

LEGISLATIVE SUMMARY

Victoria 1957

Administration of Justice

Regulation of Reports

The publication of names, details and photographs of victims of sexual or unnatural offences can cause unnecessary embarrassment and even considerable harm to the persons concerned. Publicity accorded to such cases by some sections of the press in recent years has emphasized the necessity for further controlling legislation.¹ Thus the Judicial Proceedings (Regulation of Reports) Act 1957 (No. 6113) forbids publication, in relation to any court proceedings, of photographs and other identifying particulars relating to any female, or to any male under the age of sixteen, against whom an offence of a sexual or unnatural kind is alleged to have been committed, unless the court orders that such particulars may be published.² A necessary exception is made in favour of documents in judicial proceedings themselves and in *bona fide* law reports,³ but this exception would probably not cover articles in a law journal. The prohibition applies to publication by newspapers or radio or television stations⁴ and heavy fines are provided for contravention.⁵ The Act is limited to cases in which court proceedings have commenced; it was thought that extension to cover cases of publication before the commencement of judicial proceedings would interfere with the efforts of the police in the apprehension of offenders. Despite the Statute Law Revision Committee's recommendation, it is doubtful whether the Act operates to prevent the distribution in Victoria of prohibited reports in newspapers *etc.* published in other states.⁶ An even more vexed question concerns the publication by Victorian newspapers *etc.* of names of victims of sexual cases arising out of judicial proceedings in other states and in overseas countries. Although prevention of the publication of identifying particulars of

¹ The Judicial Proceedings (Regulation of Reports) Act 1929 prohibits the printing or publishing, in relation to any judicial proceedings, of indecent matter the publication of which would be calculated to injure public morals, and substantially restricts publication of matter in relation to matrimonial causes.

² Judicial Proceedings (Regulation of Reports) Act 1957, s. 2 (1).

³ *Ibid.*, s. 2 (5).

⁴ *Ibid.*, s. 2 (1).

⁵ *Ibid.*, s. 2 (2).

⁶ S. 1 (1) of this act provides that it is to be read with the 1929 Act; s. 2 (2) of which provides: 'It shall not be lawful to distribute . . . any newspaper . . . (whether printed or published in Victoria or elsewhere) containing . . . any matter . . . the . . . publication of which would if the newspaper were published in Victoria be a contravention of this section.'

sexual assault victims is a very praiseworthy object, the Victorian legislature can hardly intend to protect people who are not within the jurisdiction of Victorian courts.

County Court

The County Court Act 1957 (No. 6117) consolidates and amends the law relating to the County Court. In lieu of the separate local courts previously in existence one court is established for the whole state; thus a sitting, wherever held, will have jurisdiction throughout all Victoria.⁷ Provision is made for the appointment of a chairman of judges,⁸ and for the appointment of acting judges.⁹ It was originally provided that judges could leave Victoria only with the permission of the Governor-in-Council; this obsolete section has now been omitted. As accommodation is not always available in city courts, section 35 allows sittings in court houses within ten miles of the Elizabeth Street Post Office.

Justices

The law relating to Justices of the Peace and Courts of General and Petty Sessions is consolidated in the Justices Act 1957 (No. 6082). The previous arrangement of subject-matter, which is familiar both to practitioners and to administrators of the law, has been disturbed as little as possible.

Recommendations of the Law Institute of Victoria are embodied in the Justices (Amendment) Act 1957 (No. 6107). To ensure speedy arrangements for bail, any policeman of or above the rank of senior constable or in charge of a police station is empowered to grant bail in a proper case.¹⁰ Where a defendant pleads guilty before a Court of Petty Sessions his right of appeal is limited;¹¹ this could cause injustice if the defendant misunderstood the plea. To remedy this possibility, a court may set aside the conviction where an appeal is made only on the ground of the excessive nature of the punishment, if it appears that it would be contrary to justice to allow the conviction to stand.¹² To enable the Supreme Court to dispose of serious indictable offences more speedily the number of offences reserved for its sole jurisdiction is modified, thus bringing a greater number of cases within the competence of the Courts of General Sessions.¹³

⁷ County Court Act 1957, s. 4.

⁸ *Ibid.*, s. 8 (6).

⁹ *Ibid.*, s. 16.

¹⁰ Justices (Amendment) Act 1957, s. 2.

¹¹ Justices Act 1957, s. 141.

¹² Justices (Amendment) Act 1957, s. 6.

¹³ *Ibid.*, s. 7.

Juries

The Juries (Amendment) Act 1957 (No. 6168) amends section 8 (1) of the Juries Act 1956 which disqualified employees of insurance companies from service on civil juries. In practice this meant the disqualification of many employees of firms which acted as agents for insurance companies; thus the amendment is designed to limit the disqualification to those who are employed by insurance companies engaged in indemnity insurance.¹⁴ Section 79 of the Juries Act 1928 (omitted in the 1956 Act) is re-enacted to place beyond doubt the power of a judge to empanel a jury whilst one jury is in retirement considering its verdict in a prior case.¹⁵

Parole Board

A number of modifications and amendments to the parole provisions of the 1957 Crimes Act,¹⁶ suggested by Mr Justice Barry, the chairman of the Parole Board, are implemented in the Crimes (Parole Board) Act 1957 (No. 6167). To assist the Board in its investigations it is given the powers of a commission of enquiry, thus enabling it to summon witnesses to give evidence on oath *etc.*¹⁷ Members of the Board are given statutory protection against actions for damages.¹⁸ The Board is given power to amalgamate minimum terms where an offender is given more than one sentence,¹⁹ and to make a parole order before a prisoner has completed his minimum term, which order can come into effect only on expiration of that term.²⁰

Status*Maintenance*

Recommendations made by interstate collectors of maintenance and approved by the Statute Law Revision Committee are included in the Maintenance Act 1957 (No. 6080). More effective administrative machinery is provided for the enforcement of maintenance orders; thus it is hoped to improve the plight of deserted wives who have difficulty in collecting the money adjudged them. On application to the Supreme Court an order may be made that moneys payable under a maintenance order made by the Supreme Court are to be paid to a Clerk of Petty Sessions.²¹ Such an order would be enforce-

¹⁴ Juries (Amendment) Act 1957, s. 2 (1).

¹⁵ *Ibid.*, s. 3.

¹⁶ Crimes Act 1957 (No. 6103), Part IV Division 2.

¹⁷ Crimes (Parole Board) Act 1957, s. 2.

¹⁸ *Ibid.*, s. 3.

¹⁹ *Ibid.*, s. 5.

²⁰ *Ibid.*, s. 8.

²¹ Maintenance Act 1957, s. 2; Maintenance (Consolidation) Act 1957, s. 23.

able in Courts of Petty Sessions and would provide the wife with a cheap and speedy procedure. Prior to this Act, a man subject to an order made in another state but enforceable against him in Victoria would be obliged to return to the original state to take any proceedings to vary the order. Such proceedings may now be initiated in Victoria and the Court of Petty Sessions at Melbourne is empowered to make a provisional order, which must, however, be confirmed by a court with power to vary, suspend or discharge the original order.²² The effectiveness of this provision will depend on reciprocal legislation by other states. It is interesting to note that no similar relief is given to a deserted wife. A nomadic husband may now find it more difficult to avoid his responsibilities, for where maintenance orders are transmitted to the Governor in Victoria and found to concern persons no longer within Victoria, they may be sent directly to the place where the husband is believed to be in residence.²³ To cut short the previous clumsy procedure and to gain the benefit of the services of interstate collectors, overseas maintenance orders that are registered in Victoria may now be enforced under Part IV of the Act if the defaulting husband leaves Victoria for another state.²⁴

The law relating to the maintenance of wives and children is consolidated in the Maintenance (Consolidation) Act 1957 (No. 6116). The provisions of the above Act are included.

Public Health

Alien Doctors

In *Georgoussis v. Medical Board of Victoria*²⁵ it was held that foreign doctors claiming to be of international standing²⁶ must possess more than normal competence: they must have a high reputation among those with scientific knowledge of medicine and surgery. This decision has supported the restrictive interpretation given the Medical (Registration) Act 1956 by the Medical Board and consequently the number of registrations made has been negligible. Hopes that the Act would lessen the shortage of doctors in Victoria have thus not been fulfilled and the Medical (Registration) Act 1957 (No. 6084) represents a more positive approach to the problem. An independent nine-member Foreign Practitioners Qualification Committee, comprising four professors of medicine and five nominees of the Faculty of Medicine of Melbourne University, is established.²⁷

²² Maintenance Act 1957, s. 3; Maintenance (Consolidation) Act 1957, s. 58.

²³ Maintenance Act 1957, s. 4; Maintenance (Consolidation) Act 1957, s. 75.

²⁴ Maintenance Act 1957, s. 6. ²⁵ [1957] V.R. 671.

²⁶ As required by the Medical (Registration) Act 1956, s. 2. See the comments on this Act in 'Legislative Summary, Victoria 1956' (1957) 1 *M.U.L.R.* 222, 231.

²⁷ Medical (Registration) Act 1957, s. 3.

Any person who is, or has been, qualified to practise medicine and surgery in any country except those specified in the Medical Act 1928, section 14, may apply to the Committee to be registered, and if the Committee is satisfied that (1) the applicant's qualification in that country has not been cancelled for professional misconduct, (2) he has resided in Victoria for not less than three years, (3) he is professionally competent to practise in Victoria, (4) he is of good character, (5) he has an adequate command of English, the Medical Board shall not refuse to register him.²⁸ The requirement of 'professional competence' does not appear to set as high a standard as the requirement of 'international standing'. The Act operates until 31 December 1960,²⁹ and does not abridge rights under the Acts of 1928 or 1956.³⁰

Clean Air

Based on a similar English statute,³¹ the Clean Air Act 1957 (No. 6125) attempts to deal with the various causes of an unhealthy and polluted atmosphere. The provisions of the Act are to be administered by the Commission of Public Health, which may in turn require municipal councils to exercise the powers and duties conferred on it.³² The Act provides that 'dark or dense smoke shall not be emitted from industrial chimneys'³³ and new industrial fireplaces are to be, as far as possible, smokeless.³⁴ All practicable means are to be used for minimizing the emission of air impurities from industrial fireplaces,³⁵ and new fireplaces are to be fitted with plant to arrest such impurities.³⁶ Although the intention behind the Act is evident, difficulties may arise in enforcing its provisions as these are not expressed as absolute prohibitions, but only as directions to be observed as far as is practicable. A Clean Air Committee of twelve members is established to investigate and make recommendations concerning air pollution problems.³⁷

Benefit Associations

The Benefit Associations Act 1951 provided some measure of control over the operation of sickness, hospital, medical and funeral benefit schemes, similar to that provided by the Friendly Societies Acts. Some changes were considered essential, especially in regard to exempt associations. Many associations were exempted from the 1951 Act by the Governor-in-Council, but only funeral associations could be granted conditional exemptions. Now the Benefit Associa-

²⁸ *Ibid.*, s. 4.

²⁹ *Ibid.*, s. 10.

³⁰ *Ibid.*, s. 9.

³¹ Clean Air Act 1956 (England).

³² Clean Air Act 1957, s. 4.

³³ *Ibid.*, s. 5.

³⁴ *Ibid.*, s. 6.

³⁵ *Ibid.*, s. 7.

³⁶ *Ibid.*, s. 8.

³⁷ *Ibid.*, s. 9.

tions (Amendment) Act 1957 (No. 6094) provides that exemptions may be granted to sickness, hospital and medical societies on terms and conditions, and thus some control is retained.³⁸ To render the associations more useful and to correspond with recent rises in payments made by the Commonwealth, the power to prescribe limits on the amount of hospital benefit paid to any one person *per week* is removed.³⁹ It was found that many life insurance companies conducted some hospital benefit business and accordingly they are no longer automatically exempted from the Act.⁴⁰ The operation of the Act is now extended to cover societies incorporated in other states and carrying on benefit association business in Victoria.⁴¹

General

Landlord and Tenant

The Landlord and Tenant (Control) Act (No. 6098)⁴² consolidates and amends all legislation on this subject enacted since 1948. Prior to the passing of this Act, it was necessary to refer to the 1948 Act and four amending Acts for a full comprehension of this particularly vital branch of the law; these difficulties of reference are now largely overcome. Generally, the alterations relate to decreased, rather than increased control, and the Act thus continues the trend shown by its immediate predecessors. It is designed to relieve unfortunate owners who are in effect subsidizing their tenants, and attempts to do this without substantially raising the cost of living by large increases in rents. In addition, the government wishes to encourage investment in building to relieve the housing shortage.

The mode of service of notices to quit provides for substituted service, delivery to the person who customarily pays the rent, or to any person apparently over the age of sixteen residing in the premises.⁴³ Doubts as to whether the sections dealing generally with notices applied to notices to quit have been resolved by their specific exclusion from the sections concerned.⁴⁴ Most of the previously existing grounds for notices to quit have been extended: for example, one ground, which previously covered hospitals alone, now covers all educational establishments and nursing institutions.⁴⁵ Where the

³⁸ Benefit Associations (Amendment) Act 1957, s. 3 (d).

³⁹ *Ibid.*, s. 4.

⁴⁰ *Ibid.*, s. 3 (d).

⁴¹ *Ibid.*, s. 2. This is the result of an unsuccessful action brought against the Blue Cross Health Insurance Company in 1955 (unreported): the company was acting as an agent for several non-Victorian societies and the legislation then in force was held not to apply.

⁴² The Act came into operation on 31 November 1957.

⁴³ Landlord and Tenant (Control) Act 1957, s. 42 (4).

⁴⁴ *Ibid.*, s. 73, 74.

⁴⁵ *Ibid.*, s. 42 (6) (k).

lessor is a trustee or personal representative, a notice to quit could previously be served only if the beneficiary himself required the premises for occupation; it now suffices if any of his near relatives require the premises.⁴⁶ Several important new grounds are introduced; notices to quit may now be served where the premises are a garage which is required so that it may be leased or sold with the house to which it belongs,⁴⁷ and where the lessee is financially capable of purchasing or leasing other suitable premises or where such premises are immediately available to him.⁴⁸

Outstanding from the rest of the Act is section 9 which provides that after 1 August 1959 all business premises shall cease to be subject to the Act. In addition to existing factors to be considered when determining a fair rent, the Fair Rents Board shall now have regard to land tax, estate agent's commission,⁴⁹ and the relative situations of landlord and tenant.⁵⁰ The Board may also have the premises inspected and valued or reported on, and take such valuation or report into consideration.⁵¹ The class of specially protected persons is still further reduced by omission of what were sections 81 to 83 of the 1948 Act. Further, preferential treatment of ex-servicemen now consists only of the court having 'special regard to' disabilities caused by war service when considering the hardship which may be caused to the lessor or lessee.⁵²

Aborigines

The necessity for amendment to the law relating to aborigines is shown by the fact that since 1886 the law in this area has remained practically unchanged; indeed, the provisions of the 1928 Act were virtually obsolete as only some twenty full blood aborigines came within its scope. The Aborigines Act 1957 (No. 6086)⁵³ embodies the recommendations of Mr Charles McLean, C.B.E., who conducted an extensive enquiry into the welfare of the aboriginal population of Victoria. The government expresses the pious hope that the Act offers a 'new deal' for aborigines; whether this is so will probably depend on how much positive action is taken under it. The 1928 Act is repealed,⁵⁴ and the Board for the Protection of Aborigines established by it is dissolved and replaced by an Aborigines Welfare Board, comprising four nominees of government departments and

⁴⁶ *Ibid.*, ground (i).

⁴⁷ *Ibid.*, ground (u).

⁴⁸ *Ibid.*, ground (x), (y).

⁴⁹ *Ibid.*, s. 24 (1) (b).

⁵⁰ *Ibid.*, s. 24 (1) (i) & (j).

⁵¹ *Ibid.*, s. 22.

⁵² *Ibid.*, s. 52 (2).

⁵³ The Act came into operation on 30 July 1957.

⁵⁴ Aborigines Act 1957, s. 11.

five other members, two of whom are to be aborigines and one an expert in anthropology or sociology.⁵⁵ The Board's function is 'to promote the moral, intellectual and physical welfare of aborigines . . . with a view to their assimilation into the community'.⁵⁶ A wider class of persons is now included in the definition of 'aborigine' for the purposes of this Act. Previously, only full blood aborigines and certain categories of people of aboriginal descent were included; this Act brings within the Board's scope all full bloods and all persons of aboriginal descent.⁵⁷ The Board is empowered, *inter alia*, to arrange for the supply of clothing, bedding, rations and medical attention to aborigines; to manage and regulate the use of aboriginal reserves and to have houses erected and sold or leased to aborigines.⁵⁸ Section 8 provides for the establishment of local committees interested in aboriginal welfare work, and the Board may make monetary grants to assist their work. The provision for the appointment of a Superintendent of Aborigines Welfare, who is to be the Board's executive officer,⁵⁹ should enable the Board's decisions to be implemented more speedily and will provide a means of maintaining contact between the Board and other bodies interested in aboriginal welfare. By repealing two obsolete provisions, one which made it an offence to sell liquor on licensed premises to aborigines,⁶⁰ and another by which any person associating with aborigines was deemed to be an idle and disorderly person,⁶¹ it is hoped to destroy any notion that aborigines are under citizenship liabilities.

Crimes

The law relating to crimes and criminal offenders is consolidated by the Crimes Act 1957 (No. 6103). A substantial portion of the 1928 Act had been repealed by the Children's Welfare Act 1950, the Penal Reform Act 1956 and the Children's Court Act 1956. The Penal Reform Act is now incorporated in the consolidation and the 1956 Act is repealed, with a saving clause preserving the transitory provisions dealing with the changeover from the old system of indeterminate sentences to the new probation and parole system.⁶² The section numbers of the 1928 Act have not been retained—perhaps this was impossible in practice—but it is unfortunate that familiar provisions are included under different section numbers, for this unduly complicates the criminal lawyer's chief reference.

⁵⁵ *Ibid.*, s. 3.

⁵⁶ *Ibid.*, s. 6.

⁵⁷ *Ibid.*, s. 6 (1).

⁵⁸ *Ibid.*, s. 6 (2).

⁵⁹ *Ibid.*, s. 5 (1).

⁶⁰ S. 177 (a) of the Licensing Act, 1928, repealed by s. 11 (2) of the Aborigines Act 1957.

⁶¹ S. 69 (1) Police Offences Act, 1957, repealed by s. 11 (3) of the Aborigines Act 1957.

⁶² Crimes Act 1957, s. 2 (3).

Protection of the community from the menace of the drunken driver is the expressed object of the Crimes (Amendment) Act (No. 6166). Section 118 (3) of the principal Act is amended to put beyond doubt the power of a police officer to apprehend the driver of a car for reckless driving, if he has reasonable grounds, based on his own personal observations, for believing that the driver has committed an offence, and if the driver refuses to give his name and address, or the car does not bear an identifying number.⁶³ To remove similar doubts as to the power of the police to arrest drivers 'apparently under the influence', they are given the same powers for this purpose as they have in relation to felonies, *i.e.*, a policeman may arrest a person if he has reasonable grounds for believing an offence has been committed although no offence has in fact been committed, or if committed, was not committed by the person arrested.⁶⁴ Thus an offender who is not actually driving a car at the time of the arrest may be brought within the arm of the law.

A change is made in the formula to determine the alcohol content in the blood;⁶⁵ and an amendment passed in the Legislative Council and adopted provides that a person must consent voluntarily to undergo a blood test—and the burden of proving consent lies on the prosecution. Mere refusal to submit to a blood test is not to prejudice any person so refusing in any proceedings.⁶⁶ To save the time of doctors and analysts, evidence that blood has been taken and analysed may be given in the form of a certificate, although the accused may still require the doctor and analyst to attend the court if he wishes to dispute their findings.⁶⁷ Doctors are protected from legal action when they take blood from people subsequently determined by reason of their condition to be incapable of giving their consent.⁶⁸

An amendment to the probation provisions of the Crimes Act 1957 removes any doubts as to the power of the court which made the probation order to deal with the probationer for the original offence if he is re-convicted during the probation period.⁶⁹ A new provision empowers a court, on the application of any person who has suffered loss, to make an order for damages against the accused enforceable in the same way as a civil debt.⁷⁰ Presumably the person aggrieved could not recover from an innocent third party as well, though it seems that the legislature did not direct its mind to this question.

⁶³ Crimes (Amendment) Act 1957, s. 2 (a).

⁶⁴ *Ibid.*, s. 2.

⁶⁵ *Ibid.*, s. 4 (a) & (b).

⁶⁶ *Ibid.*, s. 4 (c).

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, s. 5 (1).

⁷⁰ *Ibid.*, s. 7.

Estate Agents

Recommendations made by the Statute Law Revision Committee for the improvement of the 1956 legislation⁷¹ are implemented by the Estate Agents (Amendment) Act 1957 (No. 6157). In furtherance of the stated policy of the 1956 Act—to protect vendors and purchasers from unscrupulous agents, the Estate Agents' Committee is empowered to prescribe the rate of commission chargeable by auctioneers,⁷² and an estate agent is not entitled to commission unless he gives the vendor a copy of the rules of the Committee prescribing the rate of commission.⁷³ Further, section 7 allows the purchaser to avoid a contract of sale within three months if finance is not made available to him precisely as specified in the statement required under section 34 (1) of the 1956 Act. A time limit of three months is also set on the power to avoid a contract if the agent fails to provide such a statement. In both these cases the right to rescind is lost if the purchaser accepts title, or pays the whole of the purchase money or enters into possession of the property. The onus of proving that such a statement was given lies on the person alleging it,⁷⁴ and the purchaser is now required to acknowledge the receipt of such statement.⁷⁵ On its face the 1956 Act could apply to solicitors as the definition of 'estate agent' was sufficiently wide to include many of the functions normally performed by solicitors; hence they are expressly excluded from the obligation to hold a licence or observe the provisions of the Act.⁷⁶

Local Government

The two local government Acts passed during 1957⁷⁷ do not represent any major change in policy, but are rather collections of amendments aimed at correcting various unrelated shortcomings in previous legislation. A wider discretion is allowed to councils (or to the Governor-in-Council in cases of dispute) to adjust assets, liabilities and accounts when a new municipality is created or when an area is transferred from the control of one municipality to another.⁷⁸ On petition by the councils concerned, or on presentation of a request for a poll signed by one-tenth of those on the municipal roll, the Governor-in-Council may exercise his power to unite two or more

⁷¹ Estate Agents Act 1956. 'Victorian Legislative Summary 1956' (1957) 1 *M.U.L.R.* 235.

⁷² Estate Agents (Amendment) Act 1957, s. 3.

⁷³ *Ibid.*, s. 6.

⁷⁴ *Ibid.*, s. 7 (3).

⁷⁵ *Ibid.*, s. 7 (1).

⁷⁶ *Ibid.*, s. 2.

⁷⁷ Local Government Act 1957 (No. 6128). Local Government (Amendment) Act 1957 (No. 6151).

⁷⁸ Local Government Act 1957 (No. 6128), s. 2.

municipalities.⁷⁹ This provision will prevent obstructive tactics by a council when the ratepayers are in favour of a union. Section 12 of Act No. 6128 exempts lands used exclusively for ambulance purposes from the definition of rateable property in the Local Government Act 1946.

Under the second Act power for making by-laws relating to noxious weeds, objectionable noise at unreasonable times, street parking fees, caravans, derelict motor cars and spear fishing is extended.⁸⁰ Section 4 provides that the Governor-in-Council may declare a specified road of limited access, if, within six months of a request by the Country Roads Board, the local council fails so to declare. The power to defer and remit rates in circumstances of poverty is extended to cover necessitous circumstances.⁸¹ Because of public agitation following accidents due to faulty scaffolding section 21 places beyond doubt the power of the Governor-in-Council to regulate the inspection of scaffolding and building cranes.

Trustee Companies

Many of the restraints imposed by the Trustee Companies Act 1928 upon the use by companies of their own funds were felt to be outmoded and amendments were considered necessary to give these companies greater freedom of action and a more profitable return. On the recommendation of the Statute Law Revision Committee certain restrictions on the class of business in which a trustee company may engage and on the manner in which it may invest its funds are removed by the Trustee Companies Act 1957 (No. 6109).⁸² Power is given to these companies to set up a common fund,⁸³ thus enabling them to make better use of small amounts which are more effectively invested in the aggregate. The insertion of a new definition of 'gross value'⁸⁴ changes the basis on which commission is calculated from the value at the time the estate is committed to the company to the value at the time of distribution to the beneficiaries. This rule now applies to deceased estates, though not to perpetual trusts. Fees may now be charged for work involved in preparing tax and duty returns,⁸⁵ and application may be made to the Supreme Court for additional commission when the administration of an estate involves carrying on a business or the direction of a company.⁸⁶

⁷⁹ *Ibid.*, s. 4.

⁸⁰ Local Government (Amendment) Act 1957 (No. 6151), s. 3.

⁸¹ *Ibid.*, s. 5.

⁸² s. 3.

⁸³ Trustee Companies Act 1957, s. 7. The Public Trustee has this power: Public Trustee Act 1948, s. 7 (1).

⁸⁴ Trustee Companies Act 1957, s. 2.

⁸⁵ *Ibid.*, s. 6.

⁸⁶ *Ibid.*, s. 5.

Motor Car

Loopholes in existing legislation are removed by the Motor Car (Amendment) Act 1957 (No. 6154). It is now an offence to own an unregistered vehicle which is driven on a public road—previously the driver alone was responsible.⁸⁷ Thus the former clumsy procedure of charging the owner with aiding and abetting is eliminated. The Chief Commissioner of Police is empowered to refuse a licence to any person who has been disqualified from driving by a court order in another state.⁸⁸ A court order in Victoria disqualifying a person from driving is to operate to cancel that person's current licence, if he has obtained one since committing the offence.⁸⁹ Penalties for overloading are imposed on the owner as well as on the driver or person in charge,⁹⁰ and any person requiring an employee to drive an overloaded vehicle is now committing an offence.⁹¹ Previously a gross load limit of six tons was provided, designed to protect light roads by limiting the weight of vehicles; now, for the convenience of modern multi-axled transports, an axle limit of five tons is substituted.⁹² Differences between New South Wales and Victorian law as to the maximum weights of vehicles allowed caused considerable annoyance to interstate operators; new limits now bring the Victorian provisions in line with those of New South Wales.⁹³

Property Law

Amendments to the Property Law Act 1928 are designed to facilitate registration of titles under the General Law. The necessity for such amendments is an added argument in favour of bringing all remaining 'old law' land under the operation of the Transfer of Land Act 1954. The Property Law (Amendment) Act (No. 6123) provides that the recitals in a conveyance are to be included in the memorial registered.⁹⁴ This should greatly improve the operation of the index in the office of the Registrar-General. The memorial is now 'certified' by a barrister or solicitor or a commissioner for taking affidavits, instead of being 'verified' upon oath before a judge, the Registrar-General or a specially appointed commissioner.⁹⁵ Registration can thus be made by post, which is much more convenient for persons residing in country areas. The receipt evidencing the time and fact of such registration need no longer be signed by the Registrar-General personally, his seal and the signature or initial of a deputy now sufficing.⁹⁶

⁸⁷ Motor Car (Amendment) Act 1957, s. 6.

⁸⁸ *Ibid.*, s. 7.

⁸⁹ *Ibid.*, s. 8.

⁹¹ *Ibid.*, s. 11.

⁹² *Ibid.*, s. 9.

⁹⁰ *Ibid.*, s. 10 (f).

⁹³ *Ibid.*, s. 13.

⁹⁴ Property Law (Amendment) Act 1957, s. 2 (a).

⁹⁵ *Ibid.*, s. 2 (a) & (c).

⁹⁶ *Ibid.*, s. 3 (c).

Education

The Education Act 1957 (No. 6143) is principally a consolidation, although some amendments and new provisions are included. The maximum number of members on a school committee is raised from seven to twelve;⁹⁷ mothers' clubs and parents' associations are given official recognition, and appropriate regulations may be made in relation to the control and use of funds raised by such bodies.⁹⁸ Because of recent advances in the treatment of deaf children section 60 imposes a duty on parents to provide for efficient and regular instruction of deaf children. The Adult Education Act 1946 is incorporated, with some amendments, including a provision making it possible for the Council of Adult Education to have the benefit of donations, legacies and bequests.⁹⁹

Consolidations

All the Acts relating to police offences, excluding those provisions concerning racing, are consolidated in the Police Offences (Consolidation) Act 1957 (No. 6069).

All provisions relating to horse, pony, trotting and dog racing and allied subject-matters have been extracted from the Police Offences and other Acts and are consolidated in the Racing Act 1957 (No. 6070).

The law for the encouragement and protection of state forests is consolidated in the Forests Act 1957 (No. 6073) which brings together legislation previously scattered throughout some twenty-five Acts.

Fiscal

Stamp Duty

The Stamps Act 1957 (No. 6104) embodies some important changes in principle and many smaller amendments designed to make the Act more workable and to bring it into line with present conditions.

Previously with transfers of marketable securities, notwithstanding a very substantial consideration, any inadequacy at all attracted to the whole transaction the higher rate of duty applicable to gifts. This was obviously inequitable and caused much resentment. So, follow-

⁹⁷ Education Act 1957, s. 13 (1).

⁹⁸ *Ibid.*, s. 15 (e) & (f).

⁹⁹ *Ibid.*, s. 77.

ing the suggestion of Latham C. J. in the *Cuming Campbell* case,¹ section 15 provides that with transfers of marketable securities duty may be imposed at two different rates: that appropriate to the expressed consideration upon the amount of such consideration at ordinary rates, and that appropriate to gifts on the extent of the inadequacy. With transfers or conveyances of land for an inadequate consideration, an element of benefaction was required before gift duty rates could apply. Now, section 24 applies the principle suggested by Latham C. J. to transfers or conveyances of land for an inadequate consideration as well.²

To cover cases where property the subject of an alleged gift is encumbered to its full value or beyond its full value, section 26 provides that the assumption of liability by the transferee will be a good and valid consideration for duty purposes.³ This measure will prevent arguments that a gratuitous transfer of heavily encumbered property should be treated as a gift of a small equity rather than as a sale for a substantial consideration represented by an assumption of liability under the encumbrance.

Prior to this Act instruments had to be stamped within one month of execution; this is now extended to three months,⁴ a change which should prove a boon to overworked solicitors. Transfers in escrow may now be held without incurring penalties or interest until their release.⁵ The Comptroller of Stamps is empowered to permit the amendment of instruments submitted for his opinion,⁶ and to amend or withdraw an assessment.⁷ Heading IX is reprinted in a more workable form, with some minor amendments.⁸ Section 27 provides for valuation of the subject of the deed or gift for duty purposes: with land a valuation is obtained from the Land Tax Commissioner,⁹ and with other property the Comptroller may decide to accept a valuation made by statutory declaration, to agree with the parties or to obtain a valuation. The existing schedule relating to duty on leases is re-enacted with some amendments: the basis of assessment on transfers and assignments of leases was originally dependent on the amount of consideration, but now an arbitrary rate is imposed based on the rental and the balance of the term.¹⁰ When leases contain

¹ *Collector of Imposts (Vic.) v. Cuming Campbell Investments Pty Ltd* (1940) 63 C.L.R. 619.

² For an explanation of these sections see H. A. J. Ford: 'Gift Taxation Affecting Trusts' (1957) 1 *M.U.L.R.* 287, 316-318.

³ *Ibid.*, 328-329.

⁴ Stamps Act 1957, s. 4 (1) b.

⁵ *Ibid.*, s. 4 (2).

⁶ *Ibid.*, s. 2.

⁷ *Ibid.*, s. 5.

⁸ *Ibid.*, s. 28.

⁹ Land Tax Act 1928, s. 72.

¹⁰ *Ibid.*, s. 23.

provisions for re-appraisal of rent or 'escalator' clauses, the instrument concerned must be re-submitted to the Stamps Office for re-assessment on a re-appraisal of rent.¹¹ To obviate difficulties as to the assessment of the rate on the creation or surrender of easements, a fixed fee of £1 is imposed.¹²

To alleviate the hardship imposed on vendors by the Stamps (Hire-Purchase Agreements) Act 1956, a change in the definition of 'purchase price' provides that Stamp duty will apply only on the balance of the purchase price outstanding after the deposit has been paid and a trade-in allowed, and not on the full value of the article, including interest charges and insurance payments, as before.¹³

State Savings Bank

The State Savings Bank (Amendment) Act (No. 6161) is designed principally to enable the State Savings Bank to compete more effectively with rival savings banks which have been established recently. In the main, this is done by giving the Commissioners (who are increased from six to seven in number)¹⁴ greater discretionary powers. Most significant is an amendment which now empowers the Commissioners to grant cheque facilities to all depositors.¹⁵ Advances may now be made to infants over eighteen years,¹⁶ and agencies may be established outside Victoria.¹⁷ Further, the Commissioners are empowered to vary the maximum amount on which interest shall be payable,¹⁸ and to allow a depositor to hold more than one account.¹⁹ Regulations which prescribed the proportion of funds to be put in various classes of investment are removed and the classes of security upon which the bank may lend are widened.²⁰ The definition of an 'eligible person' to whom money may be lent for home building is extended,²¹ and the Commissioners may now determine the maximum cost of a home thus financed.²² These changes render bank policy more flexible, abolishing previous restrictions which were probably unnecessary and certainly antiquated.

Audit

As some revision of the provisions of the Audit Act 1928 was regarded as necessary to give formal recognition to existing practices and to remedy certain technical administrative weaknesses, the Audit Act 1957 (No. 6111) was passed. This Act consolidates and amends

¹¹ *Ibid.*, s. 22.

¹² *Ibid.*, ss. 29, 30.

¹³ Stamps (Hire-Purchase Agreements) Amendment Act 1957 (No. 6081).

¹⁴ State Savings Bank (Amendment) Act 1957, s. 2 (1).

¹⁵ *Ibid.*, s. 4 (c).

¹⁶ *Ibid.*, s. 7.

¹⁷ *Ibid.*, s. 3 (f).

¹⁸ *Ibid.*, s. 4 (a).

¹⁹ *Ibid.*, s. 4 (b).

²⁰ *Ibid.*, s. 4 (h).

²¹ *Ibid.*, s. 5 (a).

²² *Ibid.*, s. 5 (b), (c).

the law relating to the collection and expenditure of public moneys, the audit of the Public Account, the audit of other accounts including those of public authorities which the Auditor-General is required by law to audit, and the accounting for and audit of government departmental stores.

Building, Housing and Development

Housing

Although the Housing Commission could serve a closing order on the occupier or owner of premises declared unfit for human habitation, this procedure proved ineffective where the occupier or owner elected to pay the fines imposed and refused to vacate the premises. Therefore, to expedite slum abolition, the Housing Act 1957 (No. 6090) empowers the Commission to prosecute or evict an occupier who fails to comply with a closing order.²³ The Housing Act 1954 required a vendor of property on which a demolition order had been issued to disclose the existence of that order to any purchaser; this requirement is now extended to property on which a repair order is issued.²⁴ Where premises are declared unfit for human habitation the Commission is to lodge a copy of such declaration with the Registrar-General or the Registrar of Titles.²⁵ The defect will then appear on the title and will thus be brought to the notice of a prospective purchaser. An important provision is that enabling the Commission to sell any land registered in its name to any person desirous of building his own house, subject to the qualifications that he has no other suitable house, that he possesses satisfactory finance,²⁶ and that he undertakes not to sell the house for five years without the consent of the Commissioner.²⁷ To ensure that the buyer is genuine it is provided that the contract will be void unless the erection of a house is commenced within eighteen months,²⁸ and that a transfer of the land need not be executed until building operations have commenced.²⁹

Commonwealth and State Housing Agreement

The Housing (Commonwealth and State Agreement) Act 1957 (No. 6075) was passed to ratify a housing agreement (contained in a schedule to the Act) made with the Commonwealth government

²³ Housing Act 1957, s. 2 (a).

²⁴ *Ibid.*, s. 2 (b).

²⁵ *Ibid.*, s. 2 (d).

²⁶ *Ibid.*, s. 3 (1).

²⁷ *Ibid.*, s. 3 (3) (c).

²⁸ *Ibid.*, s. 3 (3) (a).

²⁹ *Ibid.*, s. 3 (3) (b).

and replacing a similar agreement made in 1945.³⁰ Under the original agreement moneys were lent by the Commonwealth to the States for building purposes, principally to help ease the housing shortage, and in furtherance of this policy the present agreement provides for loans during each financial year until 1960 for the purposes of the erection of dwellings and the provision of finance to home builders.³¹ It is hoped to ensure the construction of a greater number of houses by making available a proportion of the loan moneys to home builders requiring finance. This money is channelled into the Home Builders' Account³² and is to be distributed to home builders through 'approved' building societies. The remaining and greater part of the loan money may be used by the State to implement its housing policy, with the proviso that an amount, not being more than 5 *per cent* of this money, is to be set aside to provide dwellings for serving members of the forces.³³

Housing Societies

The law relating to the formation, registration and management of co-operative housing societies is consolidated in the Co-operative Housing Societies Act 1957 (No. 6138). These societies play an important role in the State's economy and this is emphasized by the part they take in distributing a proportion of the loan moneys under the Commonwealth and State Housing Agreement. Some amendments are included in the Act—the objects for which such societies may be formed are extended, and the societies are empowered to advance money to discharge mortgages or other securities affecting land given by members with the prior approval of the society and of the registrar, and are thus enabled to take over loans that members have obtained on their own behalf.³⁴ Executors or administrators of deceased members are granted a limited membership enabling them to hold the shares of a deceased member.³⁵ Previously they were barred unless eligible themselves to become members, and in many cases this caused hardship to the deceased member's family. Provision is made for a voluntary mortgage insurance scheme to protect the family of a member who dies owing money to a society.³⁶ In this event, a policy taken out by him will meet the outstanding amount of his mortgage and the house will pass free of debt to his family. As ex-

³⁰ Housing (Commonwealth and State Agreement) Act 1946.

³¹ Schedule, s. 5 (1).

³² Housing (Commonwealth and State Agreement) Act 1957, s. 3.

³³ Schedule, s. 7 (1).

³⁴ Co-operative Housing Societies Act 1957, s. 5 (1) (a) (v), s. 34 (2) (a) (v).

³⁵ *Ibid.*, s. 24 (3) (e) & (4).

³⁶ *Ibid.*, s. 26 (2). Because of this provision the maximum amount of insurance cover given by Friendly Societies is increased from £1,000 to £3,000: Friendly Societies (Amendment) Act 1957 (No. 6145).

pulsion of a member might mean he would lose his home, the registrar of co-operative housing societies must be satisfied that any expulsion is reasonable before it is registered.³⁷

Miscellaneous

Documents which are required by any Act or subordinate legislation to be served by registered post may now be sent either by registered post or certified mail, and service is deemed to be complete when the letter would be delivered in the ordinary course of either service.³⁸

In *In Re Watts*³⁹ and in other decisions⁴⁰ it was held that a grant of probate or administration by the Registrar⁴¹ was not completely made until probate or letters of administration had actually been issued. This meant that between the Registrar's determination and the issue of probate or administration (which may often have been a lengthy period, as the documents cannot be issued until duty is paid) the executor or administrator had only provisional authority and could have had that authority destroyed retrospectively after he had undertaken acts in his capacity as executor or administrator. Passed on the recommendation of the Chief Justice's Law Reform Committee, the Administration and Probate (Amendment) Act 1957 (No. 6089) provides that a grant of administration or probate is deemed to have been made, in the case of a grant by the court, when the order for the grant has been taken out and filed in the Registrar's office and, in the case of the Registrar, when the order has been signed by the Registrar and sealed by the court.⁴² Thus in this respect the legal powers and competence of the personal representatives as from the date of the grant are placed beyond doubt.

Miners permanently incapacitated otherwise than through intentional self-inflicted injuries will be eligible for pensions after twenty years' service in the industry, provided they have contributed to the pension fund for five years.⁴³ The amount a pensioner may earn without suffering a reduction in his pension is increased,⁴⁴ and neither disability payments under the Workers Compensation Acts nor accident allowances are to be deducted.⁴⁵

³⁷ Co-operative Housing Societies Act 1957, s. 44 (3).

³⁸ Acts Interpretation (Service by Post) Act 1957 (No. 6126).

³⁹ [1934] V.L.R. 174.

⁴⁰ *In Re Seymour* [1934] V.L.R. 136; *Re Brien* [1953] V.L.R. 585.

⁴¹ Authorized by the Administration and Probate Act 1928, s. 7.

⁴² Administration and Probate (Amendment) Act 1957, s. 2.

⁴³ Coal Mine Workers Pensions (Amendment) Act 1957, s. 2 (No. 6068).

⁴⁴ *Ibid.*, s. 3.

⁴⁵ *Ibid.*, s. 4.

An amendment to the Police Offences Act 1957 (*supra*) makes it an offence to abandon a domestic animal.⁴⁶

A fund is to be established to compensate owners of stock destroyed for the purpose of preventing the spread of foot and mouth disease should an outbreak occur in Victoria.⁴⁷

To assist the campaign against the spread of fruit fly the Fruit and Vegetables Act 1928, section 44, is amended to give inspectors distinct power to stop and inspect vehicles⁴⁸ and this power is extended to members of the police force.⁴⁹

Pursuant to an agreement made between the Governments of Victoria and New South Wales the Victorian Grain Elevators Board is authorized to erect and operate silos at railway stations on lines extending into New South Wales from the Victorian railway system.⁵⁰

Provision is made to extend the trading hours for selling motor cars until 10 *p.m.* on Fridays and 6 *p.m.* on Saturdays.⁵¹

Owing to the uncertainty of the rights of employees with respect to long service leave due to pending offences awaiting decision, the time limit imposed for the taking of actions in cases of disputes concerning entitlement to leave is extended for a further period of twelve months.⁵²

An important safety measure empowers the Governor-in-Council to make regulations relating to gas appliances and fittings used in connection with liquified petroleum gas⁵³ and forbids the supply of such gas to any premises where gas fittings do not conform with the regulations.⁵⁴

Because of the difficulties of proving 'accosting' or 'soliciting' section 28 of the Police Offences Act 1957 (*supra*) is amended to make it an offence for a common prostitute to loiter in a public place for

⁴⁶ Police Offences (Cruelty to Animals) Act 1957, s. 2 (No. 6150).

⁴⁷ Foot and Mouth Disease Eradication Fund Act 1957 (No. 6162).

⁴⁸ Fruit and Vegetables (Inspection) Act 1957 (No. 6139), s. 2.

⁴⁹ *Ibid.*, s. 3.

⁵⁰ Grain Elevators (Border Railways) Act (1957) (No. 6087).

⁵¹ Labour and Industry (Amendment) Act 1957 (No. 6096), s. 2.

⁵² Labour and Industry (Long Service Leave) Act 1957 (No. 6130). The validity of State legislation providing for long service leave was considered in *Collins v. Charles Marshall* (1955) 92 C.L.R. 529; [1957] A.C. 274; and in *T. A. Robinson and Sons Pty Ltd v. Haylor* (1957) 97 C.L.R. 177. In both cases the provisions were held to be valid.

⁵³ Liquified Petroleum Gas Act 1957 (No. 6146), s. 5.

⁵⁴ *Ibid.*, s. 3.

the purposes of prostitution.⁵⁵ Any person who is shown to be aiding, abetting, procuring or compelling prostitution is deemed to be living on the earnings of a prostitute and thus guilty of an offence.⁵⁶

To assist the campaign for the eradication of rabbits in Victoria provision is made for the appointment of a trained scientist to carry out research associated with myxomatosis and rabbit control. The appointment is for not less than three years and the salary is to be paid from a special fund financed by the Wool Research Committee.⁵⁷

To obviate the previous necessity for legislation on the matter, the Governor-in-Council is given power to close level crossings on the recommendation of the Victorian Railways Commissioners.⁵⁸

The importance of the office of Solicitor-General is recognized by legislation placing the holder of that office in the same position regarding pensions as a judge of the Supreme Court. Where a holder of this office becomes a judge of the Supreme Court, time spent as Solicitor-General is regarded as time spent on the Supreme Court bench for pension purposes.⁵⁹

An applicant for a vacancy advertised in the Education Gazette may now appeal to the Teachers' Tribunal against a decision not to make an appointment to the vacancy.⁶⁰

Passed on the recommendation of the State Development Committee, the Tourist Act 1957 (No. 6155) is expressed to be for the purpose of encouraging the development of the Victorian tourist industry. A Tourist Development Authority is established⁶¹ and its function will be to publicize and develop the State's tourist attractions and to co-ordinate the activities of organizations interested in the development of the tourist industry.⁶²

The Trinity College (Melbourne) Trusts Corporation may now

⁵⁵ Police Offences (Prostitution) Act 1957 (No. 6124), s. 2.

⁵⁶ *Ibid.*, s. 3. The Court of Criminal Appeal, affirming Pilcher J. and refusing to follow *Silver and Others* (1956) 40 C.A.R. 32, has held that a person who lets a room or flat at an inflated rent to a prostitute for the express purpose of carrying on her trade could be found guilty of knowingly living on the earnings of a prostitute: *R. v. Thomas* (1957) 41 C.A.R. 121. The English Act is very similar in terms to the Police Offences (Prostitution) Act 1957 and thus it would appear highly probable that the letting of a room in such circumstances in Victoria would be held to be an offence within the meaning of this section.

⁵⁷ Rabbit (Biological Destruction) Act 1957 (No. 6065).

⁵⁸ Railways (Level Crossings) Act 1957 (No. 6118).

⁵⁹ Solicitor-General (Pension) Act 1957 (No. 6106).

⁶⁰ Teaching Service (Amendment) Act 1957 (No. 6140), s. 4.

⁶¹ Tourist Act 1957, s. 3.

⁶² *Ibid.*, s. 5.

borrow money on the security of the land it holds (with the consent of the Governor-in-Council). Trinity is thus given the power possessed by the other University Colleges.⁶³

To secure additional representation for trotting interests the Trotting Control Board is reconstituted by the Trotting Races Act 1957 (No. 6092). A new agreement between the Board and the Royal Agricultural Society setting out the financial obligations of the Board and the conditions of occupancy of the Showgrounds is included in a schedule. Night trotting has been showing a significant loss over the past ten years and it is hoped that these measures will improve its financial status.

The law relating to illegal use of boats is brought into line with that dealing with motor cars and other vehicles by the amending of section 207 of the Police Offences Act 1957 (*supra*) so as to make it an offence for any person to take or use a boat without the consent of the owner.⁶⁴

To ensure an effective 'follow up' campaign on the release of myxomatosis virus the Vermin and Noxious Weeds Branch of the Lands Department is empowered to proclaim a vermin eradication campaign, specifying the methods to be used by landowners. To this end inspectors are empowered to enter into the property of any unco-operative landowner and perform the control work.⁶⁵

The State Rivers and Water Supply Commission is authorized to pay the market value for land acquired for channels, instead of paying compensation based on municipal or rating values.⁶⁶

JENNIFER N. MUNTZ

⁶³ Trinity College Act 1957 (No. 6057).

⁶⁴ Police Offences (Unlawful Use of Boats) Act 1957 (No. 6134).

⁶⁵ Vermin and Noxious Weeds Act 1957 (No. 6137).

⁶⁶ Water (Amendment) Act 1957 (No. 6147) s. 10.