has jurisdiction in relation to the place where the damage occurs;[115] and there are several safeguards against procedural abuses in order to protect the interests of operator defendants. All actions before a single court are to be consolidated. Article 20 of the Convention lays down a system for the enforcement of judgments in the first instance in the contracting state in which the operator has his residence or principal place of business, but if the assets in that state should prove insufficient, then in any other contracting state in which the operator may have assets.[116] This Article is to be given effect in Australia by means of regulations made under section 15 of the Act.

The Convention permits each contracting state to apply its own substantive law to any actions brought under the Convention, particu-

115 For the purposes of the Judiciary Act 1903-1955, sec. 38, an action under the Convention is deemed not to be a matter arising directly under a treaty, and therefore the High Court will not have exclusive jurisdiction over these claims.

116 It is thought that this is the first attempt by States to construct a multilateral system for the enforcement of judgments and, as such, may be of considerable interest to students of international law.

larly as regards the persons who may bring actions, the rights of the various claimants, and the elements of damage in respect of which an award may be made. Section 11, by and large, reproduces the existing law in relation to liability in respect of death; the only provision which appears unusual to Western Australia being in subsection (4)—*viz.*, that in awarding damages the court is not limited to the financial loss resulting from the death of the deceased person. This particular subsection may call for some judicial interpretation, but presumably it will authorize an award of damages for nervous shock to a dependent or as a *solatium*. In assessing damages for liability in relation to the death of or personal injury to a person, no regard shall be had to any sums of money paid or payable in respect of that death or injury under an insurance policy or from a superannuation or other benefit fund. Nor, in the case of death, is any premium which would have been payable had the insured not died to be taken into account (sec. 12).

Section 13 of the Act provides that where contracting states are sued as operators in courts in Australia, such states are to be deemed to have submitted to the jurisdiction of the court,[117] although nothing in the Act is to authorize the issue of execution against the property of a contracting state.

Part III of the Act extends certain principles of the Convention firstly to Australian aircraft on the domestic portion of an international fllight and secondly to foreign aircraft of a non-contracting state in flight over Australian territory.[118] In brief, all the provisions of the Convention apply to such aircraft except those in Chapter III relating to insurance. However, section 19 permits the Minister, by notice in writing, to prohibit a person from operating aircraft to which this part of the Act applies unless he is insured to an extent corresponding to the requirements of Chapter III. In addition, the Articles dealing

117 This provision, which appears to be new to Australian legislation, is no doubt a necessary and a good provision in days when many civil airlines may in fact be state-owned and entitled to sovereign immunity. The provision does not appear in the Convention, and, without legislation, would clearly be ineffective even if it did (Duff Development Co. v. Kelantan, [1924] A.C. 797). If it was a unilateral decision to insert this section, is there any reason why it should not also have been included in Part III of the Act which deals with damage caused by aircraft which are not subject to the Convention?

118 The Act does not apply to damage caused by aircraft engaged in purely domestic air transport, but the desirability of extending its provisions to cover all damage caused by aircraft is under consideration: See (1958) 21 COMMONWEALTH PARL. DEB. (H. of R.) 1685.

with limitation of liability are not to apply to the aircraft of a non-contracting state.[119]

Diplomatic Immunities.[120]

Since the passing of the Diplomatic Immunities Act in 1952,[121] by which diplomatic immunities were conferred on representatives in Australia of certain Commonwealth countries, Ghana and the Federation of Malaya have acquired independence and been admitted to membership of the Commonwealth of Nations. The representatives in Australia of such countries should therefore have enjoyed the diplomatic immunities extended to the representatives of the other members of the Commonwealth. However, the Act only applied to certain named countries and to "a part of the Queen's Dominions which is declared by the Regulations to be a country to which [the] Act applies."[122] The Act could have been extended to apply to Ghana by regulation but as the Federation of Malaya does not recognize the the Queen as the Head of State (although remaining within the Commonwealth) and so technically is not a part of the Queen's Dominions, it could only be extended to the Federation by an amendment to the principal Act. This was the purpose of the Diplomatic Immunities Act 1958 (No. 2 of 1958). By it both the Federation of Malaya and Ghana[123] have been expressly included in the list of countries to which the Act applies.

To overcome any such difficulty in the future the principal Act has also been amended by deleting the requirement that a country to which the Act is made to apply by regulation must be a part of the Queen's Dominions and replacing it simply with the requirement that such country is to be "a country within the Commonwealth of Nations."[124]

IX. FEDERAL TERRITORIES.

Christmas Island.

Further chapters in the history of the acceptance of Christmas

119 Sec. 17 (3). But why are the provisions which limit liability "deemed to be omitted" instead of simply "omitted"?

120 The reviewer is indebted to Mr. I.W.P. McCall for contributing the review of this Act and also of the Marriage Overseas Act 1958 (*infra*).

121 Act No. 67 of 1952.

122 Sec. 2.

123 Strictly not necessary but it was thought fitting specifically to mention Ghana as well as Malaya in the Act: See (1958) 18 COMMONWEALTH PARL. DEB. (H. of R.) 515, *per* the Minister for Defence, Sir Philip McBride.

124 Act No. 2 of 1958, sec. 4 (c).

Island as a territory of the Commonwealth were written during 1958.[125] Following the Christmas Island (Request and Consent) Act 1957 (which requested and consented to the enactment by the Parliament of the United Kingdom of an Act to place the island under the authority of the Commonwealth), an Order-in-Council, dated 13th December 1957 and effective from 1st January 1958, provided that the Island should be detached from Singapore and administered as a separate colony. The United Kingdom Parliament then enacted the Christmas Island Act 1958 authorizing Her Majesty, by Order-in-Council, to direct that Christmas Island should be placed under the authority of the Commonwealth. By Act No. 41 of 1958 the Commonwealth Parliament provided for the acceptance and the government of the Island, and the process was finally completed by an Order-in-Council of 1st October 1958 which vested the Island in the Commonwealth.

Accordingly the Christmas Island Act 1958[126] accepted as a territory under the control of the Commonwealth the Territory of Christmas Island. Incidentally the Commonwealth accepted also a transfer of all the property, rights, powers, and (with certain exceptions) liabilities of the United Kingdom, the Colony of Christmas Island, and the Colony of Singapore in or in connexion with the Island.

The Act makes provision for the government of the Island by prescribing a model constitution. So far as legislation is concerned, the laws in force immediately before the proclamation of the Act are to continue in force unless and until they are altered, amended or repealed. These are chiefly selected Singapore laws used in the Island, as a separate colony, under the United Kingdom Order-in-Council of 13th December 1957. Commonwealth Acts are not to apply to the Territory unless expressly extended to it. Legislative power is vested in the Governor-General who may make Ordinances for the peace, order, and good government of the Territory. Such Ordinances are to be published in the *Gazette,* and are to be tabled before each House of Parliament within 15 days and are subject to disallowance by resolution of either House.

The Supreme Court of Christmas Island is established as a superior court of record, its constitution, jurisdiction, practice, and procedure to be as may be prescribed by Ordinances. It is contemplated

125 Readers may refresh their memory of earlier chapters by reference to 310 *supra.*

126 Act No. 41 of 1958.

that in addition other courts and tribunals may be established by Ordinance. There is a right of appeal from the Supreme Court to the High Court of Australia.

British subjects ordinarily resident in Christmas Island[127] are given the right to elect to become Australian citizens within two years of the proclamation of the Act or, in the case of a person under 21 at that date, within two years of his attaining 21.

Sections 17 to 21 of the Act deal with a number of miscellaneous administrative matters. Provision may be made for the appointment and employment of persons for the purposes of the government of the Territory, notwithstanding any special requirements in the Public Service Act 1922-1958, and there is provision for the preservation under the Officers' Rights Declaration Act 1928-1953 of the rights of any person who, immediately before his appointment to an office in the Territory, was an officer of the public service of the Commonwealth. Section 18 deals with special arrangements in respect of prisoners and mental patients. Normally the Removal of Prisoners (Territories) Act 1923-1957 would require that prisoners should be transferred only to Australia or other Commonwealth Territories. This would clearly be inappropriate in the case of Asian workers recruited in Singapore, and therefore the section authorizes their transfer to places outside the Territory (presumably Singapore) subject to agreement with the government of that place. Legal tender is to continue as before the Act, *i.e.*, in Singapore currency, and a tender of money in coinage of the Commonwealth is also to be lawful. The Governor-General acting on the advice of the Minister may pardon or grant remission of sentence to offenders. Duties of customs are not chargeable on goods produced in the Territory and shipped in the Territory for export to Australia, provided they are not goods which, if produced in Australia, would be subject to a duty of excise.

The final chapter in the tsory is the Christmas Island Agreement Act 1958,[128] which approves and carries into effect the 1958 agreement between the governments of Australia and New Zealand relating to Christmas Island and the rights jointly held by those governments in the phosphate deposits on the Island. The Christmas Island Agreement

[127] The population of the Island (approximately 2650) is composed chiefly of workers from Singapore employed in the phosphate industry; there are no indigenous inhabitants: See (1958) 20 COMMONWEALTH PARL. DEB. (H. of R.) 619.

[128] Act No. 69 of 1958.

Act 1949[129] is repealed and the new agreement replaces the 1949 agreement embodied in that Act. The 1949 agreement was made when the Australian and New Zealand governments first acquired exclusive rights to the phosphate and other minerals on the Island, and the need for a new agreement arises from the transfer of sovereignty over the Island to the Commonwealth of Australia. The new agreement is effective as from the date of that transfer, *viz.*, 1st October 1958.

Under the new agreement the Christmas Island Phosphate Commission, which was established in 1949 to work the phosphate deposits, is to continue to operate without change, and the production and distribution of phosphate is to continue as in the past. A new provision, in Article 6 of the Agreement, is for the payment by[130] the Commission of a sum (initially eight shillings stg.) per ton of phosphate exported from the Island. This money is to be used firstly to reimburse the two Governments for the costs of the transfer of the Island, including an *ex gratia* payment of approximately £2,800,000 to the government of Singapore. The balance of the money will be used to build up a fund to help in meeting the responsibilities of the Australian government in respect of these inhabitants who may remain on the Island after the phosphate deposits are exhausted in approximately 40 years' time. A further new provision in Article 9 requires the Commission to meet the net expenditure incurred by the Government of Australia in administering the Island, but excluding the costs of any constructional works or aerodrome to the extent that they go beyond the reasonable requirements of the administration of the Island.

The effect of these new provisions on the price of superphosphate in Australia and New Zealand is expected to be about threepence per ton.

Cocos (Keeling) Islands.

The Cocos (Keeling) Islands Act[131] made three minor amendments to the principal Act of 1955-1956.

The first amendment concerns the rights of certain residents of the islands to elect to become Australian citizens. Certain Cocos Malay residents, who expressed a wish to acquire Australian citizenship, did not make their election within the prescribed time of two

129 Act No. 87 of 1949.

130 Not *to the Commission,* as reported in (1958) 21 COMMONWEALTH PARL. DEB. (H. of R.) 1753, and (1958) 13 COMMONWEALTH PARL. DEB. (Senate) 794.

131 Act No. 67 of 1958.

years from the coming into force of the principal Act. Accordingly, to meet these cases, the prescribed time is now extended to three and a half years, or two years from the applicant's attaining the age of 21, whichever is the later.

A further amendment concerns the appointment of officers in the Territory. As a result of the extension of the Public Service Act in 1957[132] to the external territories of the Commonwealth, doubts were felt as to whether persons could be employed for the purposes of government of a Territory except under the terms of the Public Service Act. Accordingly, the matter is now clarified by section 5 of the Cocos (Keeling) Islands Act 1958, which provides that persons may be employed for the purposes of the government of that Territory notwithstanding any of the terms of the Public Service Act.[133] There is also provision for the preservation of rights enjoyed by any member of the Commonwealth Public Service who is employed in the Territory.

Finally, the powers of pardon and remission vested in the Governor-General under the principal Act are amended to bring them into line with powers under legislation relating to other Territories. These powers are in future to be exercised on the advice of the Minister;[134] and the power of pardon is to extend to the pardoning of an accomplice who gives evidence leading to the conviction of the principal offender.

X. STATUS, AND SOCIAL SERVICES.

Marriage Overseas.

The Marriage Overseas Act 1955[135] made provisions *inter alia* for the celebration of marriages outside Australia when one party to the marriage was a member of the Defence Force. Such marriages could be celebrated by chaplains being ministers of religion who were both members of the Defence Forces and authorized by the law of any State or Territory to celebrate marriages in that State or Territory.[136] This definition of chaplain, however, overlooked the provisions of some State laws which deregistered ministers (and thus withdrew authorization to celebrate marriages) upon the minister ceasing to reside in the State.[137] To overcome this disqualifying effect of some

132 By Act No. 13 of 1957.
133 *Cf.* Christmas Island Act 1958, sec. 17 (1).
134 One hopes that they always have been so exercised.
135 Reviewed in (1956) 3 U. WESTERN AUST. ANN. L. REV. 544.
136 Act No. 31 of 1955, sec. 4.
137 In Western Australia deregistration is not automatic but at the discretion

State laws the Marriage Overseas Act 1958 (No. 80 of 1958) has deleted the requirement of authorization by State law from the definition of chaplain, who now needs only to be "a person who [at the material time] . . . held an appointment as a chaplain in the Defence Force."[138]

Because some marriages may have been celebrated by unauthorized persons since the passage of the principal Act, it was necessary to enact a validation provision relating to any such marriages.[139]

Nationality and Citizenship.

The Nationality and Citizenship Act 1948-1955 has been amended[140] to make provision for the recognition as British subjects of citizens of the new nations of the British Commonwealth[141] and to delete certain provisions from the Act which discriminate between naturalized citizens and Australian-born people in the matter of loss of citizenship. Accordingly, those sections of the Act are repealed which provided for loss of citizenship by naturalized and registered citizens in ways not applicable to other citizens, *viz.*, section 20 (which dealt with loss of citizenship after absence for seven years without notice of intention to retain citizenship), section 21 (which gave the Minister power to authorize deprivation of citizenship on certain grounds such as disloyalty, conviction for crimes, bad character), and section 22 (which dealt with deprivation of citizenship in the case of a naturalized person who had been deprived of citizenship of another country of the British Commonwealth on grounds similar to those in section 21). In place of these sections, a new section 21 is enacted with provides that a naturalized or registered citizen who is convicted of an offence under section 50 of the Act, for making a false statement or representation in his application for citizenship, may be deprived of his citizenship if the Minister decides that it would be contrary to the public interest for that person to continue to be an Australian citizen.[142] A

of the Registrar-General: See Registration of Births, Deaths, and Marriages Act 1894-1948, sec. 25.

138 Sec. 3 of Act No. 80 of 1958.

139 Sec. 5 of Act No. 80 of 1958.

140 By the Nationality and Citizenship Act (No. 63 of 1958).

141 Chiefly Ghana, the Federation of Malaya, and the Federation of Rhodesia and Nyasaland. It is also provided that further alterations of this nature may be made simply by regulation.

142 If the Minister is authorized to deprive a person of his citizenship by order, is it really necessary for the section to continue by stating the obvious, *viz.*, that on the making of such an order that person shall cease to be an Australian citizen?

new section 23A provides that persons who had lost their citizenship under section 20 (absence for seven years) may now resume their citizenship on registering a declaration of resumption of citizenship within one year of the commencement of the Act (8th October 1958) or of attaining the age of 21, whichever is the later, or within such further period as the Minister in special circumstances may allow.

There are also a number of minor amendments to the Act, mainly amendments consequential on the Migration Act 1958.

National Health.

Budget proposals, to provide Commonwealth assistance to enable medical and hospital benefits to be paid to persons who can not be insured at normal rates on account of age, chronic illness or ailments from which they were suffering prior to joining an insurance fund, were given effect by the National Health Act 1958.[143] Normally insurance funds will not accept such persons, on the ground that to do so would increase premiums to an unreasonably high level. The solution to this problem provided by the Act is to invite medical and hospital insurance organizations to establish special accounts for the payment of benefits to such persons. These accounts will be operated and maintained by the organizations themselves but will be guaranteed by the Commonwealth. On establishing a special account, an organization will credit to that account all the contributions of members who attain the age of 65, and such members will be entitled to payment of benefits from the special account regardless of the nature of their illness. Generally the contributions of persons under the age of 65 will

143 Act No. 68 of 1958, which *inter alia* adds sections 82A-82P to the principal Act! One can only deplore the standard of draftsmanship of some of these sections, which are masterpieces of obscurity. One has no sooner disentangled a mere double negative in sec. 82C (1) (c), when one encounters a string of negatives in sec. 82E that defies comprehension—"The Minister shall not approve . . . unless under the rules of the organisation . . . a special account contributor is not . . . excluded . . . by any rule . . . relating to the eligibility of the contributor." At the committee stage of this Bill in the Senate, the Attorney-General was asked to explain the application of this particular section to a number of hypothetical cases. His answer [(1958) 13 COMMONWEALTH PARL. DEB. (Senate) 737] was, "Quite probably what the honourable senator says is correct", and the clause was passed in spite of the strongest pleas that it be submitted to the draftsman for redrafting. Once again one feels impelled to adopt the words of Senator Wright (*ibid.*, at 735), "I deprecate without qualification legislation which enshrines ideas that all people should be able to read and understand in this confused involved concatenation of negatives and nexus so as to defy understanding by the healthy and make those for whom the legislation was intended as a benefit despair and prefer to suffer the disease rather than the medical benefit."

be retained in the ordinary account and those persons will receive benefits as in the past. However, if a claim is made by such a contributor which is liable to be disallowed under the ordinary rules of the organization on the ground of pre-existing ailment, chronic illness or the maximum limit of benefits payable within a year, the organization will have the option either to allow the claim and pay benefit or to transfer the contributor to the special account. There are a number of detailed provisions to ensure that the rules of the organization shall not discriminate between the ordinary account contributor and the special account contributor in the matter of rates of contribution and benefits. Whenever, at the end of a year, the sum of amounts credited to the special account is less than the sum of amounts debited, the Commonwealth will pay to the organization concerned an amount equal to the difference between the two sums for the credit of the special account.

The Act contains a number of other amendments, perhaps the most important of which is the provision in the new section 18A that Commonwealth medical benefit shall not be payable in respect of a contributor of less than two months' standing.

Pensions.

A completely new type of pension was introduced by the Social Services Act 1958[144] in the form of supplementary assistance in respect of age and invalid pensions and widows' pensions. This was preferred to a general increase in the pension rate which might have brought the amount of pension plus permissible income to a higher rate than the basic wage in many cases. Supplementary assistance will be paid at the rate of ten shillings per week to single age and invalid pensioners, to widows, and to married age and invalid pensioners provided that only one of a married couple is in receipt of a pension or allowance, if the Director-General is satisfied that the pensioner requires such assistance by reason of the fact that he pays rent and is deemed to be entirely dependent on his pension. At the same time, the means test on age and invalid and widows' pensions was liberalized by raising by £500 the limit of the value of property a person may own and still be eligible for a proportion of the pension. This limit will now be £2,250 for a single person and £4,500 for a married couple. In respect of pensioners and other persons in receipt of unemployment and sickness benefits, any amounts received from organizations registered under the National Health Acts will be wholly exempt as income instead of

144 Act No. 44 of 1958.

exempt only to the extent that is required to meet the cost of hospital, medical or dental treatment. Such amounts therefore will no longer affect the rates of pensions or benefits at all. Likewise, periodical payments by way of gifts or allowances from brothers or sisters will now be exempt for pension purposes in the same way as gifts from parents or children. In addition, all sick-pay received from friendly societies will be excluded from the means test applied to sickness benefit, instead of the £2 limit which was imposed in the past in addition to the £2 ordinary income exemption. Another amendment concerns the Commonwealth Rehabilitation Service which has been hampered in the past by the fact that persons could not be accepted for treatment and training unless the disability from which they were suffering had existed for 13 weeks prior to their acceptance. This restriction is now removed and patients may be admitted as soon as practicable within the limits of accommodation available. The scope of this service has been extended to include widow pensioners and claimants for special benefits, including migrants awaiting naturalization who may be ineligible for invalid pensions.

Further alterations in pensions were provided by the Superannuation Act 1958[145] and the Defence Forces Retirement Benefits Act 1958[146] which increased the pensions of orphan children of deceased contributors and pensioners under those Acts from £78 per annum to £156 per annum.[147] The pensions payable in respect of the children of deceased Australian mariners were also increased by the Seamen's War Pensions and Allowances Act 1958.[148]

The Repatriation Act 1958[149] gives effect to increases in certain rates of war Pensions.[150] In addition, the principle of supplementary assistance introduced by the Social Services Act 1958 is extended to service pensions to provide a payment of ten shillings per week to service pensioners who pay rent for their accommodation and who are

145 Act No. 45 of 1958.

146 Act No. 46 of 1958.

147 These pensions had been increased in the previous year by Acts Nos. 94 and 95 of 1957 from £39 to £78: See *supra*, 325.

148 Act No. 48 of 1958.

149 Act No. 47 of 1958.

150 The various alterations are too detailed to note fully in this review. But the reviewer would draw attention to sec. 20 of the Act, amending the third Schedule of the principal Act, which includes the words "Child (including an ex-nuptial child) . . . ". There are at least two alternatives to the expression "ex-nuptial child" which have a degree of precision and freedom from ambiguity which this expression lacks. In the reviewer's opinion the words "ex-nuptial child" transcend the realm of polite euphemism and enter that of vague and "prissy" humbug.

deemed to be entirely dependent on their service pensions. Likewise, the property limit for service pensions is increased by £500 to £2,250. The Act also contains a number of minor amendments which for the most part are rendered necessary by the major alterations.

XA. MIGRATION.

A complete overhaul of the laws of the Commonwealth relating to immigration, deportation, and emigration is provided by the Migration Act 1958[151] which repeals most of the earlier legislation on these topics. The purpose of the new Act is "to provide a simpler and clearer basis for the continuance of present immigration policies than is provided by the existing Immigration Act, and also to introduce adequate safeguards against undue infringements of the liberties of the individual."[152] It should be observed at the outset that whatever success the Act may have in attaining the first of these objectives, it fails so lamentably in relation to the second as to cause grave concern at the wide and arbitrary powers it vests in the executive with only an occasional mere pretence at the observance of legal forms and processes. Whilst the reviewer would not hesitate to agree that on topics such as this the executive must necessarily be invested with wide discretions, he insists that it is important that the nature and extent of those discretions should be generally known and that they should not masquerade as concessions to "the liberties of the individual."

The Act recognizes that immigration policy is essentially a matter for the executive, but it provides an alternative form of immigration control by entry permit in place of the dictation test, which was a highly successful device for excluding those immigrants who, whilst not prohibited from entry by any other provision of the law, were not in fact eligible for admission under immigration policy. Accordingly section 6 of the Act provides that any one who enters Australia without being granted an entry permit before or at the time of his arrival will be a prohibited immigrant. Any incoming passenger who is not eligible to enter under existing policy will simply be refused an entry permit, and if he thereafter lands he will be liable to arrest and deportation, and penalties are imposed upon the master of the vessel and the shipping company concerned for having failed to keep him on board. A similar system will operate at airports. Entry permits will normally be granted by way of a stamp in the passport on arrival, but they may be granted either before or after arrival in Australia. Entry

151 Act No. 62 of 1958.
152 (1958) 13 COMMONWEALTH PARL. DEB. (Senate) 517, *per* Senator Henty.

permits will also replace certificates of exemption from the provisions of the Immigration Act restricting entry into or stay in the Commonwealth, which were the means of admitting for specified periods people who would not otherwise have been admitted under the Act but whose admission was justified by special circumstances or who for policy reasons could not be admitted as immigrants but who were allowed to enter for a temporary stay only. In these cases, certificates of exemption will be replaced by special entry permits for either a temporary or permanent stay. Temporary entry permits will serve the same purpose as the previous certificates, but without their legal complexity, and on the expiration or cancellation of the permit the holder will be liable to deportation.

The Act also does away with the previous law which permitted the use of the dictation test to deport people within five years of their arrival in Australia, even though they may have been lawfully admitted in the first instance to settle permanently. In place of this procedure, section 13 now authorizes the Minister to order the deportation of immigrants in respect of various matters occurring within five years after their entry. Section 14 (1) confers on the Minister an extremely wide discretion to order the deportation of any alien "*if it appears to the Minister* that the conduct of [the] alien (whether in Australia or elsewhere) has been such that he should not be allowed to remain in Australia." Similarly section 14 (2) authorizes the Minister to deport any immigrant within five years of his entry into Australia on a number of extremely wide and ill-defined grounds.[153] A person, whose deportation is ordered under section 14, is given the right to have his case considered by a commissioner appointed by the Governor-General. The commissioner must be a person who is or has been a judge of a federal court or of the Supreme Court of a State or a Territory, or who is a barrister or solicitor of the High Court or a Supreme Court of not less than five years' standing. The value of this "right of appeal" is, however, severely restricted by two further provisions. Firstly, section 14 (6) requires that the commissioner shall report to the

153 Immigrants from Iron Curtain countries, who express too volubly their opinions of the tyrannies from which they may have fled, will be particularly vulnerable under sec. 14 (2) (b), even though similar opinions may well be found within the pages of Hansard. The assurance given in the Senate by Senator Henty [(1958) 13 COMMONWEALTH PARL. DEB. (Senate) 717] that these powers will not be abused can hardly come into the category of "safeguards against undue infringements of the liberties of the individual." If such liberties are to be protected, then the grounds for the making of a deportation order should be more particularly specified, and not lie concealed under a blanket formula of this kind.

Minister whether he considers that the ground specified by the Minister has been made out. Insofar as the ground may be simply that "it appears to the Minister that [the immigrant's] conduct . . . has been such that he should not be allowed to remain in Australia", there may be little left for the commissioner to investigate beyond the question of how the facts appear to the Minister.[154] Secondly, section 14 (7) authorizes the commissioner to make his investigation "without regard to legal forms, and [he] shall not be bound by any rules of evidence but may inform himself on any relevant matter in such manner as he thinks fit." This provision may conceivably operate for the protection of the proposed deportee, but in the opinion of the reviewer it is bad in principle and appears to leave to the discretion of the commissioner such questions as the right to legal representation and the decision as to whether the investigation should be in public or not. If the Minister's decision is to be subject to review, is there any valid reason why it should not be a proper judicial review? The issue raised by provisions such as these is clear: "Whether this country is to be ruled by officials according to reasons that seem valid to them, or whether it is to be ruled by an impartial system of law as expressed by Parliament."[155]

If a proposed deportee seeks to challenge the validity or application of a deportation order before a court, the scales are similarly weighted against him by section 55. That section provides that in any such proceedings, statements as to certain facts contained in the deportation order shall be deemed to be proved by the production of that order, in the absence of proof to the contrary; and proof to the contrary must be by the personal evidence of the person to whom the order relates, with or without other evidence. In this connexion it is not easy to see how a person can give personal evidence as to the place of his birth,[156] or in some cases of his nationality,[157] and it may be difficult for him to prove that he did not evade an officer for the purposes of entering Australia[158] or that certain of his papers were not obtained by false representations.[159] The purpose of the section would appear to be to ensure that a person challenging a deportation order shall expose himself to cross-examination. Section 56 applies these provisions to prosecutions under section 27 for illegal entry into Australia. It is difficult to perceive the justification for sections such

154 *Cf.* Liversidge v. Anderson, [1942] A.C. 206.
155 (1958) 13 COMMONWEALTH PARL. DEB. (Senate) 718, *per* Senator Wright.
156 Sec. 55 (1) (a).
157 Sec. 55 (1) (b).
158 Sec. 55 (1) (f).
159 Sec. 55 (1) (g).

as these, even though similar provisions were to be found in the Immigration Act 1901-1949.

Further amendments concern the powers of arrest and detention of prohibited immigrants and of persons whose deportation has been ordered. Section 38 (1) re-enacts the powers of officers to arrest without warrant any person reasonably supposed to be a prohibited immigrant, but subsection (2) now requires that a person so arrested must be brought within 48 hours, or as soon thereafter as is reasonably practicable, before a prescribed authority (to be appointed by the Minister from the ranks of the judiciary and the legal profession) who will inquire whether there are reasonable grounds for supposing him to be a prohibited immigrant. Similarly section 39 (1) re-enacts the power to arrest without warrant any person reasonably supposed to be a person whose deportation has been ordered. Such a person must be given particulars of the deportation order, although it is difficult to see why those particulars must be given only if that person so requests. If he claims that his arrest is due to mistaken identity, he may make a statutory declaration to that effect and within 48 hours of making the declaration he must be brought before a prescribed authority to inquire whether there are reasonable grounds for supposing him to be the deportee. A government amendment in the House of Representatives limited the right to make such a declaration to 48 hours from the time of the arrest. Section 39 (6) (a), which provides that a deportee may be kept in such custody as the Minister or an officer directs until he is placed on board a vessel for deportation, would appear to authorize the unlimited detention of deportees. Section 41 provides that persons in custody under the Act are to be given all reasonable facilities for obtaining legal advice and taking legal proceedings. Section 42 requires a person in custody to answer such questions as may be put to him. Nowhere does it appear that a person in custody is entitled to legal advice under section 41 before he can be compelled to answer questions under section 42.

The most astonishing piece of legislation of the year is provided by section 37. Under section 14B of the repealed Immigration Act an officer was entitled to search any vessel or premises if he had reason to suspect the presence of a prohibited immigrant thereon. It was with considerable pride that the government announced that section 37 of the new Act would now require the officer to have in his possession a search warrant.[160] However, this concession to law, humanism, and

160 (1958) 19 COMMONWEALTH PARL. DEB. (H. of R.) 1398; (1958) 13 COMMONWEALTH PARL. DEB. (Senate) 520.

liberty loses some of its lustre when it is appreciated that the search warrant will not be issued, as one might have supposed, by a member of an independent judiciary, but is to be issued in accordance with the prescribed form by an "authorized officer."[161] Insofar as an "authorized officer" is defined in section 5 as any officer of the Department of Immigration or of the police authorized to exercise that power by the Minister, it is not difficult to conceive of circumstances in which an immigration officer might be able to write out his own warrant before entering the premises. Section 37, therefore, makes very little change in the law.

The Act also deals with the responsibilities of shipping and aircraft companies in respect of the provision of passages for deportees who came to Australia on ships or aircraft of those companies. Under the Immigration Acts, if a person was deported within five years of his entry, the company operating the vessel on which he came to Australia could be required to pay the cost of his passage to his country of origin. It is now provided by section 21 (8) (b) that if he originally entered the country as a migrant with the explicit authority of the Department of Immigration, the company shall no longer be liable to meet the cost of his deportation.[162] Further, section 22 (3) and section 21 (6) provide that if the deportee will not or may not be permitted to re-enter the place from which he came, the Minister may exempt the company from its obligations—provided arrangements are concluded to the satisfaction of the Minister for the payment by the company of such sum as the Minister thinks reasonable in respect of the cost of shipping the deportee to a country where he can land.

Division 6 of Part II of the Act makes some alterations in the law relating to immigration agents. The Department will no longer issue certificates of registration to such agents, as it is thought that these certificates have in the past been used for purposes of advertising. Instead an agent is required to send to the Secretary of the Department a notice of his intention to act as an agent and he will receive an acknowledgment in writing of the receipt of that notice. Section 49 contains an express prohibition against agents' advertising themselves as registered or approved by the Department in any way.

The Act also repeals and replaces the Emigration Act 1910 which dealt with the emigration of aboriginals and children in certain circumstances. In respect of aboriginals, the principle is now adopted

161 Sec. 37 (3).
162 In fact the existing law had not been invoked in this respect since 1949.

that any aboriginal should be free to leave if he is not subject to restrictions in the State or Territory in which he lives or if he is otherwise exempted by the Minister from the need to apply for an emigration permit. An aboriginal who is so subject to restrictions may nevertheless be granted an emigration permit by and at the discretion of "an authorized officer." In respect of children, the Act contains a number of provisions supplementing existing State laws in the matter of enabling parents to prevent their children being taken out of the Commonwealth without their consent. Accordingly, sections 62 and 63 provide that a parent who has the custody of a child by order of a court, or who is seeking such an order, may notify shipping and aircraft companies not to give a passage to such a child. The company, after receipt of such a notice, may not grant a passage in respect of the child without the consent of the parent or of the court.

XI. NATIONAL DEVELOPMENT.

Atomic Energy.

The Atomic Energy Act 1953 is amended by the Atomic Energy Act 1958.[163] The amendments, which are largely amendments of the machinery provisions of the 1953 Act, are concerned with expanding the activities of the Atomic Energy Commission and enlarging the Commission itself. There is no modification of the structure of the 1953 Act or of the purposes for which it was passed. The Commission, which originally consisted of a chairman, a deputy chairman, and one other member, will now consist of a chairman, a deputy chairman, an executive member, and not more than two other members. The prohibition on the chairman's engaging in other paid employment is repealed. The intent is that the new full-time executive member should be the executive officer of the Commission, to administer its affairs "in accordance with the decisions and subject to the directions of the Commission."[164] Other amendments delete obsolete provisions of the principal Act and introduce a number of changes embodied in other Acts dealing with statutory bodies. For example, section 4 of the Act redrafts the provisions of the principal Act concerning the resignation or the vacation of office by members of the Commission. The most important amendment is that an interest in a contract with the Commission will no longer automatically result in the vacation of office by a member, but such a member is now under a duty to disclose his interest and must not take part in any deliberation or decision of the Commission with respect to that contract. The approval

[163] Act No. 1 of 1958.
[164] Sec. 3 (1) (b), which enacts a new sec. 9 (4) of the principal Act.

of the Minister is required for any appointment to a position with the Commission of which the maximum salary exceeds £2,500, instead of £1,750 as in the past. More detailed provisions are enacted in connexion with the accounts, audit, and annual report of the Commission.

Petroleum.

On 3rd September 1957 the Commonwealth Government announced its intention of subsidizing the cost of drilling in connexion with the search for petroleum in Australia. On 12th December 1957 an Act[165] giving effect to that intention came into operation. Section 10 of that Act provided that drilling operations commenced between those two dates could qualify for a subsidy, provided that application was made, and the agreement for the payment of subsidy was entered into, either before the completion of the drilling operation or before the expiration of three months from the commencement of the Act, whichever first occurred. Only one company was in fact affected by this section and, although it made prompt application for a subsidy, it was not possible to conclude any agreement within those three months. Accordingly, the Petroleum Search Subsidy Act 1958[166] amends section 10 by removing the time limit in respect of the making of the agreement.

Snowy Mountains Hydro-electric Power.

The Snowy Mountains Hydro-electric Power Act 1958[167] amends the principal Act by giving approval to two agreements entered into by the Governments of the Commonwealth, New South Wales, and Victoria in connexion with the Snowy Mountains scheme. The main agreement sets out the basis on which the scheme will be constructed and describes arrangements under which the power generated will be purchased by the Commonwealth, New South Wales, and Victoria. It also provides for the sharing between the two States of any additional irrigation water made available by the operation of the scheme. The original legislation in this matter was based largely on the Defence power, and one of the principal provisions therefore of the main agreement is the undertaking by New South Wales and Victoria to bring down legislation giving State legislative authority to the Snowy Mountains Hydro-electric Authority to do those things necessary to carry out the provisions of the agreement. This Act therefore is comple-

165 Petroleum Search Subsidy Act (No. 90 of 1957), and see *supra*, at 315.
166 Act No. 22 of 1958.
167 Act No. 31 of 1958.

mentary to such State legislation and its effect will be to set the constitutional authority for the Snowy Mountains project beyond all doubt.

The second and supplemental agreement deals with possible damage by flooding due to the scheme in the upper Murray and lower Tumut Rivers.

D.E.A.