REVIEW OF LEGISLATION.

I. Western Australia, 1963.

(continued from volume VI.)

Administration of Estates.

A small amendment to the Administration Act, by Act 66 of 1963, enlarges the Master's Jurisdiction to grant probate or letters of administration by increasing to £2,500 the maximum value of estates which may be so dealt with.[47]

Rehabilitation of convicted inebriates.

The Prisons Act Amendment Act 1962 (No. 36 of 1962)[48] inserted into the Prisons Act 1903, a new Part VI B, authorizing a setting up of an institution for the reception of convicted inebriates; and section 8 of the Criminal Code Amendment Act 1962 inserted into the Code a new section 339A providing machinery for the committal to such an institution of offenders who proved to be inebriates. In moving the second reading of the Bill which became the Convicted Inebriates Rehabilitation Act (No. 63 of 1963) the Chief Secretary, Mr. Ross Hutchinson, stated that the Government's short experience with persons committed to the rehabilitation centre set up under the above legislation showed that the new provision in the Criminal Code did not provide adequate machinery to deal with them.[49] The new legislation provides for the setting up of an Inebriates Advisory Board,

[47] It is difficult to see why sec. 55 was repealed and re-enacted "with amendments" when the only amendment was the substitution of the word "two" for the word "one"; the reason is even more difficult to find when one observes that precisely the same amendment was effected to sec. 57 (2) by enacting the substitution in question. If sec. 55 needed re-enactment, it needed it because of inapt syntax in another part: the conditional clause reads "if the fixed abode of the deceased at the time of his death has been more than fifty miles from Perth." "Has been" should read "was."

[48] Noted *supra,* at 249.

[49] (1963) 166 Parl. Deb. 3160. The Minister pointed out that although the Inebriates Act 1912, was still in force, pending proclamation of the Mental Health Act 1962, which was eventually to replace it, it provided more adequate machinery than sec. 339A of the Criminal Code.

to comprise two psychiatrists and a welfare officer from the prison service. The Board is given power (i) to examine and oversee the clinical treatment of persons placed in an institution, (ii) to recommend occupational pursuits or therapies or pastimes or diversions for those persons, (iii) to recommend that the period for which a person is ordered to be placed in an institution be reduced or increased, or that the order be rescinded, or that the person be released on trial, or that he be permitted to leave the institution temporarily under section 64Q of the Prisons Act 1903.[50] The Board may also make provision for the after-care of any person released from an institution. If the Board recommends that the period spent in an institution should be reduced or increased, the Comptroller General, to whom the recommendation is to be made, is to make the necessary application to the court which ordered the person in question to be placed in the institution. A person released on trial may be re-committed by the court which released him, if he is proved to have been guilty of a breach of any condition to which his release on trial was subject; if this happens the period during which he was released is not taken into account in reckoning the period to be spent by him in the institution.[51] (*Cf*. sec. 44 of the Offenders Probation and Parole Act 1963). Any court dealing with an application by the Comptroller General is to have the Board's recommendations, if any, made available to it.

Industrial Arbitration.

Easily the most controversial, if not the most important, piece of legislation in 1963 was the Industrial Arbitration Act Amendment Act (No. 2) (No. 76 of 1963). So much heat did it provoke that the Legislative Assembly was occupied for some little time on the 7th November and for much of the early morning of the 13th November[52] in debating, at the Committee stage, a filibustering amendment to the short title, moved by a member of the Opposition.[53] The prime

[50] Sec. 64Q allows a person to leave an institution temporarily for the purpose of being treated in any hospital, for the purpose of visiting a dying relative, or for any other reason which appears to the officer in charge to be sufficient. The power of recommending such a temporary release to the Comptroller-General is given by subsec. 1 to the officer in charge of the institution. It has not been made clear whether the provision in the Convicted Inebriates Rehabilitation Act is intended to substitute the Board for that officer, or to give it powers concurrent with his.

[51] *Cf*. sec. 44 of the Offenders Probation and Parole Act, 1963.

[52] The House adjourned at 6.29 a.m. on Wednesday, 13th December; (1963) 66 PARL. DEB. 2707.

[53] The amendment, moved by Mr. A. M. Moir, was to insert into the short title, after the word "Arbitration" the words "Court Abolition." If by

purpose of the legislation was to change the structure of the machinery of Industrial Arbitration in the State. Hitherto this machinery had comprised a Court of Arbitration, round which were grouped, (after 1925) subsidiary bodies,[54] which were to drain off and prevent accumulations of work by performing certain functions previously performed by the Court. To this was added, in 1948[55] a Conciliation Commissioner, who has been described as being "in his own person a Deputy Court and a Deputy President."[56] The new machinery, set up by amendments to Parts IV and IVA of the principal Act (sections 44 to 108C), comprises a Western Australian Industrial Commission, which replaces both the Arbitration Court and the Conciliation Commissioner, and a Western Australian Industrial Appeal Court. The Commission is composed of a Chief Industrial Commissioner and three others; it may sit in court session, or each of the Commissioners may sit alone. There is an appeal from the decision of a Commissioner sitting alone to the Commission in court session, and there is an appeal, on grounds of error of law, from either a Commissioner sitting alone or the Commission in court session, to the Appeal Court, composed of three judges of the Supreme Court nominated by the Chief Justice, of whom one is to be the President.

The principal interest for lawyers in the new organisation is that the trained legal mind, which, though long excluded from the process of industrial debate,[57] has for equally long presided over the process

some strange chance this had passed it would have produced the nonsensical short title "The Industrial Arbitration (Court Abolition) Act Amendment Act"—nonsensical, because there has never been an Act entitled the Industrial Arbitration (Court Abolition) Act. The words proposed to be inserted should have been inserted after "Amendment."

54 Industrial magistrates, industrial boards, boards of reference, boards of demarcation, compulsory conferences, and conciliation committees.

55 By sec. 4 of the Industrial Arbitration Act Amendment Act 1948.

56 See the annotation to sec. 109 of the Industrial Arbitration Act 1912-1952, in Vol. 10, The Reprinted Acts of the Parliament of Western Australia, at 123. Sec. 67 (4); there is an exception where a question of law is, or is likely to be, raised or argued.

57 When the amendment proposing to insert a provision to the effect was moved in the Legislative Assembly in 1912, the then Attorney-General (the Hon. S. Burt) was asked whether he was going to accept the amendment. He replied that he was, and added: "No lawyer who was on the list of lawyers, who had been in any way connected with a firm of lawyers, would be allowed to enter the court. This was to be purely a layman's court. If the Hon. member read the next clause, he would see that there would be a new procedure, entirely untrammelled by the laws of evidence and by the methods of those trained in the law to advance a case." (1912) 43 PARL. DEB. 1306. The initial effect of this was summed up by Burnside J. in Bunbury Engine Drivers' Union v. Millars, (1910) 9 West. Aust. Arbitration R. 219, at 223: "What we get here in the matter of examination and cross-

of industrial decision, has been removed from that field, except for appeals on questions of law. The Government explained that the new set-up was intended to provide (once again) for clearing off a backlog of work which had accumulated, and to streamline the process of industrial arbitration so that the backlog could not occur again. The Opposition, however, ever astute to perceive machinations allegedly directed by the occupants of offices in St. George's Terrace, alleged that the whole point of the reorganisation was to remove from the field the then President of the Arbitration Court, whose recent decisions, they alleged, had been thought to be far too favourable to the workers. They professed themselves to be deeply suspicious—indeed, almost certain—that the persons to comprise the new Commission had been hand-picked to make sure that its decisions were of a different type. So far as can be seen, however, their gloomiest prognostications have not yet been fulfilled.

Industrial Boards and Conciliation Committees, which were provided for by Parts V and VI of the principal Act, have also been abolished; but Special Boards for the demarcation of callings, under section 74, have been spared, as have Boards of Reference under section 89. The latter section has been re-enacted to provide that such a Board is to be chaired by a Commissioner unless it is otherwise agreed by the parties. Further, compulsory conferences, under section 171, may still be summoned, by a Commissioner, whenever a strike or lock-out has occurred or appears likely in his opinion to occur; in addition, he must summon such a conference at the request of the Minister, made upon notification to the Registrar that a strike or lock-out has occurred or is likely to occur. There is no longer any provision for the appointment of special Commissioners for the purpose of holding such conferences. Industrial Magistrates, to be appointed by the Governor,[58] are retained; their jurisdiction to make orders concerning property liable to execution, under section 102, remains; but the jurisdiction to hear proceedings in respect of offences against the Act or Regulations is limited to offences for which a maxi-

examination is a complete travesty. The examination in chief generally consists in the examiner giving the whole of the evidence and the witness answering 'yes' or 'no'. The suggestion comes from the examiner. The cross-examination consists of a weary repetition of the examination in chief from back to front, and the re-examination has as much to do with what went before as the flowers which grow in the spring . . . . It is a most pronounced and unmitigated farce in my opinion."

58 The draftsman and the Legislature appear to have overlooked the fact that, by sec. 9 (b) of the Stipendiary Magistrates Act 1957, every stipendiary magistrate possessed *ex officio* the powers of, *inter alia,* an industrial magistrate. Or was an implied repeal intended?

mum penalty of not more than one hundred pounds is provided, unless the offence is a breach of an award or agreement, when the Magistrate is empowered, by a re-enacted section 99, to impose, upon application under that section, a fine of not more than five hundred pounds on an employer, union or association. In any other case in which proceedings are begun by application the maximum fine is fifty pounds. For some curious reason section 101 has not been amended, otherwise than to make its provisions subject to the preceding section, so that the jurisdiction of the Industrial Appeal Court to try and determine all charges of offences against the Act (other than those for which the maximum penalty does not exceed £100) is still concurrent with that of courts of summary jurisdiction.[59]

Turning to other provisions of the legislation, one notes that the re-enacted section 9 requires that a society which makes application to be registered as a union must first obtain a certificate from the persons who is appointed certifying solicitor under the Act that its rules comply with the Act and that the purposes of the society are lawful; a new section 9A governs the submission of the rules for certification and provides for an appeal to the Industrial Appeal Court against the refusal of the certifying solicitor to certify those rules, on the grounds that the refusal is erroneous in law. The certifying solicitor, who is to be a legal practitioner, is to be appointed by the Governor, under a power conferred by section 60. A new section 61B provides for the exemption from membership of a union of any person who objects on the grounds of conscientious belief to being a member of a union; if exempt he must pay the Registrar the equivalent of the prescribed union subscription, which is to be credited to consolidated revenue. The Registrar may refuse a certificate of exemption if satisfied that the objection on the grounds of conscientious belief is not genuine; an appeal from that refusal lies to the Industrial Appeal Court. A new section 61C gives the Commission power to fix rates of wages and conditions of service and employment to apply to shift work in an industry. New subsections (3) and (4) require the Commission to notify the parties to a dispute, and to accord them a hearing, if it proposes to take into account any matter or information not raised before it on the hearing, or to grant relief

[59] In point of fact, sec. 101 (2) provides that the jurisdiction of the Court "shall be concurrent with that of courts of summary jurisdiction"; but nowhere else in the Act is there a specific provision conferring jurisdiction on courts of summary jurisdiction. It is presumed therefore that, on the footing that words in a statute should be given some meaning, the subsection would be treated as if it read "Courts of summary jurisdiction shall have jurisdiction concurrent with that of the Court under subsection 1."

or redress not sought in the specific claims before it. The basic wage is in future to be determined by the Commission in court session; but the provisions of section 127 for quarterly adjustments of the basic wage remain untouched.

An amendment to section 167 empowers the Chief Industrial commissioner to direct the Registrar to discontinue publishing in the Western Australian Government Gazette agreements, awards, orders, and other notifications ordinarily required to be published in that Gazette if the Industrial Gazette appears regularly at less than monthly intervals. This is an encouraging move in the direction of dividing the contents of the annual volumes of the Government Gazette, which at present contain, in addition to notices of Proclamations, appointments, vacancies in the Government service, and all the other *minutiae* of administrative detail which require to be advertised, all statutory regulations and by-laws, as they are issued, and have contained all industrial awards, etc. It is to be hoped that this development will be followed by a revision of the present law and practice so as to establish a separate vehicle for publication of regulations and by-laws, as is increasingly common elsewhere. It is difficult enough to keep track of the mass of regulations which govern our lives, without having to wade through the mass of extraneous matter in the bound volumes (or, for that matter, the current loose parts) of the Gazette in order to locate some particular piece of subordinate legislation. Could the Government be persuaded to think in terms of a loose-leaf series of Statutory Regulations and By-Laws, with a quarterly index?

III. STATUS.

Natives.

The Native Welfare Act (No. 79 of 1963) and five ancillary pieces of legislation[60] make between them some quite substantial changes to the law relating to the status of aboriginal natives in Western Australia. The Native Welfare Act itself is a consolidation of the existing legislation, with amendments. The principal amendments are these. First, the Commissioner is no longer to be the guardian of every native child, as required by section 8 of the repealed legislation, the Native Welfare Act 1905-1960. Second, the restrictions imposed by section 10 of that legislation on the travel of natives from north

60 The Licensing Act Amendment Act (No. 4) 1963, the Evidence Act Amendment Act 1963, the Criminal Code Amendment Act (No. 2) 1963, the Mining Act Amendment (No. 2) 1963, and the Firearms and Guns Act Amendment Act (No. 2) 1963.

of the twentieth parallel of south latitude to the south of that line have been removed; they were originally introduced to prevent the spread of leprosy, but are felt to be no longer necessary. Third, the office of "Protector" is abolished; but there remains provision for persons to be appointed as "representatives" (presumably of the Native Welfare Department or of the Commissioner), and those who at the date of coming into operation of the new Act were Protectors, under section 7 of the old Act, are to be representatives under section 12 of the new. Fourth, although it remains an offence for a person who is not authorized by the Act or the Regulations to go onto a reserve, it is no longer an offence to remove a native from a reserve; nor is it any longer an offence for a person other than a native to live habitually with, or cohabit with, natives or a native. Sections 49 and 50 of the repealed legislation, making it an offence to supply liquor (or opium) to a native, or to permit a native to be on licensed premises, or for a native to receive liquor or opium, have not been re-enacted.[61] The Commissioner retains the power to manage the property of natives, with the consent of the native in question (unless he is a minor); but he is no longer to administer the estates of intestate natives or the wills of those who die testate. Intestate estates are to be administered by the Public Trustee, under section 26 of the new legislation, and in the absence of any special provision the estates of natives who die testate are to be administered in accordance with the general law. Section 9(2) of the new legislation empowers the Minister to lend money to any native, to enable him to improve and develop land held by him, or to acquire further land, upon mortgage of the land. Section 24 sets up an account, to be called the "Native Trading Fund," to assist natives to engage in the production and sale of artifacts and other articles, or to undertake co-operative or group contract or other work. The account is to be funded initially by an advance from the Public Account, and kept on foot by moneys received from the sale of artifacts and other articles acquired from the natives who made them and sold by or for the Commissioner; the initial advance and any subsequent advances are to be repaid from these moneys.

The ancillary amendments are these. First, the Licensing Act Amendment Act (No. 4), (No. 87 of 1963) repeals and re-enacts sections 150 and 151 of the principal Act so that the prohibition of the supply of liquor to natives, the possession of liquor by natives, and the presence of natives on licensed premises, is to apply only in certain areas of the State proclaimed by the Governor; outside those

61 Corresponding provisions in sections 150 and 151 of the Licensing Act 1911 have been amended.

areas natives are to have rights identical with those of the rest of the population. Second, the Evidence Act Amendment Act (No. 54 of 1963) repeals section 102 of the principal Act which exempted any aboriginal native from giving evidence on oath if he made an affirmation or declaration that he would tell the truth, and amends section 103 so that an aboriginal native acting as an interpreter in any court must either take the usual oath or, if he prefers, make the declaration provided for in subsection (2).[62] Third, the Criminal Code Amendment Act (No. 2) (No. 55 of 1963) amends section 670 of the Code so that a court sentencing an aboriginal native for an offence may no longer order him to be whipped in addition to, or in substitution for, any other punishment, and consequentially amends section 680, which provides how and when the punishment of whipping is to be carried out; in addition, section 735, which requires the record of the summary conviction of any aboriginal native to be transmitted by the justices to the Registrar of the Supreme Court, and a report to be made by them to the Minister for Native Welfare, is repealed. Fourth, the Mining Act Amendment Act (No. 2) (No. 83 of 1963) repeals section 292 of the principal Act, which provided that the use of the labour of any aboriginal native on any mining tenement should not be regarded as fulfilment of the labour conditions imposed upon the occupier, except with the permission of the mining warden.[63] Finally, the Firearms and Guns Act Amendment Act (No. 2) (No. 62 of 1963) amends section 4(2) of the principal Act to place natives on the same footing as other citizens of the State so far as the restrictions under the Act are concerned.[64]

[62] It is difficult to see why this provision was ever inserted in section 103. Subsection (1) allowed an aboriginal native to act as interpreter in the same way as if he had taken an oath if he made the following affirmation: "I affirm that I will well and truly interpret the evidence given to the Court." Subsection (2) allowed any other person, if he objected to taking an oath, or was objected to as incompetent to take an oath (either of which provisions might well have fitted precisely the case of the aboriginal native) was to make a promise or declaration as follows: "I solemnly promise and declare that I will well and truly interpret the evidence given to the Court." The slight difference in the form of words devised to meet two practically identical sets of circumstances seems to be a great piece of solemn nonsense.

[63] The point of the original provision, as explained by the Hon. the Minister for Native Welfare, (1963) 166 PARL. DEB. 3055-6, was that it was feared that mine owners would engage native labour, which during the early part of the century was (or was thought to be) of a standard far below that of other members of the community, and could be hired for virtually nothing, to fulfil the labour conditions imposed on the holder of a mining tenement and thus defeat the spirit, if not the letter, of the Act.

[64] Is it not time that the offensive provision limiting the rights and privileges, under this Act, of "any person who is an Asiatic or African alien, or who

IV. PUBLIC HEALTH.

Sale of Human Blood.

The Sale of Human Blood Act (No. 31 of 1963) was introduced to protect two public monopolies: that of the Red Cross Society in the procurement and distribution of human blood, and that of the Commonwealth Serum Laboratories in the production and distribution of various products derived from human blood. The latter was protected by a Commonwealth-owned patent which expired in 1961; to extend the patent appeared for a variety of reasons to be impractical. The consequent opening of the field of fractionation of blood to commercial interests might introduce a situation in which, by paying for the raw material, such firms might wreck the blood donation scheme. Uniform legislation was recommended by the Commonwealth Department of Health, and its draft is the basis of the Act.[65] Section 2 forbids the purchase, and section 4 the sale, of human blood or the right to take blood from the body of any person. The maximum penalty for unauthorized purchase or offer to purchase is a fine of two hundred pounds, or imprisonment for six months, or both; the maximum penalty for unauthorized sale is a fine of fifty pounds. It is also an offence under section 3 to publish, exhibit or disseminate any advertisement relating to the buying of human blood. The Minister administering the Act may, however, in special circumstances authorize the purchase of human blood, and may approve any advertisement in connexion with this; if a person who sells blood reasonably believes that the purchaser is acting under a Ministerial authority he commits no offence.

Occupational Therapists.

The Occupational Therapists Act Amendment Act (No. 5 of 1963) provides, first, that a person who has undergone the necessary course of training, can be registered as an occupational therapist notwithstanding that he has not reached the age of 21, but that he may not practise on his own behalf as an occupational therapist, though he may be employed by another person if that person is approved by the Board as his employer.[66]

is an Asiatic or African alien claiming or deemed to be a British subject" was also removed from the legislation?

65 See the second reading of the Hon. Mr. R. Hutchinson (Minister for Health) (1963) 164 PARL. DEB. 836.

66 For some strange reason the subsection in question (new sec. 8A (3)) speaks of "any person approved by the Board other than an occupational therapist who has not attained the age of twenty-one years." Since such a person

Dentists.

The Dentists Act Amendment Act (No. 75 of 1963) makes certain changes, by way of modernizing the principal Act, which have been asked for by the Dental Board. For example, all references to apprentices and their training, to dental assistants, and to the recording of students, are deleted; but the rights of any person recognized as an assistant at the date of coming into operation of the amending Act are preserved, by a new section 65. Section 50, prohibiting the unauthorized practice of dentistry, is repealed and re-enacted; the principal changes are, first, that it is made an offence under that section for a person other than a dentist or a company to hold himself or itself out as practising or being prepared to practise dentistry,[67] second, that a person visiting the State as an official dental clinician for the purpose of giving professional instruction may be permitted by the Board for a period not exceeding twelve months to perform acts of dentistry in the course of giving that instruction, and third, that the maximum penalty for a first offence is increased to £40 and for a subsequent offence to £100.

V. CONTROL OF PRICES AND COMMODITIES.

Wheat Industry Stabilization.

The Wheat Industry Stabilization plan put into effect by the Commonwealth's Wheat Industry Stabilization Act 1963 and Wheat Export Charges Act 1963[68] is implemented in this State by the Wheat Industry Stabilization Act (No. 77 of 1963) which continues in existence the Western Australian Wheat Board, and otherwise follows fairly closely the provisions of the superseded legislation (the Wheat Industry Stabilization Act 1958).[69] Why the pattern of repealing and

could not practise as an occupational therapist on his own account it is difficult to see now he could possibly employ another: and in any case it is a reflection on the commonsense of the Board to suggest that it would grant approval to such a person as an employer. The Hon. N. F. Baxter pointed out (in the second reading debate in the Legislative Council (1963) 164 PARL. DEB. 1027) that the words after "Board" were redundant; but he was "fobbed off" by the Hon. A. F. Griffith (who seems to have misread the section) and did not move the appropriate amendment.

67 It is difficult to see why it was thought necessary under the admittedly awkwardly worded sec. 49 an offence under this section also. Surely if a person "holds himself out as being entitled to use any name title or description implying that he is entitled to practise dentistry or is carrying on the practice of dentistry" he is holding himself out as practising or as being prepared to practise dentistry?

68 Noted in (1964) 6 U. WEST. AUST. L. REV.

69 Noted in (1959) 4 U. WEST. AUST. ANN. L. REV. 471.

substantially re-enacting the former legislation is continued by both State and Commonwealth is a mystery to your reviewer.[70]

VI. FISCAL.

Stamp Duty.

The Stamp Act Amendment Act (No. 3) (No. 57 of 1963) introduces some modifications in the procedure prescribed in section 32 of the principal Act for an appeal from assessment of duty. The amount of duty assessed must first be paid by the aggrieved taxpayer; he is then to serve notice in writing on the Commissioner requiring him to state a case for the opinion of the Supreme Court. When a copy of the Commissioner's case has been delivered to the appellant he has ten days in which to have the case set down for hearing in the Supreme Court, and he must give to the Commissioner ten days notice in writing of the hearing. The purpose of all this is to ensure that appeals against assessments are not made frivolously, or solely for the purpose of delay, and therefore that once made they are expeditiously prosecuted. Nevertheless, the idea that person who honestly believed, or was advised, that an assessment which he had received was unjustified must, before he could dispute the assessment, pay the amount in dispute did not appeal to the Opposition, and an attempt in the Committee stage in the House to have the Bill amended by deleting the offending clause failed by only one vote. One would have thought that the provision of machinery for ensuring a speedy notice of appeal, and a quick hearing of the appeal, would have been sufficient to avert the delays referred to by the Hon. the Treasurer in his second reading speech.[71] As it is, once the Commissioner has received the money there is no incentive to him to be diligent in stating his case, and one would have thought that the subject was more in need of protection against delay on the part of the Government than *vice versa.*

VII. BUILDING, HOUSING, AND DEVELOPMENT.

Further legislative testimony to the development of the State's extensive mineral resources is provided by the Iron Ore (Hamersley Range) Agreement Act (No. 24 of 1963). The agreement contemplates the eventual shipment of not less than fifteen million tons of iron ore from the Hamersley Range area, and for that purpose the construction on the North-West coast of a harbour and wharf large

70 See the comment referred to in note 69 *supra.*
71 (1963) 166 PARL. DEB. 3088.

enough to accommodate vessels of an ore-carrying capacity of 100,000 tons.

VIII. GENERAL.

Beekeepers.

The Beekeepers Act (No. 4 of 1963) replaces the Bees Act 1930, and its amendments. It results from an investigation into the control of the industry by the Government's senior apiculturist.[72] Though the general pattern of control remains unchanged, the opportunity has been taken, while introducing the reforms thought necessary to meet the inadequacies of the previous legislation, to redraft the Act. Of this redraft the Hon. the Minister for Agriculture said, with some justification: "[I]t has been possible to achieve greater clarity and at the same time, be more concise."[73]

The principal changes appear to be the following:

(1) Registration as a beekeeper is to be applied for within 14 days of becoming a beekeeper, instead of within one month, (section 8(1)).

(2) The power to prohibit the keeping of bees on any apiary site, conferred upon the Director of Agriculture by section 5B of the earlier legislation[74] is replaced by a power conferred upon any inspector to order the removal of an apiary to an approved site if the apiary is "on any site where the keeping of bees is harmful to the process of drying fruits"[75] or is a detriment or nuisance to the public where it is (section 23).

(3) It is no longer necessary for an inspector's direction to a beekeeper to be in writing; but it must be confirmed in writing (section 16(2)). Unfortunately the new provision is less clear than the old, for the draftsman has not said whether the requirement of written confirmation is mandatory or directory. No doubt the point will be taken at some future date, if an inspector forgets to confirm a direction and either prosecutes the beekeeper or seeks to recover the

72 See the second reading speech of the Hon. Mr. Nalder (Minister for Agriculture) (1963) 164 PARL. DEB. 835.

73 *Id.* A notable example of conciseness is the new definition of "beekeeper" which occupies three lines, as against a seven line definition in the original Act and an amended definition, occupying sixteen lines, in the Bees Act Amendment Act 1950.

74 Inserted therein by sec. 6 of the Bees Act Amendment Act 1950.

75 This expression is ambiguous, and narrowly construed could be confined to cases in which the process of drying fruits is carried or on the site where the bees are kept. It would have been preferable to substitute for "on any site" "in any area."

cost of putting the direction into effect; but the foreseeable dispute could have been avoided had the legislation been specific.

(4) For the elaborate provisions of section 6 of the earlier legislation,[76] allowing for the imposition by proclamation of a quarantine on any part of the State declared an infected area, and the imposition by an inspector, pending such declaration, of an "interim prohibition order" on any apiary in that part infected by disease, is substituted a simple power in an inspector to quarantine an infected apiary (section 17).

(5) It is made an offence to keep or transport bees in such a manner as to cause a nuisance to any person (section 21).

(6) The new legislation defines the term "destroy" (ungrammatically)[77] as meaning "complete consumption by fire in a pit followed by burying at a depth of not less than one foot underground." What would be left to be buried?[78]

The ancillary Bee Industry Compensation Act 1957 is also amended, by Act No. 16 of 1963. The principal purpose of the legislation effected by section 7, is to enable payment by way of compensation of the full market value of the property destroyed, instead of only two-thirds; in addition, if a beekeeper is required merely to disinfect his property, instead of destroying it outright, he may recover the cost of this up to a maximum of two-thirds of the value of that property. The maximum permissible amount of the Compensation Fund is raised from £1,000 to £3,000. Compensation is not payable if it appears that the property destroyed or disinfected was infected with disease when brought into the State, or that the disease was occasioned by failure of the beekeeper to observe the provisions of the Beekeepers Act, or if the beekeeper has not paid his licence fees.

Beef Cattle Industry.

A familiar feature of Government control of primary production in the modern state is the scheme designed to improve the quality of production, to protect public health, and check the spread of disease, by arranging for the inspection and treatment, and if necessary destruction, of diseased stock. To schemes already operating in Western

[76] Made elaborate by sec. 2 of the Bees Act Amendment Act 1957, and noted in (1958) 4 U. West. Aust. Ann. L. Rev. at 288.

[77] "Destroy" may mean "to consume"; it cannot mean "consumption" (though "destruction" may).

[78] But "lex non cogit ad impossibilia" and no doubt reduction to ashes will be accepted as "complete combustion."

Australia in respect of the beekeeping industry,[79] the dairy industry,[80] and the pig industry[81] the Beef Cattle Industry Compensation Act (No. 78 of 1963) adds another. The pattern is basically the same as that of its predecessors: a Fund is set up (by section 19) funded in the first instance by a stamp duty on sales of cattle or carcasses and by a matching contribution from the Treasury. Provision is made for the inspection and testing of beef cattle for disease, including tuberculosis and actinomycosis and any other disease which the Governor may from time to time proclaim. The Chief Inspector of Stock may order diseased cattle, or cattle which he suspects to be suffering from disease, to be destroyed. By section 13(1) compensation is payable to the owner of cattle so destroyed. Compensation is payable also to the owner of diseased cattle (or cattle suspected of disease) destroyed with the consent of the Chief Inspector (*i.e.,* without his having ordered the destruction, and to the owner of any carcass or portion thereof,[82] other than the head,[83] whether of beef or dairy cattle) which is condemned at an abattoir[84] as unfit for human consumption. Compensation is not payable unless claimed within thirty days after destruction or condemnation, but the Minister may authorize payment in whole or in part on a late application if he is satisfied that reasonable grounds existed for the delay in applying. The amount of compensation payable is the market value of the carcass, or the value of the cattle as determined by agreement between the owner and the Chief Inspector, or failing agreement by "some competent and impartial person" nominated by the Minister.

Among the miscellaneous provisions of the Act section 28 makes it an offence for any purchaser of cattle (whether beef cattle or dairy cattle) to make any charge to the vendor, or deduct anything from the purchase-money, by way of insurance or indemnity against loss caused either by the death of the animal before it reaches the purchaser's premises, or by injury to the animal or the presence of disease in the animal. Any provision to this effect in any existing or future

79 The Beekeepers Act 1963 and the Bee Industry Compensation Act 1953.

80 The Dairy Cattle Industry Compensation Act 1960.

81 The Pig Industry Compensation Act 1942.

82 Although sec. 13 (1) (c) specifically refers to "portion of a carcass" section 14 (2) (prescribing the amount of compensation payable) refers only to "a carcass." No doubt this will be construed in practice as referring also to a portion of a carcass.

83 Sec. 17 (a).

84 The section says "an abattoirs" or "some abattoirs." The draftsman has allowed popular usage to deflect him from grammatical correctness; the singular form, according to the Shorter Oxford English Dictionary is "abattoir."

contract or agreement is invalidated by section 29.

Section 32 deserves mention as a horrible example of unnecessary verbosity, which looks as if it might attain the dignity of a standard form unless it is stamped on. It runs:

"32(1) A person who
(a) does that which by or under this Act he is forbidden to do; or
(b) does not do that which by or under this Act he is required or directed to do; or
(c) otherwise contravenes or fails to comply with any provision of this Act, commits an offence against this Act.
(2) A person who commits an offence against this Act is liable on conviction to a penalty or punishment[85] not exceeding that expressly mentioned as the penalty or punishment for the offence,[86] or if a penalty or punishment is not so mentioned to a penalty not exceeding fifty pounds."

Fourteen years before this Act was drafted E. A. Driedger (whose writings on statutory drafting should be every draftsman's bible) showed how to reduce a provision similar to, but slightly less verbose than, subsection 1 to its bare essentials, thus: "Every person who violates this section is guilty of an indictable offence."[87] I personally would prefer "disobeys" to "violates"; and would suggest that it would have been just as effective to say:—

"A person who disobeys any provision of this Act commits an offence and is liable, if no other penalty is specifically provided, to a penalty not exceeding fifty pounds."

Why was this not said?

Metropolitan Water Supply.

The purpose of the lengthy Metropolitan Water Supply, Sewerage, and Drainage Act Amendment Act (No. 39 of 1963) is to transfer the control of water supply sewerage and drainage in the Perth metropolitan area from the Minister to a seven-member Board, which is to include a General Manager who is to be the Board's chief executive officer. One member of the Board is to represent ratepayers of the City of Perth, and two are to represent ratepayers of other local

85 What is the (no doubt subtle) difference between these two? In any case the Act itself expressly provides for penalties, not for punishments.

86 Why waste words saying what is obvious and inescapable?

87 Legislative Drafting, (1949) 27 CAN. BAR. REV. 291, at 298.

authorities whose districts are wholly or partly within the metropolitan area. For some reason each of the latter two must be a member of a local authority's council, while the former need not be a member of the Perth City Council. The Board may, with the consent of the Governor (which is itself conditioned on the prior approval of the Minister) borrow upon the security of its revenues or upon a Treasurer's guarantee, either by issuing debentures or by creating and issuing inscribed stock; other modes of borrowing may be prescribed or approved by the Governor.

Control of Taxi-Cars.

The Taxi-Cars (Co-ordination and Control) Act (No. 81 of 1963) which sets up a seven-member Taxi Control Board to control taxi-cars and their drivers throughout the metropolitan area, and elsewhere in the State if its operation is extended by Order-in-Council, was introduced at the request of those concerned in the taxi industry.[88] The Board, which is to be chaired by the Commissioner of Police or his deputy, includes one other member of the police force, one representative of local authorities, one representative of the Metropolitan Passenger Transport Trust, and three representatives of the taxi industry. It is charged by section 11 with (a) investigating, and formulating schemes for, the co-ordination and control of taxi-cars; (b) determining the number and kind of taxi-cars to be licensed in any area (subject to the requirement that the number licensed in the metropolitan area is not to fall below one in eight hundred of the population nor rise above one in seven hundred); (c) the issue and transfer of taxi-car licences; (d) determining fares and charges; (e) supervising the fitness (other than roadworthiness and mechanical fitness) and cleanliness of taxi-cars; (f) establishing taxi-stands; (g) arranging and enforcing schemes for taxi operation in any part of an area under the Board's jurisdiction; (h) controlling the conduct and dress of taxi-drivers; (i) enforcing regulations made under the Act.[89]

Every taxi-car is required to be licensed under the Act, and it is an offence to operate an unlicensed taxi-car,[90] maximum penalties

88 The Hon. J. F. Craig (Minister for Police) (1963) 165 PARL. DEB. 2138.

89 But not, apparently, the provisions of the Act itself; unless this is covered by sec. 9: "Subject to the Minister, this Act shall be administered by the Board," if so, attention may be drawn to sec. 4 of the Interpretation Act 1918, by which "this Act" includes regulations made under the Act and the conclusion will be reached that para. (i) of sec. 11 is otiose.

90 Sec. 14 (1) speaks of a taxi-car that is not licensed or in respect of which a licence under the Act is not in force. What is the difference? By sec. 15, a licence is valid for only one year: surely when the year has expired, and the licence is not renewed, the taxi-car is not licensed?

range from forty pounds for the first offence to two hundred pounds for a third or subsequent offence. Taxi-cars which on the coming into force of the Act are licensed as passenger vehicles under the Traffic Act 1919 are deemed to be licensed under the new Act,[91] but the licence is to be renewed under its provisions.

Empty bottles.

The Marine Stores Act Amendment Act (No. 3 of 1963) was rushed through (after suspension of standing orders in both houses) in a week, and assented to two days after the third reading in the Assembly, in order to avert a crisis in the soft-drink industry. Storekeepers had been protesting against the practice whereby their premises became depots for soft-drink bottles returned against the deposit of 2d. or 3d., and advocating a system by which all soft-drink bottles were collected by licensed marine dealers (the legal appellation of the common or garden "bottle-o") as is done with beer-bottles and wine-bottles at present. The climax of the protest came when six storekeepers pleaded guilty to charges that by receiving such bottles and storing them, without holding marine dealers licences, they were in breach of the principal Act: by pleading guilty they, of course, forestalled any argument or decision on the doubtful question whether their actions were in fact illegal.[92] If the plan was to force soft-drink manufacturers and the public to change the established manner of returns, it backfired: for the legislation, by excluding from the purview of the principal Act "bottles in which non-intoxicating beverages are ordinarily sold and in respect of which, at the time of the sale of the contents thereof, a deposit of money, repayable by the vendor, was made, or is ordinarily made."[93] Milk and cream bottles were also excluded.

Licensing.

The licensing laws provide some work for the Legislature in almost every session, and this session was no exception, the principal Act being amended four times. The first amendment (Act No. 20 of 1963) is of merely fiscal interest—it alters the licence fee from 8½% of the net value of liquor purchases, assessed six-monthly, to 5½% of the gross value of liquor purchases during the preceding period of

91 Sec. 14 (2) says "subject to the payment of any prescribed fees"; but sec. 19 (1) makes prescribed fees payable only on "the issue' renewal or transfer of a licence" and it does not appear that any fees could be charged in respect of such a vehicle until renewal of the licence was required.

92 See the second reading speech of the Hon. Mr. Craig (Minister for Police) (1963) 164 PARL. DEB. 401.

93 Sec. 2 of the amending Act.

twelve months, and also corrects some anomalies which had become apparent during the past twelve months. The main licensing legislation for the year is contained in the Licensing Act Amendment Act (No. 2) (No. 85 of 1963).[94] This, among other changes abolishes the previously existing licensing districts which were based on the electoral districts as they stood in 1921 and constitutes the existing electoral districts of the State licensing districts: in future, changes in electoral district boundaries following an electoral re-distribution will therefore be reflected in changes in licensing district boundaries. The Metropolitan Licensing District will embrace all the electoral districts included in the Metropolitan Area as designated under[95] the Electoral Districts Act 1947. The existence since 1957 of stipendiary magistrates is at last recognized by an appropriate amendment to Section 21(7) of the principal Act, empowering licensing magistrates to delegate any of their powers "to any licensing magistrate, or to any resident or stipendiary magistrate for the time being assigned to any district by reference to his assignment." Since by section 4(3) of the Stipendiary Magistrates' Act 1957 all the then resident magistrates were deemed to have been appointed stipendiary magistrates and by section 12 all future magisterial appointments were to be as stipendiary magistrates, it is not easy to understand the continued reference to "resident magistrates," here and in sections 169 and 186(1).[96] Licences granted for the sale of Australian wines and beers, under section 32 of the principal Act, are extended to permit the holders to sell also Australian spirits.[97] The introduction of the can as a vehicle for the sale of liquor[98] may have opened a loophole in the provisions of sections 122 and 205 restricting the sale of liquor by licensees or in clubs, on Sundays, Anzac Day, Good Friday, or by licensees on Christmas Day.[99] Subsection (2) of each of the two sections exempted from the general

[94] This Act contained most of the amendments first introduced in the ill-fated Licensing Amendment Bill (No. 3) of 1963, whose fate is recorded *supra,* at p. 225.

[95] The section (4) says "pursuant to and in accordance with." Would not "under" have been sufficient—one word instead of six?

[96] Curiously, sec. 186 (5) and (7) refer only to a stipendiary magistrate.

[97] But the terms of Australian Wine Licences, under sec. 33, and Australian Wine bottle licences, under sec. 34, remain unchanged. It appears, however, that there is only one Australian wine and beer licence current, and this is a survival from before April 7th 1911 (the day on which the Licensing Act 1911 came into force: see sec. 27 (4)).

[98] Initially, of beer; but the reviewer notes, with a faint shudder, that the French have begun canning wine for export.

[99] The Bill as brought down proposed to withdraw from clubs the privilege of selling liquor on Christmas Day; but a last minute amendment removed this proposed restriction.

prohibition of sale a sale of liquor "not by the bottle or in a bottle." Each subsection has now been amended to include "can" with "bottle"; and the first is further amended to permit the sale in the Goldfields District, during permitted trading hours, of liquor in a bottle or in a can, the capacity of which bottle or can does not exceed one reputed quart, in quantities of not more than two reputed quarts.[1] Section 44 is also amended, to enable the holder of a canteen licence to sell liquor by the can as well as by the bottle or glass.

Section 184 is amended to impose further restrictions on licensed clubs, most of which concern the classes of members they may elect. No very good reasons—indeed, no reasons at all—were given for imposing these additional restrictions upon clubs; and even if they are justified so far as the classes of members is concerned, there seems no reason at all to tie clubs to a specified nomenclature. Perhaps this was not intended; but it appears to be the effect of the amendment. The classes are: ordinary members, life members, provisional members (defined as persons entitled to exercise the privileges of the club subject to some restrictions)[2] associate members (*i.e.*, female members),[3] and country members (persons living twenty-five miles or more from a club in the metropolitan area, or fifteen miles or more from a club situated elsewhere).[4] A new paragraph (bc) to subsection 1 requires all members of any committee managing the conduct of an athletic purpose to which the club is primarily devoted, or of any subcommittee of the management committee of the club, to be members of the club. One cannot see the harm in the addition of an occasional non-member to any of such committees, if it seems good to the club; but those who administer our licensing laws thought otherwise.[5] They went even further than this, however, and inserted a completely

1 Previously the permitted quantity was two bottles; the amendment provides not only for the sale in 13 oz. cans but also for sale of the 13 oz. half-bottles.

2 To be more exact, as members who are "entitled to exercise, subject to such restrictions as the rules of the club provide, the privileges of the club . . . ." One presumes that it was intended that their privileges be restricted in some way; but the definition does not specifically require this.

3 Must a women's club alter its constitution so as to call all its members "associate members"? May it admit men as "associate members"?

4 Again, it is palpable nonsense to require a club in a country town more than 15 miles from Perth to call any of its members in Perth "country members."

5 The Hon. A. F. Griffith said: "It has come under the notice of the Court that some members of club committees, particularly of sporting committees, are not club members. The amendment to section 184 is being introduced to provide that all members of club committees are to be club members" ((1963) 165 PARL. DEB. 2087). Unfortunately, no member of either house was vigilant enough to ask why this should be necessary.

impertinent requirement that the members of any such committee "shall be required to report and be responsible to the management committee." What this has to do with the purposes of the Licensing Act in licensing clubs is difficult to imagine, let alone to see. One senses bureaucracy run wild.

Section 185 is amended to provide that certain dignitaries (from the Governor-General to the mayor or president of any member of the local authority in whose district the club is situated), while visiting the club at its express invitation, shall "be and be deemed to be (!) honorary members of the club" as are persons accompanying them at the invitation of the club.

E.K.B.