II. Commonwealth.

Introductory.

The twenty-third Commonwealth Parliament passed 111 statutes during the second session, the two periods lasting from 8th March to 2nd June 1960 and from 16th August to 8th December 1960. Of these, the Act that aroused by far the greatest controversy was the Crimes Act; and as a result of the storm of protest both inside and outside Parliament made many important amendments to the original bill. In two cases, the Public Service Act and the Patents Act, Parliament and the responsible ministers concerned appear to have been under a misapprehension as to the effect of the legislation which they were enacting. An Act of particular interest to University people is the Australian National University Act, which merged the Australian National University and the Canberra University College into one body.

I. CONSTITUTIONAL.

Recording of broadcasts of parliamentary proceedings.

By the Parliamentary Proceedings Broadcasting Act 1960,[1] amending the Parliamentary Proceedings Broadcasting Act 1946,[2] provision is made for the recording of the proceedings of either the Senate or the House of Representatives. The Australian Broadcasting Commission may make a sound recording of any proceedings of either the Senate or the House of Representatives, and must make recordings of such proceedings when directed to do so by the Chairman or Vice-Chairman of the Joint Committee on the Broadcasting of Parliamentary Proceedings appointed under the Parliamentary Proceedings Broadcasting Act 1946. It is this Committee which will decide whether or not the recording is of sufficient historic interest to justify preservation.

II. JUDICIAL AND ADMINISTRATIVE.

Judiciary Act.

Prior to the Judiciary Act 1959,[3] the Commonwealth was only liable to be sued in respect of a claim in contract or tort in the High Court or the Supreme Court of the State in which the claim arose. All claims arising in a Territory, therefore, had to be brought in the High Court. The Judiciary Act 1959 rendered the Commonwealth liable to be sued in the Supreme Court of the Territory in which the claim arose.

1 No. 35 of 1960.
2 No. 20 of 1946.
3 No. 50 of 1959.

The Judiciary Act 1960[4] now renders the Commonwealth liable to be sued in respect of a claim in contract or tort in any other court of competent jurisdiction of the State or Territory in which the claim arose, thus obviating the inconvenience of having to bring claims for small amounts in the Supreme Court. Where the jurisdiction of the lower court is based on the residence of the defendant the Commonwealth is deemed to reside in the capital city of the State or the principal or only city or town of the Territory concerned. If, therefore, a plaintiff wishes to invoke the jurisdiction of a lower court on the grounds of the residence of the defendant, he must bring his suit in the lower courts of the capital city of the State or the principal or only city or town of the Territory concerned. Where the jurisdiction of the local court does not rest on the residence of the defendant, the action may be brought in the lower court which is most convenient.

The Australian National University.

The Canberra University College is no more. The Australian National University Act 1960[5] provides for its abolition as a separate entity and its reincarnation as a School of General Studies in the Australian National University. The University now comprises an Institute of Advanced Studies and a School of General Studies. In effect the old Australian National University and the Canberra University College are merged into one body, in which the Institute of Advanced Studies corresponds to the old Australian National University and the School of General Studies to the old Canberra University College.

Under the Australian National University Act 1946,[6] which established the Australian National University, power was given to the Australian National University to incorporate the Canberra University College. Neither body, however, appears to have been eager for such a merger, and the merger was attacked in debate on the grounds that it would lead to a lowering of the stndards of the Australian National University and as a result of the merger the Australian National University would turn into a University of Canberra and cease to be a truly National University.[7]

It had become impossible, however, for the Canberra University College to continue as before, as the University of Melbourne, which

4 No. 32 of 1960.
5 No. 3 of 1960.
6 No. 22 of 1946.
7 (1960) 26 COMMONWEALTH PARLIAMENTARY DEBATES (hereinafter referred to as COMMONWEALTH PARL. DEB.) (H. of R.) 719.

had been responsible for granting its degrees since its foundation in 1929, was no longer willing to continue in its association with the Canberra University College. Assuming, therefore, that no other university was willing to take Canberra under its wing, the only alternative to merger with the Australian National University was for the Canberra University College to become a separate university in its own right. This course was rejected as it was felt that the new university would become and remain a second-rate university, and also that it was undesirable to have two universities in a city the size of Canberra when there was a growing demand for second and third universities in the great centres of population.[8]

The Institute of Advanced Studies and the School of General Studies will retain a considerable degree of autonomy in the new Australian National University, each being governed in academic matters by its own Board. For an interim period of ten years the granting of doctoral degrees will be the responsibility of the Board of the Institute of Advanced Studies and the Board of the School of General Studies will be responsible for the granting of degrees and diplomas other than doctoral degrees. At the end of this interim period the question of the responsibility for degrees will be dealt with by the Council of the University.

Repeal of the Flax Industry Act.

The Flax Industry Act 1953[9] has been repealed by the Flax Industry Act Repeal Act 1960.[10] The property of the Flax Commission is transferred to the Commonwealth, which also becomes entitled to and responsible for the rights, liabilities, and obligations of the Commission.

Broadcasting and Television Act.

In the Broadcasting and Television Act 1960,[11] the Government has recognised the gap that sometimes exists between the theory of the law and the facts of commercial life.

The Broadcasting and Television Act 1956[12] provided that one person should not be in a position to control more than two commercial television stations in the whole of Australia or more than one in any one State. It was felt, however, that these provisions might

8 (1960) 26 COMMONWEALTH PARL. DEB. (H. of R.) 569.
9 No. 25 of 1953.
10 No. 5 of 1960.
11 No. 36 of 1960.
12 No. 33 of 1956.

fail to prevent the control of commercial television falling into the hands of a few people, because a legal view might be taken that the control of a company rests with the general meeting and in order to control a general meeting it is necessary to exercise as of right 51 per cent. of the voting power in the general meeting, whereas in practice a company can be effectively controlled by persons who hold considerably less than 51 per cent. of the voting power. Under the 1960 Act, which forbids a person to exercise control of more than two commercial television licences in the whole of Australia or more than one in any one State, a person is deemed to be in a position to exercise control of a licence if he can control the company that holds the licence, and he is deemed to be in a position to control that company if he can control fifteen per cent. of the voting power. The Act also forbids a person to be a director of more than two companies each of which is in a position to control a different licence, and provides that a person is deemed to be in a position to exercise control of a licence if he can control the management of the station or the selection of the programmes. This last provision, however, does not apply to *bona fide* commercial arrangements for the control of programmes made with sponsors, advertisers or suppliers of television programmes.

In order to prevent a person from obtaining control of a television station by monopolizing supplies of television film, the Act provides that when a person unreasonably refuses to supply television film to a television station, the station may apply to the Australian Broadcasting Control Board for an order that the film be made available. The Board will then hold an inquiry into the matter, and if it is satisfied that the film is being withheld unreasonably it will make an order that the film shall be made available on such terms as the Board considers just and reasonable in all the circumstances.

National Library Act.

The National Library which, like Topsy, just grew, has now been established by the National Library Act 1960[13] as a body corporate under the name "National Library of Australia." The functions of the Library are to maintain and develop a national collection of library material, including a comprehensive collection of library material relating to Australia and the Australian people, to make such material available to such person and under such conditions as the Council thinks fit, and to make available such other library services as the Council thinks fit, and in particular services for the library of

[13] No. 69 of 1960.

Parliament and for Commonwealth Departments and authorities. The Library is governed by a Council consisting of one Senator elected by the Senate, one member of the House of Representatives elected by that House, and seven members appointed by the Governor-General. Under the provisions of the Act the Governor-General may make Commonwealth land or buildings available for the Library.

The Act does not in reality create a new institution, but rather gives a statutory basis to an existing body.

Audit Act.

Under section 36 (2) of the Audit Act 1901-1959[14] the Minister of each department was bound to furnish to the Treasurer within thirty days after the close of the financial year a statement of all outstanding claims which might by law have been paid out of the Consolidated Revenue Fund. This requirement has been dispensed with by the Audit Act 1960,[15] which repeals section 36 (2) of the old Act and also section 51 (f) which required the Auditor-General to include those statements in his annual report.

Public Service Act.

The Public Service Act 1960[16] makes an important change in the methods of recruitment to the Public Service. Previously direct recruitment except in special circumstances was to the Third and Fourth Divisions only, and vacancies in the Second Division were filled by promoting officers from the Third Division. The new Act empowers the Public Service Board to appoint persons to the Commonwealth Service as officers of the Second, Third or Fourth Divisions. Persons appointed to the Second or Third Divisions must have either passed a qualifying examination or a public examination approved by the Board, or be graduates of an Australian university or of an overseas university whose degrees are, in the opinion of the Board, of at least equal standard to those of Australian universities.

It is strange that no mention of this radical change was made in any of the speeches delivered during the passage of the bill through the Senate and the House of Representatives;[17] nor does the Public Service Board make any reference to it in its thirty-seventh report to Parliament. Before the passing of the 1960 Act direct appointments were only made to the Second Division in cases where a post which

14 No. 4 of 1901.
15 No. 77 of 1960.
16 No. 105 of 1960.
17 (1960) 18 COMMONWEALTH PARL. DEB. (Senate) 2128, 2204.

required special skill or qualifications could not be filled from within the Service itself. Under the new Act, however, the Public Service Board may, if it wishes, appoint persons directly to the Second Division as a normal method of recruitment.[18]

Section 34 (c) of the Act provides that a person is not eligible for appointment to the Commonwealth Service unless the Board is satisfied that he is a fit and proper person to be an officer of that Service. This does not mark any departure from previous practice. In the past the Board had worked on the assumption that it had the ordinary rights of an employer to reject a candidate on the grounds of bad character; but as some doubts had been felt on this matter, the Board was given statutory power to reject a candidate on the grounds of bad character.[19]

Tariffs.

The Tariff Board Act 1960[20] enables the Government to impose temporary duties without consulting Parliament and before it has received a report from the Tariff Board. The composition of the Board has been changed to include two Deputy-Chairmen. Where the Minister is of the opinion that urgent action may be necessary to protect an Australian industry, he may request the Chairman of the Tariff Board to appoint one of the Deputy-Chairmen to investigate the situation. The Deputy-Chairman who undertakes this inquiry must report to the Minister within thirty days. If the Deputy-Chairman reports that urgent action is necessary and recommends the imposition of a new or increased duty, the Minister may immediately impose the new or increased duty, provided that he has referred the matter to the Tariff Board for inquiry and report. A copy of the Deputy-Chairman's report must be laid before the House of Representatives on or before the day that the temporary duty commences if the House is sitting on that day, and if not, within seven sitting days after the duty commences. The temporary duty must not exceed the rate laid down in the Deputy-Chairman's report, and will expire three months after the Minister receives the final report of the Tariff Board. The Deputy-Chairman who has carried out the special investigation may not take part in the Tariff Board's inquiry into the same matter.

18 Apparently either the Government was unaware of the effect of its own legislation or there was a deliberate and successful attempt to mislead Parliament.

19 (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 2983.

20 No. 41 of 1960.

*Education.**

The new Australian Universities Commission set up in 1959,[21] having visited the universities in all States, lost no time in submitting to the Commonwealth Government its recommendations for the period 1961-1963. It is not known whether it had to fit its proposals into a global sum previously determined as the maximum of which the Treasury would approve, or whether its original recommendations had to be later pruned down to a figure of which the Commission had been kept ignorant; what is certain is that no university appears to have been satisfied with what was offered to it—though none have refused the proffered aid—and some have even said that the measure of Commonwealth and State aid is too small to allow them to do more than stop up some of the cracks and crevices in their existing structures. Be that as it may, there is no doubt that tertiary education (to give it what now appears to be the more fashionable title)[22] in Australia would be in an even more deplorable state without the not ungenerous support given by the Commonwealth. That support, though of very recent origin, is clearly here to stay; it is indorsed by all the major political parties, and is bound to increase though perhaps not quite so rapidly as some empire-builders (who are found as much in universities as elsewhere) may like.

The scheme of financial assistance for the triennium 1961-1963 is set out in the States Grants (Universities) Act.[23] Under the 1958 Act,[24] what were described as "emergency grants", which did not require to be matched by State government subsidies, were made for the period 1958-1960 only; but, as was always expected, the emergency in university affairs had become permanent, and the new grants for

21 See 162, *supra*.

22 It appears in the decision of the Prime Minister, announced in his second-reading speech on the new Act, to set up a new Committee on Tertiary Education in Australia. The membership of the new Committee was announced much later. There are to be fourteen members, most of whom—as is the fashion these days—are prominent in pure or applied science; it does not appear to include any member genuinely representative of the humanities, though the so-called social sciences have four champions—an economist and three professional "educationalists." Eleven of the members come from New South Wales (including the Australian Capital Territory) or Victoria; apparently there is no one in Western Australia or Tasmania deemed sufficiently competent to be a member of this new Committee.

23 No. 106 of 1960.

24 See 4 U. WEST AUST. ANN. L. REV. 513-514.

* The reviewer is indebted to Professor F. R. Beasley for contributing the comments on the States Grants (Universities) Act, and also on the State Grants (Special Assistance to South Australia) Act and the States Grants (Special Assistance) Act, *infra*.

recurrent expenditure include not only increased Commonwealth subsidies but the total of the older emergency grants as well. Since more money is made available for capital expenditure (*i.e.*, buildings) and for some other purposes, the net effect is a substantial increase in Commonwealth aid, as the following tables show:

Grants for recurring expenditure

	1960[25]	1961	1962	1963
Minimum[26]	£2,944,000	£6,006,000	£6,006,000	£6,006,000
Maximum	£6,400,830	£7,651,000	£8,445,000	£9,328,000

Grants for capital expenditure[27]

1958-1960	1961-1963
£6,280,000	£14,216,000

Grants for residential colleges[28]

1958-1960	1961-1963
£600,000	£1,000,000

Substantial building programmes are now well under way at all universities. Given the complexities of academic planning, and the time necessarily spent on the preparation of architectural drawings and specifications, the major problem for some universities is, "Can we spend on buildings, before the end of 1963, all the money that can be made available to us?" A failure to spend up to the hilt is almost certain to convince the Australian Universities Commission of the need to recommend smaller capital grants in the triennium 1964-1966. For this reason the universities hope that in future the Commission will announce its recommendations well in advance of the next triennium, so that they can start their detailed planning much earlier—on the assumption that the Commonwealth government will accept the Commission's recommendations.

25 The last year of the triennium 1958-1960.

26 The minimum grants, generally known as first-level grants, are made unconditionally. The difference between minimum and maximum is a "second-level" grant, available in whole or in part where a university's income (from fees and State grants) exceeds the minimum specified in a schedule to the Act.

27 These grants are conditional upon the State governments providing equal subsidies for buildings.

28 In addition, the Commonwealth offers to each residential college an annual grant of £2,000 plus a subsidy of £15 for each resident student and of £5 for each non-resident student. Here too the State must offer £ for £ if the college is to get federal aid.

IIA. CRIMES.*

General.

On several occasions during recent years, this review has commented upon unsatisfactory trends in Commonwealth legislation. There has been the practice of drawing provisions in terms far wider than is actually required—conferring general powers where particular powers would suffice—and relying on ministerial assurances as the only safeguard against their abuse. Provisions, for example those reversing the normal distribution of the burden of proof, which run contrary to ordinary concepts of justice but which might be justified in particular instances, have been turned into stock, common-form clauses to be used on all occasions. We have predicted that these practices would one day cause trouble. In 1960 they did.

The amendments proposed in 1960 to the Crimes Act[29] of the Commonwealth exhibited most of these faults. The story of the amendments is a sorry one from which few people emerge with any real credit. However, it is doubted whether the amendments were prompted by a flush of McCarthyism as was frequently alleged, or even by innate skullduggery and a desire to wreck the trade unions; the unsatisfactory aspects of the legislation were largely the product of inept and thoughtless drafting, much of which was corrected before the Bill became law. The legislation did, however, place a big stick into the hands of many, although few appeared to appreciate what it was they had in their hands, whose heads they should have been belabouring, or for what purpose. Nevertheless, there was a considerable brouhaha; and it is a tribute to the strength of public opinion, informed, uninformed, and misinformed, and to the political acumen of the Government, that the proposed amendments were revised and the worst features eliminated, so that the legislation was ultimately passed[30] in a form more closely resembling that in which it should first have appeared.

The Crimes Act of the Commonwealth was first passed in 1914[31] shortly after the outbreak of the first world war. As the Commonwealth has no general power to legislate in respect of crime, and as there was no power in the Commonwealth at that time to legislate

29 Act No. 12 of 1914, as amended by No. 6 of 1915, No. 54 of 1920, No. 9 of 1926, No. 13 of 1928, No. 30 of 1932, No. 5 of 1937, No. 6 of 1941, No. 77 of 1946, No. 80 of 1950, No. 10 of 1955, and No. 11 of 1959.

30 Act No. 84 of 1960.

31 By a Labour Government.

* The reviewer is indebted to Mr. D. E. Allan for contributing the comments on the Crimes Act; Mr. Allan in turn acknowledges his debt to material collected earlier in the year by Mr. E. J. Edwards.

with extra-territorial effect, the scope of the Act was very restricted. The authority for the Act therefore is to be found in matters incidental to the constitutional powers of the Commonwealth, particularly with reference to defence. Accordingly the Act deals with such matters as offences against the Government, the protection of the Constitution and of the public and other services, offences in respect of the administration of justice by federal courts, coinage offences, offences by or against public officers, and breaches of official secrecy. Even in respect of these offences, the Act did not purport to be comprehensive. Treason, for example, was limited to instigating an invasion or assisting a public enemy "by any means whatever". In the result therefore the Commonwealth had frequently to rely on State law and the willingness of State governments to prosecute offences of this nature.

The Crimes Act 1960 therefore was the occasion for a comprehensive review of the principal Act.[32] Various factors contributed to the need for the review; the greater importance of the Territories of the Commonwealth and the consequent need to extend many of the provisions of the Act to apply in respect of the Territories; changes in the theory and practice concerning the punishment and treatment of offenders; developments in the materials which can be used for coins, genuine and counterfeit. Above all else, however, the emergence of Australia as an independent nation in a "cold-war climate" pointed to the necessity for reviewing the provisions relating to offences against the Government and to breaches of official secrecy,[33] and for giving extra-territorial effect to the provisions of the Act.

It is because of this last factor that the Crimes Act 1960 and the controversy which surrounded it are so typical of the problems which confront governments to-day and illustrate so well the dilemma that faces most countries. In the present international situation, a government which did not take steps to preserve the national security against both direct attack and indirect infiltration would fall far short of meeting its responsibilities. Security, however, does require that certain powers and discretions be given to the executive which ncessarily involve interference with individual liberties, and the executive must be able to exercise its powers speedily and if necessary secretly even though this may involve infringements of the concepts of the rule of law. Security must demand some sacrifice of individual liberties, but

32 This fact was rather ignored in the clamour concerning the treason-treachery amendments, and there was very little public appreciation of the extent of the revision and of the important changes which were introduced by the amending Act in other areas.

33 The need had been further demonstrated in the Report of the Royal Commission on Espionage in Australia 1954-55: See in particular c. 20.

it involves the danger that, in reacting from one form of totalitarianism and in protecting ourselves against it, we may possibly be creating another for ourselves. It is to be hoped that we are not faced with a choice between survival under a police-state régime or disintegration in a glorious flourish of individual freedom and liberty. The challenge of this decade appears to be the problem of finding an acceptable compromise which, while guaranteeing the security of the State, would preserve as far as possible the liberties of the subject. To do as did so many opponents of the Bill and close one's eyes to the existence of this problem, does not assist at all in solving it. But if any criticism should be directed against the Bill, it is that, although the Bill apparently recognised the problem, it displayed a considerable lack of imagination as to the ways of meeting it and, at any rate as first introduced, was couched in such vague and loose terminology as to raise serious doubts as to just what the Government did intend.

The principal change was a "new look" for treason and offences against the Government by enacting a detailed modern code in respect of treason, treachery, sabotage, espionage, and breaches of official secrets.

Treason.

Section 24 of the principal Act had defined treason as the instigation of an invasion or the assisting "by means whatever" of a public enemy, and it could only be committed within the Commonwealth or its Territories. Other categories of treason had therefore fallen within the jurisdiction of the States. The Bill introduced in September 1960 sought to substitute a new section 24 to take over the whole field of treason and to state the various offences which would amount to treason in terms of those elements of the common law which were of practical relevance in the circumstances of the Commonwealth.[34] Extra-territorial effect was secured for this and the other provisions of the Act by a new section 3A applying the principal Act "throughout the whole of the Commonwealth and the Territories and also . . . beyond the Commonwealth and the Territories."

The objections to section 24 were directed principally at the paragraph[35] which would have made it treasonable to assist "by any

34 The Attorney-General maintained throughout that the new section merely codified and did not change the common law. The Opposition saw radical new departures. The matter was certainly not free from doubt under the section as originally drafted, and the reviewer is still not convinced about the section as it was ultimately passed. However, this is not really relevant on the question of the desirability of the new provision.

35 Sec. 24 (1) (d).

means whatever any enemy at war with the Commonwealth, whether or not the existence of a state of war had been declared." The strong protests about the use of the words "by any means whatever" were probably misconceived. These words were not an innovation, but had appeared in section 24 of the principal Act and are not uncommon in treason statutes.[36] More serious was the criticism that under this paragraph an accused person's life might depend on whether or not a state of war existed, and that this would generally be determined *ex post facto* by information supplied to the Court by the executive.

As a result of these and other criticisms, this paragraph was amended in November in two ways. Firstly it was made clear that merely doing some act which chanced to assist an enemy was not treason unless it was done with intent that it should assist him. Secondly a requirement was added that the enemy who was assisted should not merely be an enemy at war with the Commonwealth but should have been specified as such by a proclamation made for the purpose of the paragraph.

Subsection (2) of the new section 24 makes it an offence, punishable by imprisonment for life, to receive or assist a person, who to the knowledge of the accused is guilty of treason, in order to enable him to escape punishment. Likewise it is an offence similarly punishable for a person to fail to notify the appropriate authority when he knows that another intends to commit treason. It is difficult to appreciate the criticisms of the last provision as it appears to do no more than restate the common law offence of misprision of treason.

In short it would appear that the new section 24 gives the Commonwealth a comprehensive and much needed law of treason. It does not depart substantially from accepted principles and there are no real grounds for objection to the section as it was finally passed.

Treachery.

The offence of treachery created by the new section 24AA is an innovation.[37] The section provides a list of particular types of conduct punishable by imprisonment for life. In introducing this section in the House of Representatives, the Attorney-General (possibly anticipating protests) attempted to allay fears and suspicions by explaining that life imprisonment was the maximum sentence. He said:[38]

36 See for example Western Australian Criminal Code, sec. 37 (8).

37 There had been in the United Kingdom a Treachery Act 1940 (which terminated in February 1946) which created a capital offence of assisting an enemy with intent to assist him.

38 (1960) 28 COMMONWEALTH PARL. DEB. (H. of R.) 1028.

"Honorable members will, of course, realize that the stipulation of a punishment by a statute is but to set a maximum. The judge called upon to sentence a person guilty of a crime for which some penalty other than death is prescribed has a discretion which allows him to equate as well as he can the gravity of the offence to the extent of the punishment imposed. In addition, honorable members will bear in mind that in every case there resides in the Attorney-General the discretion to forbear to prosecute in cases where there may be no more than a technical breach or where good reason exists for doubting guilt, and the likelihood of conviction."

It is hoped that the Attorney-General was not seriously suggesting that either of these factors could justify a legislative proposal that was otherwise objectionable.

The conduct which it was proposed in the September Bill to treat as treachery was as follows: Firstly, acts done in an attempt to overthrow the Constitution of the Commonwealth by revolution or sabotage; secondly, acts done in an attempt to overthrow by force or violence the established government of the Commonwealth, of a State or of a proclaimed country; thirdly, certain conduct within the Commonwealth or a Territory in relation to foreign countries, such as levying or preparing to levy war against a proclaimed country, instigating a person to make an armed invasion of a proclaimed country, assisting by any means whatever an enemy of and at war with a proclaimed country whether a state of war had been declared or not. The clause gave the Government power to proclaim countries it considered its friends, and provided that a proclaimed country included the colonies, overseas territories and protectorates of that country, and any territory for the international relations of which that country was responsible.

The provisions of the clause were somewhat startling. The Attorney-General stressed the importance of preserving good relations with friendly countries[39] but this clause went much further than anything previously known.[40]

Criticisms of the clause were aimed mainly at its vagueness. In particular it was pointed out that the clause placed the onus on the

39 *Ibid.*, at 1028-1029.

40 In the United Kingdom, the Foreign Enlistment Act 1870 created the offence of enlisting or inducing others to enlist in the military or naval services of a foreign state at war with another state which was at peace with the United Kingdom. The maximum penalty is 2 years' imprisonment.

subject of knowing the colonies and territories of a proclaimed country and the territories for the international relations of which it was responsible. It was urged that proclamations should be proclamations of defined geographical areas rather than of political ties. This aspect of the clause was fortunately amended in November to require the specification of the colonies, territories, etc., of the proclaimed country in the proclamation. The clause had also placed on the subject the onus of knowing the enemies of a proclaimed country, whether a state of war had been proclaimed or not. This also was revised in November to require specification in the proclamation of the enemies of the proclaimed country to which the section would extend, and to make it clear that conduct which in fact assisted a proclaimed enemy would not be treachery unless it was done with the intent to assist. Proclamations of countries and of their enemies are required by subsection (5) to be made only in pursuance of a resolution of each House of Parliament passed within the preceding 21 days.[41]

The new clause also proposed that, where part of the Defence Force is on or is proceeding to service outside the Commonwealth and the Territories, assisting by any means whatever persons against whom the Defence Force (or a Force of which it is part) is or is likely to be opposed should be treachery.

Objections were taken again to the expression "by any means whatever" and also to the vagueness of the expression "is or is likely to be opposed". The clause was accordingly redrafted in November to add the further requirements that the persons who may not be assisted should be specified or included in a class of persons specified in a proclamation, and that the assistance should be rendered with intent to assist.

As a result of the new section 24AA, some restraint has been imposed on the freedom of action of the subject. Nevertheless, it is suggested that the section is now expressed with sufficient clarity and that adequate safeguards are provided so that, having regard to the requirements of national security, the loyal citizen has no real ground for complaint.

Sabotage.

A new offence of sabotage, punishable by a maximum of 15

41 It is still possible, under the combined effect of sec. 3A and sec. 24AA (1) (a) (ii), that conduct outside Australia by persons who could have had no knowledge of a proclamation or of its effect at the time of the conduct may subsequently be charged with treachery if the persons concerned come within the jurisdiction of the Australian Courts.

years' imprisonment, is created by section 24AB. This offence is committed by a person who carries out an act of sabotage or who has in his possession any article capable of use, and which it is proved he intends to use, in carrying out an act of sabotage. Act of sabotage was defined in the September bill as the destruction, damage or impairment of anything intended to be used in connexion with defence if it was done "for a purpose prejudicial, or intended to be prejudicial, to the safety or defence of the Commonwealth."

It was objected firstly under this section that a purpose might in fact be prejudicial to the safety and defence of the Commonwealth although not intended as such, and this definition was amended accordingly in November to make it clear that it would not be sufficient that an act of destruction was done for a purpose which was in fact prejudicial to the safety and defence of the Commonwealth unless also it was intended to be prejudicial.[42]

The most vigorous objections to this section were however aimed at subsection (3) which provided that, on a prosecution under the section, proof that the accused acted for a purpose prejudicial to the safety and defence of the Commonwealth did not require proof of a particular act showing that purpose. Instead the accused might be convicted if it appeared from the circumstances of the case, from his conduct or from "his known character as proved" that that was his purpose.

This provision attracted more criticism than anything else in the Bill, and not all the criticism appeared rational. Many critics[43] failed to appreciate altogether that proof of intention or purpose is always a matter of inference from "the circumstances of the case" and the conduct of the accused. The only issue raised by this provision in this context was whether in fact the context justified the reversal of the

42 "A purpose intended to be prejudicial to the safety and defence of the Commonwealth." It is feared that the interpretation and application of this expression may yet cause some difficulty, as it is not clear how one can have an intent in relation to a purpose. "Purpose" is defined in the Oxford English Dictionary as "The object which one has in view"; or "intention." Accordingly it is submitted that the word "intended" in this expression can not be given its normal legal meaning of foresight of consequences plus a desire for those consequences. Is it therefore to be equated with motive? Or does it mean simply that the accused must appreciate that his purpose is in fact one which is prejudicial to the safety and defence of the Commonwealth?

43 See for example the letter written on behalf of the Methodist Church of Australasia, Social Services Department, dated 26th October 1960, and quoted in 29 COMMONWEALTH PARL. DEB. (H. of R.) 2515.

normal rule excluding character evidence. Certainly the provision was not new. It existed already in section 78 (2) of the principal Act; it was to be found in the United Kingdom Official Secrets Act 1911, section 1; and in the New Zealand Official Secrets Act 1951, section 7. There was no evidence that any harm had been done by the section in the past. Nevertheless it is a provision which is objectionable in principle and which should not therefore be used unless it can be shown to be essential.

In view of the uproar which this "known character" provision produced, the clause was modified in November by the addition of further sub-clauses providing that "known character" evidence should be excluded by the Court if it did not tend to show a purpose intended to be prejudicial or if it would prejudice the accused's chance of a fair trial. In addition, the judge is placed under a duty, if the evidence is admitted, to direct the jury that the known character of the accused may be taken into account only on the question of whether the purpose of the accused was intended to be prejudicial and that on all other issues it is to be disregarded.

A new section 24F added in November provides that certain acts if done in good faith are not unlawful as a result of any of the provisions of Part II of the Act (Offences against the Government). These acts will include such things as endeavouring to show that the policies of a government are mistaken, or that there are errors or defects in the government, constitution, legislation or administration of justice of a country with a view to the reformation of those errors or defects, or doing anything in good faith in connexion with an industrial dispute or matter. Subsection (2) lists specific purposes and intents which have the effect of preventing an act or thing being held to have been done in good faith. It is perhaps a measure of the ambit of the other provisions of Part II that it has been necessary, albeit in a negative form, almost to enact certain guaranteed rights.

Espionage.

The offence of espionage contained in the re-enacted Part VII of the Act is not new but is basically the old offence of unlawful spying. The scope of the new offence, however, has been considerably enlarged. The main change has been the expansion of the definition section,[44] extending particularly the definitions of the articles or information in respect of which the offence can be committed. "Information" is defined extremely widely to mean—

[44] Sec. 77.

"information of any kind whatsoever, whether true or false and whether in a material form or not, and includes—

(a) an opinion; and

(b) a report of a conversation."[45]

The offence of espionage, which carries a maximum of 7 years' imprisonment, is committed by any person who, for a purpose intended to be prejudicial to the safety and defence of the Commonwealth or a part of the Queen's dominions, obtains, collects, uses, communicates *or has in his possession* certain articles or information which might be useful to an enemy or foreign power. The offence is therefore not confined to war-time. The purpose of the accused may be proved from his known character. Further, if certain articles or information relating to or used in prohibited places are proved to have been obtained, used, possessed, or communicated by the accused without lawful authority, the onus is placed on the accused to show that this purpose was not intended to be prejudicial to the safety and defence of the Commonwealth.[46]

This section is possibly the most far-reaching of all the amendments and is expressed, even after revision of the original Bill, in language that is far from precise. Strangely, however, the clause did not attract more criticism than other parts of the Bill, and such criticism as there was tended to be misconceived. The issue was again raised, and conceded by the Government, that the purpose of the accused should have been *intended* to be prejudicial.[47] In fact, however, the expression "any purpose prejudicial to the safety and interest of the Commonwealth" had existed in the principal Act since 1914. The substitution of the word "defence" for "interest" was already one restriction on the scope of the section that was contained in the 1960 Bill as first introduced. Similarly the known character clause and the shifting of the burden of proof had always been part of the offence of unlawful spying.

Official secrets.

The offence of unlawful communication of secret information, which was created by section 79 of the principal Act, was based on the United Kingdom Act of 1911, although without incorporating any of the amendments to that Act made in 1920. It was therefore pro-

45 Sec. 77 (1).
46 Sec. 78.
47 See note 41 *supra.*

posed to replace the section by a new section 79 dealing with official secrets.

The new section did not really extend the offence; rather it clarified it and graded it. For example, as with espionage, the purpose of the accused must now be one that is intended to be prejudicial to the safety and defence of the Commonwealth instead of one that is prejudicial to the safety and interest of the Commonwealth. It has also been made clear that the section relates only to information which is supposed to be secret. The offence has also been graded according to its seriousness. For example, under the principal Act the unlawful communication of information was punishable by 7 years' imprisonment. Now unlawful communication for a purpose intended to be prejudicial to the safety and defence of the Commonwealth carries a 7 years' penalty. However, unlawful communication without that purpose or intent is punishable only by 2 years' imprisonment. Unlawfully retaining articles or failing to take reasonable care of them is punishable with 6 months' imprisonment. The known character clause, as modified in November, applies in relation to the proof of purpose.

One strange anomaly remains in this section. In spite of the grading of the offence so that only the most heinous conduct will now carry a penalty of 7 years, the unlawful receipt of information still remains an offence carrying the 7 years' penalty unless the accused can prove that the information was communicated to him contrary to his desire.

Ancillary offences.

A new section 83A creates a series of offences concerned with the illegal use of uniforms or official permits, or false impersonation, for the purpose of contravening the espionage and official secrets provisions of the Act or of gaining access to a prohibited place. A new section 86 provides increased penalties for certain types of conspiracy.

Procedure.

New sections 83B and 84 deal with the arrest without warrant of persons who have committted or are about to commit offences concerned with espionage and official secrets or who are in the vicinity of prohibited places. The new section 84A confers a wide authority on Commonwealth officers and constables to search suspects.

So far as the mode of trial of the various new offences is concerned, section 12A of the principal Act provided that a court of

summary jurisdiction could, with the consent of the defendant, deal with any offence under the Act even though it was declared indictable. Further, if the offence related to property the value of which did not exceed £50, the case might be tried summarily at the request of the prosecution.

There was some strong feeling that the new offences created by the Act should always be tried by a jury. Accordingly, in November section 12A was amended by specifying that charges of treason, treachery, sabotage, espionage and breaches of the official secrecy provisions could be tried only by indictment.

Further, the new section 24AC provides that proceedings for treason, treachery, and sabotage can be instituted only with the consent of the Attorney-General, although a person may be arrested, charged, and remanded in custody pending the granting of consent to institute proceedings.

Miscellaneous.

The 1960 amendments made a number of very important changes in other provisions of the principal Act, although without arousing the same controversy as did the provisions reviewed above.

In the first place the Act was amended throughout to ensure not only that the provisions of the Act should clearly extend to all the Territories, but that they should be capable of being enforced in the case of offences committed in respect of a Territory, even though committed outside that Territory.

Secondly, the coinage provisions contained in Part IV of the principal Act were amended for a number of purposes. The amendments will ensure that the expression "counterfeit coin" will include a counterfeit coin made of plastic or other non-metallic material. The melting down and defacing of current coin other than gold (which was already dealt with) is now penalized. The making and selling of tokens that could be passed off as current coin although not bearing a sufficient resemblance to current coin to meet the legal definition of counterfeit is made an offence. The coinage provisions are extended generally to both metallic and non-metallic currency in case non-metallic current coins should ever be minted.

Finally, a number of new sections were added dealing with the treatment of offenders. It was pointed out that the Constitution places on the States the duty to make provision for detaining in prisons persons accused or convicted of offences against the laws of the Commonwealth. Changes since 1914 in the theory of the treatment of

offenders have been given effect to some extent by State laws; but some provision was needed in the Commonwealth Act so that offenders against the laws of the Commonwealth could be treated in the same way as offenders against the laws of the States. New sections were therefore introduced for this purpose. For example, a new section 19A authorizes the release of offenders on licence. A new section 19B makes provision for the conditional release of offenders, charged before a court of summary jurisdiction with an offence against Commonwealth law, without proceeding to conviction if there are special circumstances of character, age, health, the nature of the offence or other extenuating circumstances which justify that course. Section 20A confers power on the Courts to vary or discharge conditions of recognizance.

Section 20B makes special provision for persons, who, by reason of their unsoundness of mind, are either unfit to plead or are acquitted of the offence. Such persons are to be detained in such custody as the Governor-General may direct. Persons who have been acquitted of the offence on the ground of insanity may be subsequently released either conditionally or unconditionally on the order of the Governor-General. Where a person by reason of insanity was unfit to plead, he must be detained in custody until he is certified as fit to plead by two medical practitioners. In such event the Governor-General may order him to be tried.

Section 20C provides for the special treatment of children or young persons who offend against the law of the Commonwealth. They may be tried and punished in the same manner as if the offence had been an offence against the law of the State or Territory in which they are charged or convicted. Persons under the age of 18 who are convicted of a capital offence are not to be sentenced to death "but the Court shall impose such other punishment as the Court thinks fit."[48]

III. FISCAL.

Bounties.

The copper bounty, which is payable in respect of refined copper produced and sold in Australia, and which was due to expire on 30th June 1960, has been extended for a further three and a half years until 31st December 1963.[49] The rate of the bounty has been

[48] Sec. 20C (2).

[49] By the Copper Bounty Act 1960 (No. 31 of 1960) and the Copper Bounty Act (No. 2) 1960 (No. 100 of 1960).

changed. Previously the rate of the bounty was £45 per ton of refined copper where the cost at which electrolytic copper wire bars could be purchased overseas did not exceed £275 per ton; where the cost exceeded £275 per ton, a pound was deducted from the bounty for every pound by which the cost exceeded £275 per ton. The new rate is £35 per ton of refined copper where the cost at which electrolytic copper wire bars can be purchased overseas does not exceed £290 per ton; where the cost exceeds £290 per ton, a pound is deducted from the bounty for every pound by which the cost exceeds £290 per ton. Section 9 of the Act of 1958[50] provided that where a producer had exceeded his fair share of the Australian market, the Minister might determine that bounty should be paid only in respect of the refined copper which amounted to a fair share of the Australian market. This section has now been repealed and a new section 9 put in its place. The new section empowers the Minister to prohibit the payment of bounty where there has been a profit-sharing arrangement between producers.

The sulphuric acid bounty, which was due to expire on 30th June 1960, has been extended for a further five years until 30th June 1965;[51] the bounty, however, will only be payable to producers already in production of sulphuric acid. The bounty was paid in order to encourage the production of sulphuric acid from indigenous materials in place of imported brimstone. The Government considered that this bounty was no longer justified on economic grounds, but felt that it had obligations to producers who had co-operated in its previous policy.[52] The bounty, therefore, will not be payable to producers whose application for registration of premises as a factory was made after 1st December 1960, unless the application was made within six months of that date and the applicant had already installed plant on those premises or had incurred substantial expenditure in order to do so.

In accordance with the recommendations of the Tariff Board, a bounty will also be payable in respect of iron pyrites which is produced for the purpose of the manufacture of sulphuric acid in Australia.[53] The rate of the bounty will be £3 per ton of the sulphur content of the pyrites where the cost of imported crude brimstone exceeds £16 per ton; where the cost of imported brimstone is less than £16 per

50 Copper Bounty Act 1958 (No. 78 of 1958).
51 By the Sulphuric Acid Bounty Act 1960 (No. 30 of 1960) and the Sulphuric Acid Bounty Act (No. 2) 1960 (No. 101 of 1960).
52 (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 3503.
53 Pyrites Bounty Act 1960 (No. 102 of 1960).

ton the bounty will be increased by the difference between the cost of imported brimstone and £16, and where the cost of imported brimstone exceeds £16 per ton, the bounty will be reduced by the amount by which the cost exceeds £16 per ton. The bounty, which will expire on 30th June 1965, will only be payable to producers who were in production before 1st December 1960.

Customs and Excise.

Fear of dumping has led to a modification of the system of Canadian preferences. It was felt that owing to the fact that industries in North America are usually conducted on a far larger scale than their counterparts in Australia, Canadian factories might produce a surplus of goods which exceeded the total output of similar factories in Australia, and which could be exported to Australia at a preferential rate of tariff and dumped on the Australian market.[54]

By the Customs Tariff (Canada Preference) Act 1960,[55] therefore, the previous Customs Tariff (Canadian Preference) Acts have been repealed. From now on Canadian goods will be subject to increased tariffs contained in the Second Schedule of the Act.

Income Tax.

Following the introduction of income tax into the Territory of Papua and New Guinea,[56] Australian income tax laws have been amended[57] so as to relieve Australian residents who derive income from the Territory of Papua and New Guinea from the burden of double taxation. Previously residents of Australia had been liable for Australian tax on their territorial income; tax paid under the Income Tax Ordinance of the Territory will now be allowed as a credit against Australian tax on territorial income. The legislation also removes anomalies caused by the discriminations that previously existed between the Territory of Papua and the Territory of New Guinea. Previously Papua had been treated as part of Australia for income tax purposes, with the result that an overseas resident who received income from Papua was liable for Australian tax, but was exempt if he received his income from New Guinea. With the introduction of territorial tax the Government decided that Australia should with-

54 (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 2837.

55 No. 54 of 1960.

56 By Ordinance 26 of 1959.

57 By the Income Tax and Social Services Contribution Assessment Act 1960 (No. 18 of 1960) and the Income Tax and Social Services Contribution Act 1960 (No. 20 of 1960).

draw from that field of taxation.[58] Territorial income, therefore, will now be exempted from Australian tax and liable only to territorial tax, provided that the recipient is not a resident of Australia. Allowances for the maintenance of dependants, which were only available where the dependants resided in Australia or Papua, are now extended to dependants residing anywhere in the Territory of New Guinea, or in Norfolk Island, Cocos (Keeling) Islands, Christmas Island, or the Island of Nauru.

The Income Tax and Social Services Contribution Act (No. 2) 1960[59] increased the rates of tax payable on incomes derived by companies by 6d. in the £1. The rate payable on insufficient distribution of incomes of private companies remains at 10/- in the £1. The exemption levels for aged persons have been increased from £429 to £442, and from £858 to £884 in the case of married couples both of whom are qualified by age. These levels have been increased in consonance with the increase in age pensions. The Income Tax and Social Services Contribution Act 1959[60] made a reduction of 5 per cent. in the tax payable by individual taxpayers, in the form of a rebate of 1/- in the £1; this rebate is not continued in the 1960 Act.

The Income Tax and Social Services Contribution Assessment Act (No. 2) 1960[61] increased the allowance for periodical subscriptions paid for membership of professional, trade or business associations from £10.10.0 to £21. Income tax deductions are allowed for gifts of £1 and upwards to the following bodies:—The National Trust of Tasmania, the Art Gallery Society of New South Wales, the Australian Productivity Council, and, where the gift is made for the purpose of medical research or education, the Australian Postgraduate Federation in Medicine, the College of Radiologists of Australasia, the Australian College of General Practitioners, and the College of Pathologists of Australia. The amount upon which the special 20 per cent. depreciation may be claimed in respect of residential accommodation provided for employees, share-farmers and tenants engaged in agricultural, pastoral, and pearling activities has been increased from £2,750 to £3,250.

The main object of the Income Tax and Social Services Contribution Assessment Act (No. 3) 1960[62] is to curb the activities of

58 (1960) 27 COMMONWEALTH PARL. DEB. (H. of R.) 1127.
59 No. 59 of 1960.
60 No. 71 of 1959.
61 No. 58 of 1960.
62 No. 108 of 1960.

companies which have been borrowing large sums of money at high rates of interest. These companies have been engaged in such fields of activity as hire purchase finance and speculative building and real estate operations, where they can expect a quick turnover and large and early profits. The principal stock in trade of such companies is capital, and their eagerness to obtain it has led to a bidding up of interest rates, which the Government considered to be bad for the economy. This unrestrained competition for capital, it was felt, forced up the costs of industry, diverted resources from productive enterprises into speculative activities, and increased the burden of taxation, as the less governments were able to borrow money on reasonable terms the more they had to obtain by means of taxation.[63] The Act, therefore, restricts the amount of interest on loans which is deductible for tax purposes. Where the amount of interest exceeds £10,000 no greater amount will be allowed to be deducted for the year 1959-60. In order to prevent the Act from acting retrospectively companies are given the option of deducting up to the amount of interest for which they were liable in the year 1959-60, or the amount of their annual interest liability as at 15th November 1960, which was the date on which the Treasurer, Mr. Holt, announced the scheme in Parliament. The provisions of the Act apply only to companies, and do not apply to borrowings by or from banks, pastoral finance companies, approved short-term-money-market dealers, building and co-operative housing societies registered under State or Territory law, and companies engaged in supplying gas, electricity, and water. These provisions are intended to be an interim measure until a continuing scheme is drawn up and presented to Parliament.[64] The Act also provides that interest on convertible notes may no longer be deducted for tax purposes. The object of this provision is to prevent companies from deducting interest paid on amounts which were raised as borrowings but which were really designed to be a permanent investment in the company. Previously companies which had issued convertible notes in lieu of shares had been able to obtain a deduction for interest paid on the notes, which they would not have been able to obtain on interest paid on share capital. The provision is intended to have effect indefinitely.[65]

Parliamentary approval was given by the Income Tax (International Agreements) Act (No. 2) 1960[66] to an agreement between Australia and New Zealand for the avoidance of double taxation.

63 (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 3581.
64 (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 3582.
65 (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 3584.
66 No. 29 of 1960.

Similar agreements already exist between Australia and the United Kingdom, Canada, and the United States of America. Previously Australia and New Zealand had to a large extent avoided double taxation of their residents by independent action.[67] The agreement limits the tax that may be imposed on dividends paid by a company resident in one country to a shareholder resident in the other to 15 per cent.

Loans.

Following on the Government's decision to add to the amount available for expenditure on public undertakings in the Territory of Papua and New Guinea by local borrowing,[68] the Papua and New Guinea Act 1949-1957[69] has been amended[70] so as to give a Commonwealth guarantee to public loans borrowed by the Administration of the Territory.

The Loan (Housing) Act 1960[71] authorized the raising of £37,200,000 for financial assistance to the States for housing; the allocation to Western Australia was £3,000,000.

State Grants.

The new method of calculating Commonwealth grants to the States[72] does not require legislative approval each year, as the States Grants Act 1959 contains a section charging on Consolidated Revenue Fund the payments which it authorizes. But the Commonwealth Treasurer must of necessity refer to these amounts in his Budget speech since they constitute a significant item in federal expenditure; the following table shows the amounts paid in 1959-1960 under the new method, and the estimate[73] of the amounts payable for the financial year which ended on 30th June 1961:—

Commonwealth grants to the States

	1959-1960 (actual)	1960-1961 (estimate)	Percentage increase
New South Wales	£83,450,000	£91,982,000	10.22

67 (1960) 27 COMMONWEALTH PARL. DEB. (H. of R.) 1761.
68 (1960) 26 COMMONWEALTH PARL. DEB. (H. of R.) 329.
69 No. 9 of 1949 as amended by No. 80 of 1950, No. 41 of 1954 and No. 15 of 1957.
70 By the Papua and New Guinea Act 1960 (No. 4 of 1960).
71 No. 62 of 1960.
72 See 172-178, *supra*.
73 The figure given by the Treasurer in his Budget speech had to be corrected later when more information on population, etc., had been received from the Commonwealth Statistician: see (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 2375.

Victoria	60,625,000	67,377,000	12.35
Queensland	36,375,000	39,917,000	9.73
South Australia	27,675,000	30,718,000	10.99
Western Australia	25,462,000	27,955,000	9.79
Tasmania	10,913,000	11,965,000	9.64
	£244,500,000	£269,914,000	10.42

Since the grants are primarily based on population, the percentage increase in the amount payable to each State gives a fairly accurate picture of the relative growth of population in each. (Corrections to population estimates have now been made in the light of the census held on 30th June 1961; the census returns confirmed predictions based on earlier estimates that New South Wales, Queensland, and Western Australia are each likely to lose one seat in the House of Representatives).[74]

The State Grants (Special Assistance to South Australia) Act,[75] which authorizes the payment of £1,027,000 to South Australia, does not mean that that State has come back into the list of applicants for additional financial support[76] from the Commonwealth. The amount approved by this Act is the belated—and final—adjustment of the special grant payable to that State for the financial year 1958-1959.[77] The two States (Western Australia and Tasmania) which continue to make an annual approach to the Commonwealth Grants Commission were each to receive, during the financial year 1960-1961, the sum of £4,309,000.[78] In the previous financial year Western Australia had received £3,500,000 and Tasmania £3,400,000.

IV. DEFENCE.

Telephone tapping.

The Telephonic Communications (Interception) Act 1960[79] prohibits the interception of telephone communications except in two sets of circumstances. The first exception arises when officers of the Postmaster-General's Department have to listen-in in the course of installing, operating or maintaining a telephone system, or in the course of tracing the origin of a call when an offence under the Posts and Telegraphs Act has been committed or is suspected. The second

74 The distribution of seats in that House is based on population. It is not mandatory to provide for a re-distribution after the census; the normal practice has been to do so.

75 No. 16 of 1960.

76 See 176-177, *supra,* and particularly 176, note 76.

77 See (1960) 27 COMMONWEALTH PARL. DEB. (H. of R.) 1296.

78 States Grants (Special Assistance) Act, No. 6 of 1960.

79 No. 27 of 1960.

exception arises when a warrant has been issued by the Attorney-General at the request of the Director-General of Security Services. The Attorney-General may issue the warrant where he is satisfied that the telephone service concerned is being used or is likely to be used for purposes prejudicial to the security of the Commonwealth, and that the interception of communications passing over that service by the Australian Security Intelligence Organisation might assist that Organisation in obtaining intelligence relevant to the security of the Commonwealth. Such warrants may not be issued for a period longer than six months at a time but are renewable. In cases of emergency the Director-General of Security Services may issue a warrant under his own hand for a period not greater than forty-eight hours. Where such a warrant is issued the Director-General must forthwith furnish the Attorney-General with a copy of the warrant and a statement of the grounds of his belief that the security of the Commonwealth would be seriously prejudiced if the telephone service were not intercepted before a warrant could be obtained from the Attorney-General. Records of intercepted communications which are not relevant to security must be destroyed. A person intercepts a communication within the meaning of the Act when he listens to or records a communication without the knowledge of the person making it, unless he listens in by accident due to a technical defect, or on a party line. As section 3 of the Solicitor-General Act 1916 does not apply to this Act, the Attorney-General may not delegate his power to issue a warrant to the Solicitor-General.[80]

National Service.

The National Service (Discharge of Trainees) Act 1960[81] provided for the winding up of the national service scheme. Under the National Service Act 1951-1957[82] a person called up for national service had to serve for five years in the Citizen Forces. The 1960 Act provided that all trainees who had not volunteered for service in the Citizen Forces should be discharged on 30th June 1961.

Explosives.

The development since the war of a defence policy based on collective security has led to an amendment[83] of the Explosives Act

80 Not surprisingly, the Opposition attacked this measure most vehemently. The Act, however, does not give the executive any fresh powers, but merely defines and restricts the powers that already existed.

81 No. 28 of 1960.

82 No. 2 of 1951, as amended by No. 63 of 1951, No. 30 of 1953, No. 16 of 1957 and No. 40 of 1957.

83 By the Explosives Act 1960 (No. 66 of 1960).

1952-1957[84] so as to extend the provisions of that Act to explosives which are the property of the armed forces of a friendly foreign power which are in the Commonwealth or a Territory of the Commonwealth for the defence of Australia.

V. INDUSTRIAL RELATIONS.

The Commonwealth Industrial Court.

The Conciliation and Arbitration Act 1960[85] has increased the number of judges who may be appointed to the Commonwealth Industrial Court by one. This increase was rendered necessary by the departure of Mr. Justice Dunphy on leave and the resignation of the judge of the Supreme Court of the Australian Capital Territory, Mr. Justice Simpson. The absence of Mr. Justice Dunphy would have left the Court with a bare quorum; moreover, the judges of the Commonwealth Industrial Court had for some time been performing the functions of the judge of the Supreme Court of the Australian Capital Territory owing to the illness of Mr. Justice Simpson. The resignation of Mr. Justice Simpson, therefore, left two judges to do the work of four. As the Commonwealth Industrial Court is a federal court, its judges are appointed for life, so that it was not possible to appoint an acting judge during the absence of Mr. Justice Dunphy; nor could the gap be filled by the appointment of a new judge of the Supreme Court of the Australian Capital Territory, as the judge of the Supreme Court of the Australian Capital Territory could not perform the functions of a judge of the Commonwealth Industrial Court. The Act, therefore, was amended so as to increase the number of judges, in addition to the chief judge, who may be appointed to the Commonwealth Industrial Court from two to three.[86]

One consequence of this Act is that there will be no resident judge in the Australian Capital Territory, at least for some time, as the Attorney-General indicated in the debate that he did not propose for the present to replace Mr. Justice Simpson.[87]

Seamen's compensation.

The scope of the Seamen's Compensation Act 1911-1959[88] has been extended by the Seamen's Compensation Act 1960[89] so as to apply to seamen engaged for "delivery voyages" to or from Australia.

84 No. 99 of 1952, as amended by No. 33 of 1957.
85 No. 15 of 1960.
86 (1960) 27 COMMONWEALTH PARL. DEB. (H. of R.) 1217.
87 (1960) 27 COMMONWEALTH PARL. DEB. (H. of R.) 1218.
88 No. 13 of 1911, as amended by No. 56 of 1938, No. 18 of 1947, No. 7 of 1949, No. 10 of 1953, No. 16 of 1954 and No. 99 of 1959.
89 No. 67 of 1960.

A delivery voyage is defined as being a voyage between two ports, one being in Australia and the other being in another country, the whole or principal object of the voyage being the delivery of the ship to the port of destination. The act now applies to seamen engaged in Australia for such a voyage upon terms that entitle them to transport from Australia to join the ship or back to Australia after leaving the ship. It is immaterial whether or not the articles of agreement were entered into in Australia, or whether or not the ship is British, and if British whether or not it is registered in Australia.

Stevedoring industry charge.

The Stevedoring Industry Charge Assessment Act 1960[90] exempts stevedoring employers from payment of the stevedoring industry charge in respect of their permanent employees. Permanent employees are defined as those who are employed on a weekly basis or longer, and to whom the Australian Stevedoring Industry Authority does not pay attendance money, annual leave pay, sick leave pay, or payment in respect of public holidays.

VI. TRADE, COMMERCE, AND INDUSTRIAL PROPERTY.

Colonial Light Dues.

As a result of the ratification of the International Convention on the Territorial Sea and the Contiguous Zone 1958 by the United Kingdom, the Colonial Light Dues Collection Act 1932-1936,[91] the Colonial Light Dues (Rates) Act 1932-1936,[92] and the Colonial Light Dues Appropriation Act 1932[93] have been repealed by the Colonial Light Dues Legislation Repeal Act 1960.[94] Under arrangements made in 1932 the Australian Government had collected on behalf of the United Kingdom Government dues from ships arriving at Australian ports which had passed or derived benefit from lighthouses and buoys in the British West Indies. As the Convention precludes the levying of such dues on foreign ships, it became necessary to repeal the acts which authorized the collection of the dues on behalf of the United Kingdom Government.[95]

Sugar agreement.

The Sugar Agreement Act 1960[96] approves a supplemental agreement to the Sugar Agreement 1956-1961 between the Commonwealth

90 No. 61 of 1960.
91 No. 65 of 1932, as amended by No. 15 of 1934 and No. 90 of 1936.
92 No. 66 of 1932, as amended by No. 91 of 1936.
93 No. 67 of 1932.
94 No. 12 of 1960.
95 (1960) 26 COMMONWEALTH PARL. DEB. (H. of R.) 952.
96 No. 63 of 1960.

and Queensland Governments. Under the supplemental agreement the maximum wholesale prices at which the Queensland Government agrees to make sugar available in the State capitals, Launceston, and Darwin are increased from £82. 1. 0 per ton in the case of refined sugar of 1A grade to £90. 5. 2 per ton, and from £80 per ton in the case of refined sugar of 1XD grade to £88 per ton, representing an increase of 1d. per lb. in the retail price; the sugar industry's contribution to the funds of the Fruit Industry Sugar Concession Committee is increased from £120,000 per annum to £264,000 per annum; and the rebate payable on sugar used in manufactured fruit products is increased from £2. 4. 0 per ton to £5. Under the main agreement exporters of goods containing Australian sugar were paid an export rebate at rates which were determined monthly by the Export Sugar Committee; exporters, however, were given the option of electing to accept for periods not exceeding twelve months the rate of rebate declared by the Committee in respect of any month. As the rate of the rebate, which is based on the difference in price of Australian sugar and foreign sugar, rises automatically when the price of Australian sugar rises, the exporters who had exercised their option before the increase in the price of Australian sugar would have received a lower rate of rebate than they would otherwise have received. The Export Sugar Committee, therefore, was empowered under the supplemental agreement to adjust the rebate rates of exporters who had already exercised their option.

Insurance.

The Insurance Act 1932-1937[97] has been amended by the Insurance Act 1960[98] so as to increase the amount of the deposit lodged with the Treasurer to satisfy any final judgment obtained by a policy holder in respect of his policy. The minimum initial deposit is increased from £5,000 to £10,000 and the maximum deposit is increased from £40,000 to £80,000, or £100,000 in the case of a foreign company. The initial deposit for foreign companies not carrying on insurance business in the Commonwealth at the commencement of the Act is increased from £50,000 (£60,000 if the company was incorporated or had its head office in a non-British country) to £100,000.

Aluminium industry.

The Aluminium Industry Act 1960[99] approves the agreement to sell the aluminium undertaking of the Australian Aluminium Produc-

[97] No. 4 of 1932, as amended by No. 29 of 1932 and No. 5 of 1937.
[98] No. 76 of 1960.
[99] No. 81 of 1960.

tion Commission at Bell Bay, Tasmania, to the Aluminium Production Corporation Ltd. Aluminium Production Corporation Ltd. is a company incorporated under Tasmanian State law, one-third of the shares being held by the Tasmanian Government and the rest by Consolidated Zinc Pty. Ltd.[1]

Patents.

The Patents Act 1960[2] made several important amendments to the Patents Act 1952-1955.[3] Following the recommendations of the Dean Committee, section 43 of the old Act has been repealed and the classes of persons who may make applications for a patent, the time allowed for accepting a patent application, and the Commissioner's power to extend the time allowed for doing certain acts have been extended.

Section 43 of the 1952 Act provided that a complete specification, together with any provisional specification, should be open to public inspection six months after the complete specification had been lodged and that the Commissioner should publish a notification to that effect in the Official Journal. Section 43 has now been repealed and section 52 amended so that now a complete specification will be published and open to public inspection immediately after the application has been accepted.

The classes of persons who may apply for a patent have been extended to include persons entitled to have the patent assigned to them; and the time within which an application and complete specification may be accepted has been extended from fifteen months after the examiner's first report on the complete specification to twenty-one months.

Under the 1952 Act, where acts in relation to an application for a patent had not been done within the specified time, the Commissioner had power to extend the time limit if the failure to do those acts in time was due to the fault of the Patent Office or circumstances beyond the control of the person concerned. Under the 1960 Act, the Commissioner may also extend the time limit if the failure is due to an error or omission on the part of the person concerned or his agent or attorney.

Following the revision of the International Convention for the Protection of Industrial Property by the Lisbon Conference in 1958,[4]

1 (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 3540.
2 No. 107 of 1960.
3 No. 42 of 1952, as amended by No. 14 of 1954 and No. 3 of 1955.
4 See (1959) INDUSTRIAL PROPERTY QUARTERLY (January).

amendments have been made to those parts of the Act which deal with applications from foreign countries. Under the provisions of the 1952 Act, when a person who had made an application for a patent or similar protection in a Convention country, or a person who derived his title from that applicant, lodged an application for a patent to protect the same invention in Australia, the priority date of the claim in Australia was the date when the original application was made; provided that the application in Australia was made within twelve months of the original application. When there had been more than one application in the Convention country with regard to the same invention, the original application was deemed to be the first in point of time, even although it had been withdrawn, abandoned or refused. If, therefore, an application was made in a Convention country and then withdrawn, and another application with regard to the same invention was made at a later date, and the applicant lodged an application to protect the same invention in Australia within twelve months of the second application but more than twelve months after the first application, the priority date of his claim in Australia could not be back-dated. The new Act, therefore, provides that when there has been more than one application in a Convention country and the first application has been withdrawn, abandoned or refused, without becoming open to public inspection and without being used as the basis for claiming a right of priority in a Convention country, the applicant may request the Commissioner to disregard the first application for the purpose of determining priority, and the Commissioner must comply with such a request.[5] A Convention application could be made by the applicant in the Convention country or someone who derives his title from him, provided that the applicant in the Convention country was a person who would have been entitled to apply for

[5] The Attorney-General, Sir Garfield Barwick, in his second reading speech, stated that this amendment to the Act gave effect to the Lisbon revision of the Convention: See (1960) 27 COMMONWEALTH PARL. DEB. (H. of R.) 2215. Such may have been his intention, but the amendment does not, in fact, give effect to the Lisbon revision. Section 142AA of the Act provides that when the first application has been withdrawn, abandoned or refused the applicant *may* request the Commissioner to disregard the first application for the purpose of determining priority. If, therefore, an application is lodged in Australia within twelve months of the first (withdrawn) application in the Convention country, the applicant will be able to choose whether the priority date of his claim in Australia shall be the date of the first (withdrawn) application or the later (successful) application. Article 4, C (4) of the Convention as revised, however, states that the later application *shall* be treated as the first application for the purpose of determining priority, thus giving the applicant no choice in the matter at all. See (1959) INDUSTRIAL PROPERTY QUARTERLY, 9.

a patent in Australia. The 1960 Act enables a person who derives his title from the applicant in the Convention country to make a Convention application, even although the applicant in the Convention country would not be entitled to apply for a patent in Australia. Under the new Act the complete specification accompanying a Convention application may include a claim to matter which was not disclosed in the Convention country application.

Section 108 of the 1952 Act, which provides for the granting of compulsory licences when the reasonable requirements of the public with respect to a patented invention have not been satisfied, has been amended in accordance with the Lisbon revision of the Convention, so that such compulsory licences shall be non-exclusive and shall be transferable only with the enterprise or goodwill which uses the licence.

Section 176 of the 1952 Act provided that renewal fees in respect of patents granted under repealed Acts should be as fixed under those Acts. In order to increase those fees, section 176 has been amended so as to remove that restriction.

VII. PRIMARY PRODUCTION.

Meat.

Following negotiations between the Government and primary producer organizations the Cattle and Beef Research Trust Account has been created[6] to finance research into the problems of the beef industry. Funds will be raised by a levy on cattle slaughterings and the Government will contribute a subsidy on a £1 for £1 basis.[7] The Research Account is to be administered by the Australian Cattle and Beef Research Committee, which consists of the chairman of the Australian Meat Board, representatives of primary producers' organizations, a representative of the Commonwealth Scientific and Industrial Research Organization, a representative of the Department of Primary Industry, and a representative of those Universities that engage in research into matters affecting the beef industry. The rate of the levy, which will be paid by the owners of the cattle at the time of slaughter, will be determined by the Research Committee, but may not exceed two shillings per head.

The powers of the Australian Meat Board have been increased[8] in order to enable it to engage in the promotion of meat sales within

6 By the Cattle and Beef Research Act 1960 (No. 6 of 1960).

7 Cattle Slaughter Levy Act 1960 (No. 7 of 1960), Cattle Slaughter Levy Collection Act 1960 (No. 8 of 1960).

8 By the Meat Export Control Act 1960 (No. 9 of 1960).

ments.[17] Membership of the Association, therefore, will be divided into two classes, the more developed countries and the less developed. The more developed countries will pay the whole of their subscription in gold or convertible currencies, and the less developed countries will pay ten per cent. of their subscription in gold or convertible currencies and the remaining ninety per cent. in their own currencies. Loans may be made on such terms as the Association thinks fit; loans, therefore, may be made on easy repayment terms, free of interest, or repayable in the borrowing country's own currency.

Air navigation.

Prior to the passing of the Air Navigation Act 1960,[18] the executive was authorized to make regulations to give effect to the Chicago Convention on International Civil Aviation or any other agreement on air navigation to which Australia might become a party. The new Act transfers many of the more important regulations to the body of the Act, and lays a statutory duty upon the responsible Minister to make an annual report to Parliament on the working of the Act and the regulations and any other matters relating to civil aviation which should be brought to the attention of Parliament. The Act authorizes the executive to make such other regulations as may be necessary to give effect to the Chicago Convention, but withdraws the blank cheque to make regulations to give effect to any future international agreements on air navigation to which Australia may become a party. For the first time the text of the Convention is contained in the schedules to the Act.

Antarctica.

The Antarctic Treaty Act 1960[19] gives effect to the Antarctic Treaty 1959. Under the terms of the Treaty, nationals of contracting parties who are in Antarctica as observers or scientific personnel exchanged under the terms of the Treaty or their staffs shall be subject only to the jurisdiction of the contracting party of which they are nationals. The Act, therefore, provides that non-Australians who are in Antarctica as observers, scientific personnel or as members of their staffs under the Treaty shall not be subject to the laws in force in the Australian Antarctic Territory, and that Australian citizens who are in Antarctica in the same capacities shall be subject to the laws of the Australian Antarctic Territory in respect of any acts or omissions occurring in Antarctica, whether they occurred in the Territory or not.

17 (1960) 27 COMMONWEALTH PARL. DEB. (H. of R.) 1347.
18 No. 39 of 1960.
19 No. 48 of 1960.

Development of the Indus Basin.

The Indus Basin Development Fund Agreement Act 1960[20] authorizes the Government to appropriate funds to pay Australia's contribution under the Indus Basin Development Fund Agreement. The purpose of the Fund is to enable Pakistan to construct a system of works in the Indus river basin, following the conclusion of the Indus Waters Treaty between India and Pakistan.[21] Under the terms of this treaty all the waters of the Ravi, Sutlej, and Beas rivers will be available for the unrestricted use of India, but India will permit the release of waters from these rivers to Pakistan for a period of ten to thirteen years while Pakistan is constructing works for the replacement of these waters from other sources.

IX. FEDERAL TERRITORIES.

Papua and New Guinea.

The Papua and New Guinea (No. 2) Act 1960[22] enlarges and widens the Legislative Council of the Territory and abolishes the Executive Council which is replaced by the Administrator's Council.

The old Legislative Council consisted of twenty-nine members, comprising the Administrator, sixteen official members, and fourteen non-official members. Three of the non-official members were elected and nine were appointed, three of them being native members and three being members representing the interests of the Christian missions.[23] The new Council will consist of thirty-seven members, comprising the Administrator, fourteen official members, and twenty-two non-official members; thus giving the non-official members a majority in the Council. Twelve of the non-official members will be elected and ten will be appointed; at least five of the appointed members must be resident in the Territory of New Guinea and at least five must be natives. Until such time as natives are eligible to be enrolled on a common roll, six of the elected members shall be elected by electors of the Territory, and six shall be elected by natives.

The Executive Council consisted of nine appointed official members. Only the Administrator could submit matters to the Executive Council, and he was not bound to act in accordance with the advice of the majority of the Council. The Executive Council has been

20 No. 87 of 1960.

21 This treaty marks the end of the long dispute between India and Pakistan over the use of the waters of the Indus Basin.

22 No. 47 of 1960.

23 Papua and New Guinea Act 1949 (No. 9 of 1949).

abolished and replaced by the Administrator's Council, comprising the Administrator and six members of the Legislative Council appointed by the Minister on the nomination of the Administrator. Three of these members shall be official members, and three non-official, of whom at least two must be elected members.

The National Capital.

The National Capital Development Commission Act 1960[24] extends the functions of the Commission, by enabling it to exercise control over the planning, development, and construction of buildings being privately constructed and to carry out construction on land other than Commonwealth land at the request of the owner or lessee of the land with the approval of the Minister.

X. STATUS AND SOCIAL SERVICES.

Social Service benefits and pensions.

The Repatriation Act 1960[25] and the Seamen's War Pensions and Allowances Act 1960[26] increase widows' pensions by five shillings per week. The Repatriation Act also increases repatriation benefits in certain cases of sickness and disability. Additional retirement benefits are provided by the Defence Forces Special Retirement Bnefits Act 1960[27] for members of the permanent military forces who are compulsorily retired as a result of army re-organization.

The Social Services Act 1960[28] increases the maximum rate of age, invalid and widows' pensions by five shillings per week, and also abolishes the class D widows' pension. Previously women over fifty years of age, with children, whose husbands had been imprisoned for six months or more, had only been entitled to the same pension as a widow without children. This penalty on the children has now been removed, and in future these women will receive the same rate of pension as class A widows.

The Act also merges the two previous means tests, one of income and one of property, into one composite means test. The Repatriation Act has been amended so as to apply the new merged means test to service pensions.

24 No. 83 of 1960.
25 No. 44 of 1960.
26 No. 46 of 1960.
27 No. 68 of 1960.
28 No. 45 of 1960.

Nationality and citizenship.

The purpose of the Nationality and Citizenship Act 1960[29] is to simplify and humanize the procedure for applying for Australian citizenship. Previously an applicant for a certificate of registration or naturalization had to advertise his intention to apply, and then make a statutory declaration stating his name, age, birthplace, occupation, and residence and produce certificates of character from three Australian citizens. The advertisement, the statutory declaration, and the need for three certificates have now been dispensed with, and all the applicant is now required to do is to furnish a written statement signed by him, setting out his name, address, occupation, date and place of birth. It was felt that the certificates of character were largely valueless, and that the need for such certificates and the formality of the existing procedure might deter many new Australians from applying for Australian citizenship.[30]

International organizations.

The International Organizations (Privileges and Immunities) Act 1948,[31] which granted diplomatic privileges and immunities to international organizations of which Australia is a member, has been amended so[32] as to extend its provisions to all Commonwealth Territories, and to confer juridical personality on such organizations.

XI. NATIONAL DEVELOPMENT.

Whaling.

The Whaling Acts of 1935[33] and 1948,[34] which were framed to cover the activities of pelagic whaling expeditions, have been repealed and replaced by the Whaling Act 1960,[35] which is framed to cover the activities of shore-based whaling operations. The new Act also gives effect to various amendments which have been made to the International Whaling Convention.

Public works.

Under the Public Works Committee Act 1913-1953[36] the Minister or any member of the House of Representatives was entitled to move

29 No. 82 of 1960.
30 (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 2458.
31 No. 72 of 1948.
32 By the International Organizations (Privileges and Immunities) Act 1960 (No. 103 of 1960).
33 No. 62 of 1935.
34 No. 66 of 1948.
35 No. 10 of 1960.
36 No. 20 of 1913, as amended by No. 32 of 1914, No. 19 of 1921, No. 92 of 1936, No. 69 of 1947, No. 79 of 1951 and No. 88 of 1953.

that any proposed public work, the estimated cost of which exceeded twenty-five thousand pounds, should be referred to the Parliamentary Standing Committee on Public Works for a report. The Public Works Committee Act 1960[37] gives authority for all proposed public works to be referred to the Committee for a report, whatever their estimated cost, and further provides that when the estimated cost of any proposed public work exceeds £250,000 it must be referred to the Committee for a report, unless the House of Representatives resolves that it is expedient that the proposed work should be carried out without reference to the Committee or the Governor-General declares that the proposed work is for defence purposes and that reference to the Committee would be contrary to the public interest. The Act gives power to the Committee to review its own reports, provided that the proposed work has not been commenced; and if the Committee gives notice to the Minister of its intention to review its report the proposed work may not be commenced unless the Committee does not wish the commencement of the work to be deferred, or the House of Representatives decides that the work should be commenced without waiting for the further report, or the further report has not been made before the House of Representatives is dissolved or expires by effluxion of time.

Posts and telegraphs.

The Post and Telegraph Act 1960,[38] which repeals the Postal Rates (Defence Forces) Act 1939,[39] the Post and Telegraph Rates (Defence Forces) Act 1940,[40] the Post and Telegraph Rates (Defence Forces) Act (No. 2) 1940,[41] and section 21 of the Post and Telegraph Act 1901-1950,[42] abolishes the postal concessions enjoyed by members of the forces not serving overseas.[43]

W.E.D.D.

37 No. 13 of 1960.

38 No. 85 of 1960.

39 No. 48 of 1939.

40 No. 24 of 1940.

41 No. 94 of 1940.

42 No. 12 of 1901, as amended by No. 25 of 1909, No. 24 of 1910, No. 28 of 1910, No. 30 of 1912, No. 23 of 1913, No. 14 of 1916, No. 17 of 1923, No. 45 of 1934, No. 77 of 1946, No. 35 of 1949 and No. 80 of 1950.

43 Concessions enjoyed by servicemen serving overseas are not affected by this Act, as these concessions are determined by the postal authorities in the countries concerned. See (1960) 29 COMMONWEALTH PARL. DEB. (H. of R.) 2647.