

LEGISLATIVE SUMMARY

VICTORIA 1961

Constitutional Amendment

Electoral Practice

The Constitution Act Amendment Act 1961 (No. 6840) recognized the need for greater protection to parliamentary candidates in respect of certain unfair electoral practices, such as the circulation of unauthorized or untrue printed matter. This is effected by section 3 which, in providing a new section 261 A to the Constitution Act Amendment Act 1958, incorporates almost verbatim section 161 of the Commonwealth Electoral Act 1918-1940. These provisions provide for the authorization and identification of printed electoral matter and the punishment as an illegal practice the printing, publishing, issuing circulation or distribution of unauthorized or misleading printed matter. Section 3 (2) prescribes as an illegal practice the writing or posting of electoral matter on public property or on private property without the owner's consent. Sub-section (3) empowers a member of the police to destroy, remove or deface any offending poster.

Section 4 inserts a new section 263 into the 1958 Act which extends the power of a Judge of the Supreme Court to issue interim or perpetual injunctions against the repetition of the making of false statements to include a power in relation to any printed matter in respect of which an illegal practice has been committed. Section 5 increases and varies the penalty provisions in section 264 (1) of the 1958 Act to six months imprisonment or a fine of not more than two hundred pounds. The new Act also amends sections 73 and 99 of the 1958 Act in relation to the qualifications for members of the Legislative Council and Assembly, so that on naturalization aliens immediately qualify as candidates for election.

Section 9 of the Constitution Act Amendment (Electoral) Act 1961 (No. 6764) amends sections 219 (3) (c) and (e) of the Constitution Act (Amendment) Act 1958 so as to bring Victorian Law into line with Commonwealth electoral provisions with respect to prohibitions against persuading or inducing a person to apply for a postal ballot paper so as to include such activity by *any* person, and not only where 'an unauthorized witness' was involved, as previously was the case.

Administration of Justice

Juries

The Juries (Amendment) Act 1961 (No. 6766) settles the disputed question as to whether the trial judge or a special jury should decide

challenges for cause to jurors in civil and criminal matters. Section 2 prescribes that such matters are to be decided by the Judge or Chairman of General Sessions. Section 4 embodies provisions for compensation to be payable to jurors for personal injuries arising out of or in the course of their employment as jurors, by the addition of new sections 50G to 50L to the Juries Act 1958. Such addition was necessary because jurors in carrying out a duty imposed by law, and not working under a contract of service, did not fall within the provisions of the Workers Compensation legislation. Employment as a juror is defined by the new section 50H (2) of the 1958 Act so as to include a juror in attendance at a jury pool or court, and a juror absent during an ordinary court adjournment, or absent with the express permission of the court provided that during such absence the juror does not voluntarily subject himself to any abnormal risk of injury. Sub-section (2) (b) provides for compensation where a juror is injured whilst travelling to and from his residence, place of business or employment, and the court. Sub-section (5) specifies the appropriate person to whom payment of compensation will be made.

Evidence (Children)

The anomalous state of the law with respect to the admission of evidence of children in certain cases was brought to light by the decision of the Full Court of the Victorian Supreme Court in *The Queen v. Giles*.¹ The Full Court indicated that the provision in section 403 of the Crimes Act 1958 relating to cases under sections 68 and 69 of the Crimes Act 1958 operated so as to admit only the evidence of a boy under fourteen years with the result that an obvious *casus omissus* appeared in respect to evidence of a girl under the age of fourteen years. The Statute Law Revision Committee made certain recommendations in relation to this question in 1960 which were enacted by the Evidence (Children) Act 1961 (No. 6758) which consolidates, with some alterations, section 23 of the Evidence Act 1958 and section 403 of the Crimes Act 1958 (which are both repealed). The new section, to be section 23 of the Evidence Act 1958, applies to both civil and criminal proceedings to cover evidence given by any child under the age of fourteen years. Section 23 now applies to a witness who does not understand the nature of the oath, compared with the old section 23 which applied where the witness had 'no knowledge of God or of any belief in religion or of a future state of rewards and punishments'. Sub-section (2) retains the necessity of corroboration of such evidence before a conviction can be obtained.

It will be noted that there is no longer any reference to aborigines

¹ [1959] V.R. 583.

and half-caste natives, so that such persons are now in no special legal position in regard to the reception of their evidence. The new enactment does not affect the provisions of the Crimes Act 1958 regarding evidence not given on oath.²

Legal Aid

The Legal Aid Act 1961 (No. 6805) embodies a meritorious scheme whereby the Victorian Bar Council and the Council of the Law Institute of Victoria, with financial assistance from the State Government, provide legal assistance for those unable to pay for it.³ The administration is to be carried out by the two aforementioned bodies under their Legal Aid Committee.⁴ Although legal assistance, through the Public Solicitor, can be obtained under the Poor Persons Legal Assistance Act 1958, it was thought desirable that its facilities be extended because of that Act's strict means test, and the fact that it did not provide for legal assistance at proceedings in Courts of Petty Sessions. The new legislation does provide legal assistance in matters arising at Courts of Petty Sessions⁵ to be available to persons who can pay some legal costs⁶ and who otherwise would fall outside the means test of the previous legislation. Section 5 allows the Committee to direct the payment of out-of-pocket expenses from the Legal Aid Fund and also permits a higher amount than that allowed under the Court Rules, if the Committee considers it necessary for the proper presentation of the assisted person's case. This provision appears to cover the case of witnesses' expenses (a doctor, for example). Court Rules generally do not allow for an amount equal to such a witness's normal fee. The Act sets out detailed machinery for orders and recovery of costs⁷ and the disposal thereof;⁸ the keeping of audits and accounts;⁹ and for the protection of information given in respect of a claim for legal assistance.¹⁰

Legal Practice

The Legal Professional Practice (Amendment) Act 1961 (No. 6778) increases the contribution of barristers and solicitors to the Supreme Court Library from forty guineas to sixty guineas, payable by annual contributions of ten instead of five guineas.¹¹ However, a total of forty guineas only is required of persons admitted to practice before the commencement of the Act.¹² The Act further provides¹³ for a new section 40A of the Legal Profession Practice Act 1958 which allows a solicitor to pay unclaimed moneys from his trust account,

² Evidence (Children) Act 1961, s. 2 (4).

³ See s. 6 (1).

⁴ Ss. 3, 4.

⁵ S. 2.

⁶ S. 4.

⁷ S. 8.

⁸ S. 9.

⁹ S. 10.

¹⁰ S. 11.

¹¹ S. 2 (a) (ii) and (iii); and see Legal Profession Practice (Amendment) Act 1959, s. 2 (a).

¹² 25 October 1961.

¹³ S. 3.

after due enquiry for the person entitled, into the Unclaimed Moneys Fund thereby absolving himself from further liability in respect of such moneys. The Legal Profession Practice (Further Amendment) Act 1961 (No. 6822) increases the maximum amounts payable as compensation for loss through defalcation of solicitors and their clerks to the sum of twenty thousand pounds.¹⁴ Section 3 of the Act now prescribes three months after notice of the disallowance of the claim as the time limit for proceedings against the Institute.¹⁵

Police Offences

Pape J., in remarks to the Prosecutor at the conclusion of the case *The Queen v. Maguire*,¹⁶ drew attention to the fact that a charge of conspiracy to effect a public mischief involved great public expense and inconvenience for its successful prosecution. As the result of recommendations by the Statute Law Revision Committee, section 2 of the Police Offences (False Reports to Police) Act 1961 (No. 6757) adds to the Police Offences Act 1958¹⁷ the offence of making false reports to the police. The section, in intending to cover only the case of voluntary reports, aims to avoid cases where the information is given by a suspect whilst being interrogated. Sub-section (4) allows the accused the option of trial by jury or summary trial.

Breath Tests

Section 2 of the Crimes (Breath Test Evidence) Act 1961 (No. 6806) permits evidence to be given of the percentage of alcohol indicated to be present in the blood by a breath analysing instrument, operated by a person 'authorized' by the Chief Commissioner of Police. The reading is *prima facie* evidence of such percentage of alcohol, but the question of admissibility of any evidence which might be given apart from this evidence remains unaffected. Such evidence is admissible only in the cases where it is relevant to the offences specified in section 2: including cases of manslaughter, negligently causing grievous bodily harm by the driving of a motor car, and other offences under the Crimes Act 1958¹⁸ and the Motor Car Act 1958.¹⁹ Sub-sections (4) and (5) (the compulsion provisions) empower a policeman, believing on reasonable grounds that a person has been while driving or in charge of a car²⁰ under the influence of intoxicating liquor to such an extent as to be incapable of having proper control of the car, to require a person to undergo a breath test. Section 5 (a) provides a penalty of not more than twenty pounds for refusal to take such a test. To be compulsory the test must be

¹⁴ Legal Profession Practice (Further Amendment) Act 1961, s. 2 (1).

¹⁵ *Ibid.* s. 15. ¹⁶ April 1959 [Unreported]. ¹⁷ S. 189A.

¹⁸ Crimes Act 1958, ss. 318 (1), 319 (1). ¹⁹ Motor Car Act 1958, s. 82 (1).

²⁰ See Motor Car Act 1958, s. 82 (1) (a).

taken within two hours of the driving or being in charge of the car, and must be taken at or in the vicinity of such or at the nearest police station.²¹ Section 5 (b) allows an option of a blood sample under section 408 of the Crimes Act 1958. Sub-section (2) requires a copy of the result of the analysis to be given to the person; sub-section (3) provides that the evidence of the operator shall be *prima facie* evidence of the facts that the apparatus is a 'breath analysing instrument';²² that the instrument is in proper working order and was properly operated by him;²³ and that all relevant regulations made under this section were complied with.²⁴

Children's Welfare

Part VI of The Children's Welfare Act 1958 sets out the provisions for maintenance orders for children admitted to the care of the Social Welfare Branch.²⁵ Provision is made to enable an increase in the amount payable by the parent of a child admitted,²⁶ and it is further provided that where the child is a ward of the state the burden is upon the parent to show the inability to pay maintenance at the determined rate.²⁷ Section 51 provides for relief from payment for poor persons. Previously there has been no appeal from these determinations (as exists in respect of a Maintenance Order under the Maintenance Act 1958), and the Children's Welfare (Appeals) Act 1961 (No. 6812) does provide for an appeal²⁸ to a Court of General Sessions from an order fixing or increasing any sum payable or pursuant to an application under section 51 of the 1958 Act.

Housing and Development

Housing Commission

Section 2 of the Housing (Amendment) Act (No. 6745) authorizes any municipality or public statutory corporation to make gifts of real or personal property to the Housing Commission of Victoria. The object of this provision is to assist the redevelopment of decadent housing areas, especially in relation to certain areas within the boundaries of Melbourne. It is anticipated that the value of such gifts will be offset by the increased income from rates which will follow reclamation. A donation is deemed 'a permanent work or undertaking' so as to allow borrowings or credit by the municipal bodies under the Local Government Act 1958.²⁹ Section 3 adds a proviso to section 34 (1) of the Housing Act 1958 enabling the Com-

²¹ Crimes (Breath Test Evidence) Act 1961, s. 4 (b) (i) and (ii).

²² S. 3 (b) (i). ²³ S. 3 (b) (ii). ²⁴ S. 3 (b) (iii).

²⁵ Children's Welfare Act 1958, s. 43. ²⁶ *Ibid.* s. 44.

²⁷ *Ibid.* s. 48.

²⁸ Children's Welfare (Appeals) Act 1961, s. 2.

²⁹ Local Government Act 1958, s. 392 (1) (a).

mission, with the consent of the Minister, to sell houses to the various bodies specified therein. The previous powers only allowed the sale of houses to an 'eligible person'.³⁰

Building Societies

The Building Societies (Amendment) Act (No. 6765) invests the Registrar of Permanent Building Societies with greater power and control over the formation operation and winding up of such societies. It is provided that before borrowing can be undertaken ten members must have been issued with, and paid in cash, shares to the value of five hundred pounds.³¹ This provision was derived from the English legislative counterpart and overcomes a weakness in former legislation whereby ten members could be authorized to borrow after contributing only nominal amounts.³² Section 11 increases the borrowing powers of the society from three to five times the paid up capital. Section 12 authorizes the State Treasurer to guarantee loans to a society by a Bank, up to a limit of £100,000 for each society.³³ In this connection the society is empowered to mortgage or charge any property or assets of the society.³⁴

The Co-operative Housing Societies Act 1961 (No. 6821) is designed to facilitate the formation of co-operative housing societies. It was found that under previous legislation formation of societies was delayed by the adjournment provision³⁵ inserted so as to allow members an opportunity of studying the prospectus and rules, and section 4 of the 1961 Act obviates the necessity for such an adjournment. The number of persons needed to form a society is also reduced from twenty to seven.³⁶

Loans to Minors

The Property Law (Loans to Minors) Act 1961 (No. 6814) empowers an infant not under the age of eighteen years to execute a first mortgage of land as security for a loan from any bank or life assurance society for the purpose of purchasing or erecting a dwelling house for himself, and subjects such infant to the normal operation of law as if he were of full age. Similar provisions can be found in legislation such as the Co-operation Act 1958, and it was thought proper to extend the benefit to other similar lending institutions.

Rural Development

The first step in the combination of the activities of the Soldier Settlement Commission and the Rural Finance Corporation is seen

³⁰ Housing Act 1958, s. 21. ³¹ S. 3. ³² Building Societies Act 1958, s. 4.

³³ It would appear that the Government's interest is well secured by s. 12 (3).

³⁴ Building Societies (Amendment) Act 1961, s. 12.

³⁵ Co-operative Housing Societies Act 1958, s. 8. ³⁶ S. 4 (e).

in the Rural Finance and Settlement Commission Act 1961 (No. 6846) which sets up such a Commission to exercise their joint functions. Section 20 envisages full co-ordination in requiring the Commission to make a special report to the Minister on measures to be taken for the co-ordination of activities and the necessary legislation.

Commerce

The Companies Act 1961 (No. 6839)

A survey of this Act is made elsewhere in this volume.³⁷

Money Lenders

Current economic conditions and increased bank interest rates have made it difficult, if not impossible, to obtain money on a first mortgage at a rate which would not make the lender a 'money lender' within the meaning of the Money Lenders Act 1958. This resulted in a reluctance on the part of investors to invest in the housing field. The Money Lenders (Amendment) Act 1961 (No. 6819) is designed to remedy that position by fixing the criterion for 'money lending' within the 1958 Act, as the making of loans at rates in excess of 10 *per cent per annum* instead of the previous rate of 8 *per cent per annum*. In furtherance of this purpose, section 2 (b) in defining 'interest' excludes any sums paid for, *inter alia*, legal costs. Section 4 alleviates the hardship of money lenders under section 22 of the Act of 1958 by allowing for the recovery of principal, but not the interest, by money lenders whose failure to obtain a licence was accidental or due to inadvertence, where the lender has acted honestly and reasonably in all the circumstances of the case and ought fairly to be excused for the failure.

The Pawnbrokers (Amendment) Act 1961 (No. 6813) amends the previous legislation in relation to the method of disposal by a pawnbroker of unredeemed pledges. The law since 1865 required that sale should be by public auction after due advertisement in cases where the sum lent was more than five shillings. Additional measures were required where the article or lot put up for sale secured a loan of ten shillings or more.³⁸ Section 2 of the present Act alters both these values to the more realistic level of five pounds.

Fiscal

The Stamps (Amendment) Act 1961 (No. 6739) represents the annual tidying up of the revenue producing Stamps legislation. Sections 2 and 3 allow unpaid fees, damages and duties to be recovered under Part II of the Crown Proceedings Act 1958. This

³⁷ See Ford, 'Uniform Companies Legislation: Its Effect in Victoria', p. 461 *supra*.

³⁸ Pawnbrokers Act 1958, s. 26.

procedure is more expeditious and less expensive than that under Part I of the Act which hitherto has provided the only method of recovery.

Section 7 adds further exemptions to those contained in the Third Schedule of the 1958 Act in the form of purchases of marketable securities for charitable purposes;³⁹ and leases assigned in the course of the administration of an estate.⁴⁰

The Stamps (Further Amendment) Act 1961 (No. 6791) widens the scope of the revenue producing Stamps Act legislation, and also makes certain alterations to the law relating to various aspects of racing. Section 2 (a) incorporates a definition of 'marketable security' designed to include the unit trust in the same dutiable field as other marketable securities. Section 8 places instruments which really are agreements to transfer or assign in a similar position to actual transfers or assignments for the purposes of section 64 (2) of the Stamps Act 1958. Duty is limited in the case of settlements or gifts of the dividends to be received from marketable securities to the actual income or the dividends.⁴¹ Section 13 (b) aims at enforcing the assessment of duty on deeds of settlement and of gift which are effected in several documents at the rate applicable where such is carried out in one document, by facilitating the scheme for the aggregation of such amounts of gift or settlement. Section 14 exempts from duty the exercise of a special power of appointment contained in a deed on which no duty was originally payable because, for example, it was a marriage settlement; hitherto only the exercise of those powers, under a deed whereon duty was paid, was exempt.⁴² Provisions are made in regard to the imposition of stamp duties on bookmakers, including alterations to the law with respect to doubles betting⁴³ and bets between bookmakers.⁴⁴

The Entertainment Tax (Amendment) Act 1961 (No. 6810) abolishes entertainment tax on the live theatre and amateur sport and, in addition, effects a reduction of the rates of tax on picture theatres and dancing.

Land Tax

Section 8 of the Land Tax (Exemptions and Rates) Act 1961 (No. 6827) declares the annual rate for land tax (as is required by section 6 of the Land Tax Act 1958) to enable the tax to be assessed and collected for the current year. Section 7 raises the exemption for land not used for primary production to the value of £1,450 with the exemption diminishing to non-existence at £1,631. Section 6 in amending section 55 of the 1958 Act allows the solicitor of each

³⁹ Stamps (Amendment) Act 1961, s. 7 (b).

⁴⁰ *Ibid.* s. 7 (c).

⁴¹ S. 12.

⁴² Stamps Act 1958, s. 89.

⁴³ Stamps (Further Amendment) Act 1961, ss. 16-19, 21.

⁴⁴ *Ibid.* s. 18.

party to sign, as agent, the notice of change of ownership and land: this will allow prompt lodgment of the notice and obviate the difficulty and delay in securing the signature of the purchaser.

Recovery of Imposts

The Limitations of Actions (Recovery of Imposts) Act 1961 (No. 6845) seeks to protect the economy from the consequences of constitutional attacks on the validity of state fiscal laws, such as licence fees under transport Acts. Contrary to earlier belief, it now appears that the establishment of the invalidity entitles the tax payer to recovery if he was required to pay the tax in order to be allowed to continue his ordinary business, or if the *non-payment* would have resulted in penal action against him.⁴⁵ Section 2 inserts a new section 20A in the Limitation of Actions Act 1958, and precludes actions for recovery of the amount of any tax, fee charge, or other impost paid under the authority of any Act, later than twelve months after the payment. The necessity for such legislation was dictated by the large amounts which may be involved in this type of recovery action.⁴⁶

Health

The Milk Pasteurization (Licences) Act 1961 (No. 6755) empowers the Minister for Health to prescribe a maximum amount of milk which may be handled daily in any licensed milk pasteurizing premises; the amount to be based on the standard and capacity of the equipment and premises.⁴⁷

The Health (Proprietary Medicines) Act 1961 (No. 6756) enables the reviewing of the registration of any medicine on the list of proprietary medicines registered under Division 3 of Part XIV of the Health Act 1958 not more than once every ten years, with a view to the discontinuance of registration or variation of the claims in respect of which it is registered. This review may be initiated by the Advisory Committee appointed under the 1958 Act or by the Chief Medical Officer—formerly review could only be initiated at the request of the proprietor.⁴⁸

Medical officers employed by the Commonwealth Government are now permitted to be registered in Victoria without fee by the provisions of section 2 of the Medical (Amendment) Act 1961 (No. 6837). Thus, during their normally short stay they may be able to do work of a post-graduate nature in public hospitals. The registration fee for a medical practitioner is increased to the sum of ten guineas.⁴⁹

⁴⁵ See *Mason v. State of New South Wales* (1958) 32 A.L.J.R. 380.

⁴⁶ See *Dennis Hotels Pty Ltd v. State of Victoria* [1961] 3 W.L.R. 268: where a refund of £6,400,000 was claimed.

⁴⁷ S. 2.

⁴⁸ Ss. 3, 4.

⁴⁹ S. 3 (2).

The provisions relating to registration of foreign-trained medical practitioners are extended until 30 June 1965.⁵⁰ Section 4 brings up to date the qualifications recognized as entitling a person to registration as a medical practitioner.

Landlord and Tenant

The Landlord and Tenant (Amendment) Act 1961 (No. 6828) provides a measure of relief to tenants and sub-tenants from eviction from uncontrolled dwelling-houses let on a periodic tenancy, the receiving period of which does not exceed one month. This provision was prompted by the fact that nowadays many dwellings are not under the control provisions of the current legislation⁵¹ and that there is considerable difficulty in finding suitable alternative accommodation. It appears that a weekly tenant of such a dwelling-house has about seven weeks from the service of the notice to quit in which to vacate the premises and, further, that no one is under any obligation to advise a sub-tenant that ejectment proceedings are in train. It is possible that the first knowledge a sub-tenant obtains about these matters is on the execution of the warrant.

Section 3 (4) prescribes that the notice to quit be given not less than fourteen days before the day specified therein for quitting; subsection (5) requires the notice to contain a statement obliging the tenant to inform the landlord of the name and address of each sub-tenant. Section 4 (1) requires the landlord to serve a copy of his complaint and a summons on the sub-tenant if he has been notified by the tenant of the existence of any such sub-tenant. The sub-tenant is entitled to be heard in court as to whether the court should stay the issue of the warrant. Where the court issues a warrant of execution it can now order the stay of the issue of such warrant for a period not exceeding three months⁵² with appropriate conditions as to rent.⁵³ Section 6 deems as lessees certain persons who resided with the tenant of prescribed premises immediately prior to his death and who are by section 106 of the 1958 Act allowed to continue in possession of the premises, so that such persons can now apply to the Fair Rents Board to determine the fair rent of the premises. Section 7 (1) seeks to overcome the position considered in the decision of the Full Court of the Supreme Court of Victoria in *Gilbert v. Bond*,⁵⁴ where it was held that, where after proper determination of a tenancy of non-prescribed premises the former tenant remained in possession against the landlord's will, the declaration by Governor-in-Council⁵⁵ that Part V of the Act of 1958 should extend to such premises did not afford the former tenant the pro-

⁵⁰ S. 6 (c). ⁵¹ Landlord and Tenant Act 1958. ⁵² S. 5 (2). ⁵³ S. 5 (3).
⁵⁴ [1961] V.R. 59. ⁵⁵ Under the Landlord and Tenant Act 1958, s. 44.

tection given to lessees of prescribed premises thereunder, nor did it deprive former landlords of their common law remedies for the recovery of possession. The sub-section declares such person in possession at the time of the order to be a lessee on the terms of the existing lease. Section 12 deems premises to be prescribed under the Act until the contrary is proved.

Motor Boats

Marine

The Motor Boating Act 1961 (No. 6832) purports to regulate the use of all craft at present being used for pleasure purposes. Section 4 empowers the Governor-in-Council to set aside special areas for particular classes of boating. Part II of the Act requires the registration of all motor boats, and prescribes the procedure for registration. A registration plate is to be fixed in a conspicuous position on every registered boat.⁵⁶

Part III deals with the regulation of the navigation of boats, collisions,⁵⁷ and certain requirements as to water ski-ing.⁵⁸

Minimum equipment to be carried in boats is prescribed in Part IV to include *inter alia* at least one life belt⁵⁹ and fire extinguisher.⁶⁰ Offences and penalties are set out in Part V: some of the more important offences being reckless or negligent operation of a motor boat,⁶¹ and the operation of a motor boat while under the influence of intoxicating liquor.⁶²

Shipping

Alterations have been made to the Marine Act 1958 (whose precursors date back to pre-federation days) by the Marine (Amendment) Act 1961 (No. 6847), which acknowledges the fact that the power to regulate overseas and interstate vessels has been almost completely assumed by the Commonwealth. The membership of the Marine Board is altered so as to exclude Victorian representatives.⁶³

Town and Country Planning

The Town and Country Planning Act 1961 (No. 6849) consolidates and amends the law relating to town and country planning and rearranges the legislation in a more logical fashion. The principal alterations effected are with respect to:

Interim Development Orders. Power is given to reserve land under an interim development order for public purposes. Previously the power existed only to prohibit the development of land proposed to be reserved for public purposes in a planning scheme.⁶⁴ This provision has been given retrospective effect to cover reservations of the

⁵⁶ S. 10.

⁵⁷ S. 16.

⁵⁸ Ss. 17-20.

⁵⁹ S. 21.

⁶⁰ S. 22.

⁶¹ S. 27 (1).

⁶² S. 28 (1).

⁶³ S. 4 (a).

⁶⁴ S. 17 (2).

Melbourne and Metropolitan Board of Works Interim Development Order.

Permits. Where there is an application for a permit, the responsible authority may require notice of such application to be published or served on specified persons, so as to give them an opportunity for objections to be made to the granting of the permit. Such notice may not be required by the authority where it decides to refuse an application. Where the applicant appeals to the Minister against the refusal of the permit, it is now provided that the Minister may require the appellant to give notice of the appeal, and any objectors, who so desire, may be heard.⁶⁵

Section 21 (2) makes it clear that upon the hearing of any appeal the matters to be considered should not be restricted to the grounds of appeal initially given in writing by the appellant or to the reasons given by the responsible authority for the refusal of the permit, but that all relevant matters should be considered. The Minister may not be able to effectively determine an appeal against a refusal to grant a permit if the scheme is suddenly approved and becomes law or the interim development order ceases to have effect. It is thus provided that any permit issued by the responsible authority, following a determination of the authority, shall be deemed to have issued on the date of the original determination of such body.⁶⁶

Section 24 (1) provides that in certain circumstances the responsible authority may revoke or modify a permit. These are, first, where an applicant for a permit makes some misstatement or conceals some relevant fact; secondly, where there is a substantial failure to comply with the conditions on which a permit is granted; thirdly, where some mistake was made in the issuing of a permit; and fourthly, where a change of circumstance has occurred since the grant of a permit. Such a power cannot be exercised where buildings or works authorized by the permit have been completed or where any development of land authorized by the permit has taken place.⁶⁷

Compensation in such a case is payable to the permit holder, except in the case where some misstatement was made or some fact concealed when the permit was applied for, or where the conditions of a permit have not been observed.⁶⁸

To give a reasonable degree of flexibility in town planning administration, section 27 provides for the granting of permits under schemes with or without conditions, and gives rights of appeal to the Minister similar to those available where there is an interim development order in existence. Sub-section (4) also provides for revocation or modification, and for the consequent payment of compensation in certain circumstances.

⁶⁵ S. 20 (2). ⁶⁶ S. 22 (3). ⁶⁷ S. 24 (4). ⁶⁸ S. 24 (5), (6).

Revocation and Amendment of Schemes. Revocation of a scheme may leave the land free from any control as to its use. The Governor-in-Council is empowered by section 32 (5), when revoking a scheme or any part thereof, to prohibit the use or development of land affected by the revocation (except with the consent of the responsible authority) until a new interim development order is made. Such prohibition is for all purposes deemed to be an interim development order. As the normal procedure for amending a planning scheme is cumbersome where only a small amendment is needed, the Governor-in-Council is given power under section 32 (6) to effect an amendment when the preparation of a scheme is not considered to be warranted and the responsible authority administering the scheme so requests. The Minister may require the authority to give notice of the proposals to persons who may be affected, thereby inviting them to submit to the Minister any objections they may have.⁶⁹

Streets. It is provided in section 36 that where, in relation to any planning scheme, land is reserved for a new road, or for the widening of an unconstructed private street, then the land comprised in the road or widened street shall be deemed to be a private street. The abutting owners are in consequence chargeable with the cost but they are not liable for the extra cost involved in the construction of a street to a greater width or a heavier standard than a normal private street.

Compensation. It is considered that compensation should not be payable by reason only of the making of a planning scheme: responsible authorities would otherwise be confronted with substantial claims in respect of land which, though reserved in a scheme, may not in the normal course be required for years to come. Thus compensation is now made payable in respect of loss or damage arising out of the operation of the scheme.⁷⁰

It is specifically provided that compensation is payable where a permit to develop land is refused under an interim development order on the ground that the land is required for a public purpose, and also where access to any existing road is restricted, diverted or prohibited, by the effect of an interim development order.⁷¹

The responsible authority is empowered to require any person to whom full compensation has been paid in respect of any land which the authority was not then empowered to acquire, to transfer the land to the responsible authority. Where compensation has been paid in respect of land reserved for public purposes, and the reservation is revoked or otherwise ceases to be operative, the responsible authority is empowered to acquire the land unless the owner refunds

⁶⁹ S. 32 (7).

⁷⁰ S. 41 (1).

⁷¹ S. 42 (1) (c) (ii), (iii).

the compensation paid to him. Compensation payments in respect of land intended to be reserved under a scheme are validated.

Penalties. Section 49 increases the maximum penalty to £100 (plus £10 per day for continuing offences) for failure to comply with a scheme or order or any condition attached to a permit or any provision of the Act. The responsible authority is empowered to apply to the Supreme Court for an injunction restraining any person from contravening the Act, or any planning scheme or interim development order or permit thereunder, and compelling compliance therewith.

It has become necessary for the Town and Country Planning Board to prepare schemes for districts which have no municipality, for example, the recently developed French Island. Otherwise the sub-divider can sub-divide as he pleases without compliance with any scheme or order. Without more, any such scheme may be invalid, as there would be no responsible authority under the Act to enforce it. The Town and Country Planning (Amendment) Act 1961 (No. 6751) puts the matter beyond doubt. It provides that where there is no municipal district the Board shall be the responsible authority for the carrying out and enforcement of a planning scheme.⁷²

It was considered necessary that a means be provided whereby the process of planning would not be stopped by any alteration in the boundaries of a municipal district. The general legal opinion was that where the boundaries of the municipalities were altered, the planning scheme procedure could not be finalized, and the council's interim development order would be of no effect. In such a case a discretion is given to the Governor-in-Council, on the application of the council of any municipality concerned, to make such an order as it thinks fit.⁷³ Provision is made for an existing interim development order and permit to be continued in existence.⁷⁴

General

Animals

The Dog Act 1961 (No. 6848) purports to aid the municipal councils in their regulation of dogs so as to prevent their being a source of annoyance or of danger to others. Section 8 deals with the wearing of collars and exempts dogs working livestock and any dog while on the owner's premises from the necessity of wearing such collar. Section 11 amends section 18 of the Dog Act 1958 in requiring owners to keep dogs, save those used for the droving of stock, on their premises between sunset and sunrise, or else to keep them effectively secured or controlled by a proper chain or leash. This is

⁷² S. 3 (1).

⁷³ S. 5 (1).

⁷⁴ S. 5 (2).

now a general state-wide requirement. Section 14 alters the effect of the provision permitting owners or occupiers of enclosed land on which sheep, cattle or poultry are confined to destroy trespassing dogs not 'under the effective control of some person by means of proper chain or leash'. Section 15 confers on the court a discretion to destroy or order a dog to be muzzled where it has generally 'attacked' certain other animals.

Certain matters have arisen in the course of administration of the Sheep Owners Protection Act first enacted in 1935 which require legislative attention. To give greater effectiveness to the Sheep Owners Protection Act 1958 (first enacted in 1935) the Sheep Owners Protection Act 1961 (No. 6809) provides that the 1958 Act is to be directly administered by the Police Department as the more appropriate department to administer the enforcement provisions than the Department of Agriculture, which had hitherto administered the Act. The field of officers authorized to issue permits in the previous legislation was far too wide for any effective control over the issue of permits, and the narrowing of such field is provided for in section 3. Part II of the Act prohibits any person from buying raw sheep skins unless he is a licensed skin dealer.

Apprentices

The Apprenticeship (Amendment) Act 1961 (No. 6793) adopts certain recommendations of the Apprenticeship Commission. Apprentices who fail to attend their classes of instruction are liable to a deduction from their wages under section 4. Where an apprentice transfers to another employer while he is in the course of his training such employer may employ him on probation for a period of three months before the indentures must be signed.⁷⁵ Section 6 affords greater protection to the supervisors employed by the Commission to oversee the proper training of apprentices by increasing the penalties for *inter alia* anyone who assaults or intimidates these persons.

Civil Aviation

The Civil Aviation (Carriers' Liability) Act 1961 (No. 6808) regulates the liability of airline operators in respect of the death of or injury to passengers and of damage to luggage carried by aircraft within Victoria, by incorporating the provisions of the Commonwealth Aviation (Carriers' Liability) Act 1959 to apply in respect to purely intra-state carriage. The Commonwealth legislation so incorporated affixes the airline operator with absolute liability for damage sustained by reason of the death of a passenger or for

⁷⁵ S. 5.

personal injuries suffered while on board or in the course of embarking or disembarking operations, to the amount of £7,500 for one passenger, or such higher amount as is specified in the contract of carriage.⁷⁶ Any agreement tending to relieve such liability or fix a lower limit is null and void.⁷⁷

Education

Doubts had arisen in the past as to the legal standing of School committees, and the enforcement of contracts by and against these committees appeared to involve serious legal difficulties. Section 2 of the Education (Amendment) Act 1961 (No. 6835) renders certain the enforcement of such contracts, by deeming that the committee enters into the contract for and on behalf of the Crown. Where the cost of the work involved is estimated by the committee to exceed £500, tenders are to be called for, and the work is to be carried out under such supervision as the Minister directs.

Motor Car

Section 3 of the Motor Car (Amendment) Act 1961 (No. 6762) enables persons surrendering driving licences to be refunded an amount equal to one-third of the fee paid in respect of the licence for each whole year of the unexpired period of the licence where the surrender is due to 'ill health, bodily infirmity defect or incapacity, or old age'. Provisions are made for the Chief Commissioner of Police to issue licences to motor driving instructors.⁷⁸ Section 5 provides for the reciprocal cancellation of licences in Victoria where another state has so cancelled them, and also empowers the Chief Commissioner to require an applicant or holder of a licence to submit to a medical test. Penalties for failure to stop after an accident in which a person has been injured are increased in section 10. The amendments effected by section 13 to sections 318-320 of the Crimes Act 1958 make it clear that a disqualification of licence on a conviction for driving under the influence of intoxicating liquor may be made by a court for a longer period than twelve months.

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⁷⁶ Civil Aviation (Carriers' Liability) Act 1959, ss. 28, 31 (Cth).

⁷⁷ *Ibid.* s. 32.

⁷⁸ S. 4.