LEGISLATIVE SUMMARY

VICTORIA 1959

Administration of Justice

Parole

In accordance with recommendations of the Parole Board, the legislation governing the parole system is amended by the Crimes (Sentences and Parole) Act 1959 (No. 6572).

A problem was found to arise in cases where a person already undergoing a minimum term of imprisonment (that is, that part of his sentence which must be served before he is eligible to be released on parole) in respect of one sentence, is sentenced to a further term of imprisonment in respect of which a minimum term is required to be fixed. Section 535 of the Crimes Act 1958 directed that the judge before whom the prisoner is convicted in the later case should fix a composite minimum term in respect of the aggregate of the sentences and in substitution for the minimum term previously fixed. Practice has shown this procedure to be unsatisfactory; the judges often did not have all the information necessary to fix the composite minimum term properly, and, as a result, a number of cases occurred in which the fixing of minimum terms was not in accordance with the Act. Section 3 of the amending Act replaces section 535 with a new section which implements the Parole Board's proposals to deal with this problem. Under the new procedure, the judge fixes a minimum term having regard only to the term of imprisonment he imposes in the case before him. If he directs that the term of imprisonment be served concurrently with the sentence already being undergone, then the minimum terms also will be served concurrently; if the terms of imprisonment are cumulative, then the minimum terms will also be cumulative. Specific provision is also made for the order of service of different sentences and parts of sentences; fixed terms and minimum terms are to be served first, so that eligibility for parole is not unduly delayed. Section 4 inserts a new section in the Crimes Act 1958[1] which makes it clear that the failure to fix a minimum term in an incorrect manner will not invalidate the sentence itself. This provision is made retrospective. A sentence which has been irregularly imposed may be corrected, on the application of the Director of Penal Services, by the Full Court of the Supreme Court, or, in the case of a sentence by a court of petty sessions, by the appropriate court of general sessions.

Section 532 (2) of the Crimes Act 1958 requires the Parole Board to make annual reports to the minister with respect to persons held

[1] S. 537A.

in custody pursuant to an order of the Governor after having been acquitted on a trial for an indictable offence on the ground of insanity, and persons serving a sentence commuted to a life sentence. The Board expressed the view that such reports should also be made on all other persons in custody otherwise than on sentence for fixed terms. Accordingly, section 532 (2) is amended[2] so as to require the Board to submit annual reports on persons held in custody pursuant to sections 393,[3] 496,[4] and 569 (4)[5] of the Crimes Act 1958.

Procedure

Where an inquest has been interrupted by the death, retirement or illness of the presiding coroner, it has been the practice for another coroner to recommence the inquiry. This procedure involved unnecessary inconvenience, as proceedings before coroners are recorded in the form of written depositions and it would be quite practicable for another coroner to continue and complete the inquiry as if he had commenced it. Such a procedure is introduced by the Coroners (Amendment) Act 1959 (No. 6551).[6]

The procedure upon adjournment of cases in courts of petty sessions is set down in section 92 of the Justices Act 1958. In *Bond v. Mitchell,*[7] Hudson J. criticized the wording of section 92 (3), stating that the words 'and if the justices then and there present do not include any justice before whom the hearing up to the time of the adjournment did not take place they may subject to the provisions of this Act proceed with the further hearing' constituted an ambiguous and circuitous method of expressing Parliament's intention. Section 2 of the Justices (Amendment) Act 1959 (No. 6495) replaces the awkward double negative form of wording with a more positive expression, by which the intention of the provision is clearly shown to be that, where justices have heard the first part of a case in a court of petty sessions, the hearing may be resumed if the same justices are present; but if another justice is on the bench he must withdraw before the case can be resumed, or the whole hearing must be recommenced.

Section 26 of the Imprisonment of Fraudulent Debtors Act 1958 directs that the evidence of a judgment debtor who is examined on summons as to his means and ability to pay a judgment debt, should be taken down in the form of depositions by the clerk of the court.

[2] Crimes (Sentences and Parole) Act 1959, s. 2.

[3] Persons found unfit for trial on the ground of insanity, or declared insane when brought before the court to be discharged for want of prosecution.

[4] All persons whose capital sentence has been commuted. Previously only those whose sentence had been commuted to life imprisonment were reported on by the Board.

[5] Persons who, having been convicted of an offence, are found on appeal to the Full Court to have been insane at the time of committing the offence.

[6] S. 2. [7] [1959] V.R. 465.

Having regard to the rarity of appeals from such hearings, the time wastage occasioned by this laborious recording process is unwarranted and, on the recommendation of the Statute Law Revision Committee, section 26 is repealed.[8]

Persons within the various classes listed in section 120 of the Evidence Act 1958 as capable witnesses of statutory declarations relating to public revenues and public departments, may now also witness declarations which are made to public statutory corporations.[9] Previously, such declarations could only be made before commissioners and justices of the peace. The group of potential witnesses is extended to include any classified teacher.[10]

Commerce

Hire-Purchase

The Hire-Purchase Act 1959 (No. 6531) was proclaimed to come into operation on 1 July 1959. It replaces the legislation initially enacted in the Hire-Purchase Agreements Act 1936[11] which was unequal to the task of regulating the tremendous post-war volume of hire-purchase transactions. The new Act presents a comprehensive treatment of hire-purchase law and attempts to deal with all the known abuses of the hire-purchase trade and to give extensive new protection to hirers. It applies to all hire-purchase agreements, as defined, and agreements made in connection with hire-purchase agreements entered into after 1 July 1959.[12]

The expression 'hire-purchase agreement' is defined to include a letting of goods with an option to purchase, and an agreement for the purchase of goods by instalments. Agreements under which the property in the goods passes at the time of the agreement, or before delivery of the goods, and agreements under which the hirer is a dealer in goods of the same description as those comprised in the agreement, are excluded.[13] The definitions of 'hirer' and 'owner' are extended to include assignees and certain other successors in title.[14] Agreements to buy with payment by instalments are within the Act subject to the exceptions in respect of the passing of property. In some cases it may be difficult to decide whether an agreement is governed by the Goods Act or the Hire-Purchase Act—some agreements will be agreements to buy under both Acts, and there are significant differences in the application of the two Acts. Section 2 (3)

[8] Imprisonment of Fraudulent Debtors (Depositions) Act 1959 (No. 6571) s. 2.
[9] Evidence (Amendment) Act 1959 (No. 6540) s. 2 (a), (b). [10] *Ibid.* s. 2 (c).
[11] In the 1958 consolidation of Victorian Statutes, this legislation became Part X of the Instruments Act 1958.
[12] Hire-Purchase Act 1959, s. 1 (4). Agreements made prior to 1 July 1959 continue to be governed by Part X of the Instruments Act 1958, which is otherwise repealed by s. 1 (5). [13] *Ibid.* s. 2 (1). [14] *Ibid.*

strikes at a device which was used to avoid the provisions of the 1936 Act; where two or more documents, none of which in itself would amount to a hire-purchase agreement, are used and their effect is that there is a bailment of the goods and either the bailee may buy the goods or the property in the goods will or may pass to the bailee, the agreements are deemed to constitute a single hire-purchase agreement for the purposes of the Act.

Part I of the Act deals with the formation and contents of hire-purchase agreements. Before the agreement itself is entered into or any offer is signed by the hirer, the owner or dealer must give the hirer a written statement in the form of the First Schedule, which summarizes all his financial obligations under the proposed agreement.[15] Every hire-purchase agreement is required to be in writing and signed by the hirer and all other parties.[16] Failure to comply with this requirement renders the agreement unenforceable by the owner.[17] The agreement must contain all the important terms listed in section 3 (2). All items which go to make up the sum payable under the agreement must be set out in tabular form,[18] enabling the hirer to see what he is paying for the goods and what imposts he is paying over and above the cash price. The owner is also required to serve on the hirer, within twenty-one days after the making of the agreement, a copy of the agreement (which must be in the prescribed form), a copy of or statement of the terms of any relevant insurance policy, and a notice in or to the effect of the Second Schedule, which sets out the hirer's rights under the Act.[19] Sections 3 and 4 state the consequences of non-compliance, and the general penalty imposed by section 39 applies to any contravention or non-compliance (where no other penalty is expressly provided) which is made an offence against the Act. Failure to comply with the prescribed form and content of hire-purchase agreements renders the owner guilty of an offence.[20] If any provision of section 3 is not complied with, the amount to be paid by the hirer is reduced by the amount of the terms charges, but otherwise the agreement remains in force.[21] Failure to observe the requirements of section 4 does not avoid the agreement.

The 1936 Act contained no provision relating to implied conditions and warranties, and this was one of the most vexed questions in hire-purchase law prior to the 1959 Act. Injustice frequently occurred because of the tripartite nature of the hire-purchase transaction, which placed difficulties in the way of the hirer, because there was no contract between him and the dealer, and he could not sue the finance company since the transaction did not amount to an agreement to

[15] *Ibid.* s. 3 (1). [16] *Ibid.* s. 3 (2) (a), (b). [17] *Ibid.* s. 3 (5).
[18] *Ibid.* s. 3 (2) (e). [19] *Ibid.* s. 4. [20] *Ibid.* s. 3 (3). [21] *Ibid.* s. 3 (4).

sell within the meaning of the Goods Act.[22] The courts had taken great pains to seek ways of surmounting this difficulty.[23] The problem is obviated by sections 5 and 6 of the new Act.

Sections 5 (1) (a), (b) and (c) imply respectively a warranty of quiet possession, a condition that the owner will have the right to sell the goods at the time the property is to pass[24] and a warranty that the goods will be free from all encumbrances at the time when the property is to pass (other than any encumbrance created with the consent of the hirer). Presumably authorities on the corresponding provisions of the Goods Act 1958[25] will be used in construing section 5 (1). Section 5 (2) implies in every hire-purchase agreement a condition that the goods shall be of merchantable quality.[26] However, no condition is implied as regards defects in new goods of which neither the owner nor the dealer could reasonably be aware at the time the agreement is made, nor where the hirer has examined the goods or a sample as regards defects which the examination ought to have revealed.[27] In the case of second-hand goods, no condition is implied if the agreement contains a statement that the goods are second-hand and all conditions and warranties are expressly negatived —the onus being on the owner to prove that the hirer has acknowledged in writing that the statement was brought to his notice. This condition as to merchantable quality is wider in scope than that in the Goods Act 1958, since it is not subject to the requirement that the goods be bought by description from a dealer in goods of that description. Section 5 (3) implies a condition that if the hirer expressly or impliedly has made known the purpose for which he requires the goods, they shall be reasonably fit for that purpose.[28] The

[22] *Helby v. Matthews* [1895] A.C. 471. The Court of Appeal in *Felston Tile Co. v. Winget Ltd* [1936] 3 All E.R. 473 expressed the view that a hire-purchase agreement is a conditional contract of sale of goods and therefore within the protection of the Sale of Goods Act, but Lowe J. in *Woods Radio Exchange v. Marriott* [1939] V.L.R. 309 refused to follow these remarks which, he pointed out, were *obiter* and not reconcilable with the decision of the House of Lords in *Helby v. Matthews*. He also demonstrated the conceptual difficulties which would attend the contrary position.

[23] *E.g. Drury v. Victor Buckland Ltd* [1941] 1 All E.R. 269; *Brown v. Sheen and Richmond Car Sales Ltd* [1950] 1 All E.R. 1102; *Shanklin Pier v. Detel Products Ltd* [1951] 2 All E.R. 471; *Andrews v. Hopkinson* [1956] 3 All E.R. 422.

[24] S. 5 (1) (b) does away with a source of some argument before the Act. In *Karflex Ltd v. Poole* [1933] 2 K.B. 251 the question concerned the point of time at which the owner should be deemed to warrant that he has to pass the property in the goods. Was it sufficient if he had title at the time when the hirer could exercise his option to purchase, or should he have title when entering into the agreement? The Divisional Court (Acton and Goddard JJ.) took the latter view, but Dean, *Hire-Purchase Law in Australia* (2nd ed. 1938) 113-115, criticized this decision as casting an unnecessary burden on the owner. S. 5 (1) (b) now adopts the latter opinion.

[25] Goods Act 1958, s. 17. [26] *Cf.* Goods Act 1958, s. 19 (b).

[27] S. 5 (2) appears to overcome the difficulty which arose in *Thornett v. Beers and Son* [1919] 1 K.B. 486 in relation to the English provision corresponding to s. 19 (b) of the Goods Act 1958.

[28] This provision is free of the qualifications which limit the operation of s. 19 (a) of the Goods Act 1958.

exception as to second-hand goods applies here also. The owner is given a right of indemnity against the dealer for damage suffered by him as a result of the operation of section 5 (3).[29] An important difference between section 5 and the corresponding Goods Act provisions is that it appears that parties cannot contract out of the provisions of the Hire-Purchase Act.[30] The hirer thus gets greater protection than the ordinary buyer.

The problem of misrepresentation by dealers or owners or any person acting for either is dealt with by section 6. Section 6 (1) makes the dealer for this purpose the agent of the owner, so that a hirer may rescind for misrepresentation even though at the date of the representation the hire-purchase company is not the owner of the goods and the dealer has no authority to make statements on its behalf. Section 6 (1) (b) seeks to give the hirer some rights against the dealer in respect of representations or statements inducing entry into the hire-purchase contract. In cases prior to the Act, for example *Andrews v. Hopkinson*,[31] a problem arose because of the difficulty of establishing a contractual relationship between dealer and hirer. Section 6 (1) (b) gives the hirer 'the same right of action in damages' against the person making the representation and any person for whom he is acting as the hirer would have if he purchased the goods as a result of the negotiations. It would appear that this only gives the hirer a remedy if the misrepresentation is fraudulent; apart from fraud, common law gives no remedy for misrepresentation, and damages are not a form of equitable relief.

Division 2 of Part II creates new statutory rights for hirers. The hirer is entitled to a copy of the agreement and a statement of his present position as to the amount already paid, the unpaid amount due, and the amount to become payable. The owner must supply these documents within fourteen days of a request by the hirer at any time before the final payment under the agreement has been made, except where the owner has previously supplied such documents within three months of the request.[32] The penalty for non-compliance is a fine not exceeding £50 and until the default is remedied the owner may not enforce the agreement.[33]

Section 8 excludes any possibility of the hire-purchase company taking advantage of the fact that a hirer has two or more agreements

[29] Hire-Purchase Act 1959, s. 5 (4).

[30] *Ibid.* s. 28 (1); see also *Newlands v. Argyll General Insurance Co. Ltd* (1959) 76 W.N. (N.S.W.) 131.

[31] [1956] 3 All E.R. 422. Plaintiff acted on the representation of a dealer as to the condition of a car by accepting delivery and entering into a hire-purchase agreement. McNair J. held that the representation amounted to a warranty, enforceable against the dealer, which was supported by the consideration that the dealer should cause a finance company to enter into an agreement with plaintiff. There are obvious conceptual difficulties in this result.

[32] Hire-Purchase Act 1959, s. 7 (1). [33] *Ibid.* s. 7 (2).

current with the company at the same time; it operates to prevent a company from keeping alive its right to repossess under all the agreements until they are all discharged. This provision appears to be unique in British Commonwealth hire-purchase legislation.

The hirer has the right, subject to the consent of the owner, to assign his interest; the owner's consent may not be unreasonably withheld, nor may the owner make any charge for its consent.[34] The owner may, however, as a condition of consent require that all defaults under the agreement be remedied, including a covenant by the assignee to perform all the hirer's obligations under the agreement, and to pay the reasonable costs of the assignment incurred by the owner. The hirer remains personally liable for all payments and duties under the agreement.[35]

Where a hire-purchase agreement requires the hirer not to remove the goods from a particular place, courts of petty sessions have power to allow the goods to be removed to another place, which then becomes the place to which the agreement refers.[36]

The hirer has the right to finalize the agreement at any time by exercising his option to purchase. He is entitled to proper rebates of terms charges for early completion, and if he desires to cancel any associated insurance or maintenance contracts, a rebate in respect of those contracts must be allowed. By section 11 (1), the hirer may complete his agreement by giving notice in writing to the owner of his intention and tendering to the owner the 'net balance due' under the agreement, that is, the balance originally payable less any instalments paid by the hirer (excluding the deposit) and less the 'statutory rebate for terms charges' and, where required, the statutory rebate for insurance and maintenance charges.[37] These statutory rebates are defined in section 2 (1) and are based on an actuarial calculation. Where the owner has taken possession of the goods, the hirer must also pay the reasonable costs of repossession.[38]

The hirer may determine the agreement at any time by voluntary return of the goods to the owner during ordinary business hours at the owner's place of business or to another place specified for that purpose in the agreement.[39] Section 12 (6) deals with a very controversial issue. Prior to this Act, the common inclusion in hire-purchase agreements of 'minimum hiring clauses' designed to protect the owner's interest made voluntary return of goods very expensive; these clauses were one of the chief hardships suffered by hirers. Every hire-purchase agreement had to give the hirer the right to return the goods, otherwise it would not come within *Helby v. Matthews*[40] (which established the legal basis for the existence of hire-purchase

[34] *Ibid.* s. 9 (1). [35] *Ibid.* s. 9 (2). [36] *Ibid.* s. 10. [37] *Ibid.* s. 11 (2).
[38] *Ibid.* s. 11 (3). [39] *Ibid.* s. 12. [40] [1895] A.C. 471.

agreements), but most agreements subjected the hirer returning goods to payments of the order of 50-100 *per centum* of the full price, irrespective of the time the goods had been held on hire, of the value of the goods and of the loss incurred by the owner. This situation was obviously unjust and appeared to impose an oppressive penalty.[41] The 1936 Act gave no protection against these clauses but now section 12 (6) provides that the owner may only recover either the amount (if any) required to be paid in such circumstances under the agreement, or the amount (if any) the owner would have been entitled to recover if he had taken possession of the goods at the date of termination, *whichever is the less*. Further protection is afforded the hirer by section 28 (a), (b) and (c), which makes void attempts to impose heavier liabilities on the hirer than those imposed by the Act.

The Act extends the regulation of the rights of both owner and hirer on repossession of the goods by the owner. Minimum hiring clauses are excluded here also. In general, on repossession, the owner is entitled to recover only the loss incurred through breach of the agreement. Before repossession, the owner must serve on the hirer a notice in the form of the Third Schedule, with a period of notice of not less than seven days,[42] though this requirement need not be observed if the owner can show reasonable grounds for believing that the goods will be removed or concealed by the hirer.[43] This exception is not a significant loophole for the owner, since in the nature of things, knowledge of such a situation, much less the means of proof, would be very rare. After repossession, the owner must serve on the hirer (and any guarantor), within twenty-one days, a notice in the form of the Fourth Schedule, which attempts to set out in simple language the hirer's rights and liabilities under the Act, what he can do to re-instate the agreement, to complete it, or to recover certain amounts.[44] To this end, the owner may not sell or part with possession of the goods for twenty-one days from the date of the service of the notice without the hirer's consent.[45] If the owner fails to comply with the requirement of notice, all his rights under the agreement cease and determine, but if the hirer exercises his right to recover the goods, the agreement remains in full force as if notice had been properly given by the owner.[46]

The hirer is allowed a proportional rebate of terms charges attributable to the period of the agreement unexpired after the determination, and similar rebates on amounts charged for insurance and

[41] In *Cooden Engineering Co. Ltd v. Stanford* [1953] 1 Q.B. 86 the Court of Appeal held that the doctrine of penalties did apply to minimum hiring clauses. This decision was followed by Sholl J. in *Universal Guarantee Pty Ltd v. Carlile* [1957] V.R. 68. [42] Hire-Purchase Act 1959, s. 13 (1).
[43] *Ibid.* s. 13 (2). [44] *Ibid.* s. 13 (3). [45] *Ibid.* s. 14. [46] *Ibid.* s. 13 (4).

maintenance.[47] An upper limit is set on what the owner may recover: a sum which, together with 'the value of the goods at the time of the owner so taking possession' and all payments under the agreement by the hirer, would not amount to more than the 'net amount payable' on the goods.[48] The 'net amount payable' is defined as 'the total amount payable less the statutory rebates for terms charges, insurance and maintenance'.[49] With regard to 'the value of the goods', Sholl J. in *Universal Guarantee Pty Ltd v. Carlile*,[50] in considering the definition in the old Act where 'value' was defined as 'the actual value . . . at the time' less the owner's reasonable costs of repossession,[51] held that the plaintiff finance company could not claim the wholesale value as the 'actual value' of the goods, though he did not assert that the wholesale price could in no case be the actual value. The definition in the 1959 Act seems to adopt the view of Sholl J., when it says 'the best price that could reasonably be obtained . . .'[52] less the owner's reasonable costs of repossession. It seems that the 'best price' could still be in some cases the wholesale price, especially where there are agreements between the dealer and finance company covering this exigency. On the other hand, the courts might take the view that such contracts could not affect the definition, because otherwise the Act could be defeated by terms in such contracts putting a very low price on the goods. Section 15 (3) places on the owner the onus of proving that the price actually obtained by him was the best price reasonably available. It will thus be *prima facie* the retail price unless the owner satisfies the court that it should be something else. As a condition precedent to recovery of excess charges, the hirer must give the owner a notice, within twenty-one days of receipt of the owner's notice in the form of the Fourth Schedule, setting out the amount he claims as returnable and the amount he claims to be the value of the goods.[53]

An unsatisfactory situation in the previous law is also disposed of by section 15. Under the old Act,[54] an owner suing, on repossession under a minimum hiring clause, could not get more than the net purchase price. But in *Johnston's Pty Ltd v. Nettleton*,[55] the owner sued for arrears of hire, and the High Court held that this provision did not extend to such an action; therefore the owner could recover an amount greater than the net purchase price. This decision created a conflict with the provision in the Act which allowed the hirer to recover amounts in excess of the net purchase price.[56] The Court

[47] *Ibid.* s. 15. [48] *Ibid.* s. 15 (1) (c). [49] *Ibid. s.* 15 (2) (a). [50] [1957] V.R. 68, 72.
[51] Instruments Act 1958, s. 98 (3); formerly Hire-Purchase Agreements Act 1936, s. 3 (3). [52] Hire-Purchase Act 1959, s. 15 (2) (b) (i). [53] *Ibid.* s. 15 (4).
[54] Instruments Act 1958, s. 99; formerly Hire-Purchase Agreements Act 1936, s. 4.
[55] (1943) 68 C.L.R. 190.
[56] Instruments Act 1958, s. 98; formerly Hire-Purchase Agreements Act 1936, s. 3.

said the latter provision referred only to excess payments made under the agreement, whereas in the case before it, the excess was paid by order of the court. This unsatisfactory result is abrogated by section 15 (1) (c) of the new Act, which effectively limits the owner to the net purchase price. Section 16, which substantially corresponds to a provision of the old Act,[57] preserves the hirer's right to re-instate the agreement after repossession by the owner. The court has power, in proceedings in relation to repossession, to vary any order or judgment of any court in order to give effect to section 15.[58]

Part III of the Act deals with the rights and liabilities of guarantors. Section 18 merely reproduces the old provisions on this matter,[59] but section 19 gives additional protection to guarantors so as to ensure that an owner will not be able to evade the provisions protecting the hirer by imposing heavier liabilities on the guarantor.

Part IV is entirely new legislation, dealing with insurance of hire-purchase goods. It applies to all contracts of insurance of goods in respect of which any sum payable under the contract is included in the total amount payable under a hire-purchase agreement.[60] Section 20 eradicates several abuses in the hire-purchase trade; insurance premiums exacted in connection with hire-purchase agreements were often excessive, and secret commissions were derived by some hire-purchase companies and dealers from insurance transactions associated with hire-purchase. The court may excuse the hirer from liability for failure to perform or observe terms of the contract of insurance if it appears that the insurer was not prejudiced by such failure.[61] This opens the way for an inroad on the strict common law rules relating to contracts of insurance whereby the liability of the insurer may be completely discharged by any technical breach of the contract, no matter how insubstantial. Requirements are laid down as to the contents of contracts of insurance of hire-purchase goods, and the statement to be served on the hirer pursuant to section 4.[62] Section 22 (2) strikes at '*Scott v. Avery* clauses', that is, any provision in a contract which first requires an award to be made by an arbitrator before recourse may be had to the courts in the case of any dispute.[63] The subsection provides that clauses requiring disputes arising out of the contract of insurance to go first to arbitration, shall not bind the hirer, though the right of the parties to agree, after a dispute has arisen, to submit to arbitration, is preserved by section 20 (3).

[57] Instruments Act 1958, s. 100; formerly Hire-Purchase Agreements Act 1936, s. 5.
[58] Hire-Purchase Act 1959, s. 17.
[59] Instruments Act 1958, s. 102; formerly Hire-Purchase Agreements Act 1936, s. 7.
[60] Hire-Purchase Act 1959, s. 23. [61] *Ibid.* s. 21. [62] *Ibid.* s. 22 (1).
[63] Such clauses were held valid and not to constitute ouster of the court's jurisdiction in *Scott v. Avery* (1856) 5 H.L.C. 811.

Though some other Australian State Acts have done so, this Act does not fix maximum rates of interest that may be charged in hire-purchase agreements except as to interest on overdue instalments.[64] But section 24 gives a power to the court, in any proceedings under the Act or arising out of a hire-purchase transaction, or in proceedings for such relief by the hirer (or his guarantor) under section 24 (4), to re-open the transaction and take an account between the parties 'where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that a Court of Equity would give relief'. The Moneylenders Act 1958, section 28, contains an almost identical provision which has long been on the English and Victorian statute books; guidance may also be obtained from decisions on the corresponding provision in New South Wales.[65] It appears that the clause is to be read disjunctively—relief is not confined to cases where a Court of Equity would have given it.[66] The provision seems not to have been applied in any case of a hire-purchase agreement since it was first inserted into the New South Wales Act in 1947, though it would appear to be a valuable residuary protection to the hirer.[67] Section 24 (3) gives the court power to join as a party to the action any other person who has shared in the profits or has any other beneficial interest in a transaction held by the court to be harsh and unconscionable. Section 24 (6) puts a time limit on institution by the hirer (or his guarantor) of proceedings under this section. The court may afford special protection to a farmer by ordering the return of agricultural implements which have been repossessed.[68]

The conflict between the right of a repairer of hire-purchase goods to a lien, and the rights of the owner of the goods, had given rise to problems which did not receive uniform judicial treatment.[69] Section 26 gives the repairer the same right to a lien as he would

[64] Hire-Purchase Act 1959, s. 28 *(d)*.

[65] Hire-Purchase Agreements Act 1941 as amended, s. 9 (N.S.W.).

[66] This was the view taken by the House of Lords in *Samuel v. Newbold* [1906] A.C. 461, a decision on the Moneylenders Act 1900 (Eng.), which had a similar provision. Lord James said that excessive interest in itself may be sufficient to render a transaction harsh and unconscionable, and so liable to be re-opened by the court to relieve the debtor: [1906] A.C. 461, 473.

[67] It was discussed in *Bigeni v. Drummond* (1955) 71 W.N. (N.S.W.) 242, where an attempt was made to have a hire-purchase transaction re-opened on the ground that a flat rate of interest of 13·6 *per centum* in relation to a second-hand truck was harsh and unconscionable. Although the flat rate amounted to an effective rate of about 27 *per centum*, Maguire A-J., in chambers, held that it was not harsh and unconscionable and was not an unusual rate of interest to be charged on second-hand motor vehicles. He refused the application to re-open the transaction. His Honour took into account the depreciation rate of the goods, the risk to the owner and the practice of the trade. He pointed out that the provision was not meant to replace an action for damages and therefore refused to consider the additional claim of the hirer that the transaction was harsh and unconscionable because the goods were completely unsuitable for the purpose for which they were required.

[68] Hire-Purchase Act 1959, s. 25.

[69] Compare *Albemarle Supply Co. v. Hind & Co.* [1928] 1 K.B. 307 with *Fisher v. Automobile Finance Co. of Australia Ltd* (1928) 41 C.L.R. 167.

have if the hirer were the owner of the goods, but the lien is not enforceable against the owner if the hire-purchase agreement contains a provision prohibiting the creation of such a lien by the hirer, and the repairer had notice of that prohibition before doing the work on the goods. A problem raised here is whether 'notice' means actual or implied notice, or actual notice only. The latter construction would appear to be preferable.[70]

Hire-purchase goods which at the time of the agreement are not fixtures to land are not to be treated as acquiring that character while the agreement remains in force,[71] but the owner is prevented from repossessing goods which have been affixed to a dwelling-house or residence, if a third party has *bona fide* acquired for value an interest in the land without notice of the owner's rights.[72] This provision greatly simplifies the previous law but it presents some difficulties itself. Section 27 (2) says the owner shall not be entitled to 'repossess' goods affixed to the land—it is not clear whether this means that if the agreement is determined by some other means than under sections 13-17, then section 27 (2) will not apply, or whether 'repossess' is used in the general sense of the owner getting his goods back, no matter how the agreement is terminated. The latter would seem to be the correct interpretation when the section is read as a whole. Secondly, it is not clear whether goods affixed during the period of the hiring will become fixtures at the end of the period or not.

Section 28 is a general provision preventing contracting out of the Act, and ensuring that the new protection given to the hirer is not whittled away or evaded. Attempts to oust the Act are declared void and of no effect. Section 28 (g) prevents the owner or his agent from entering any premises to take possession of goods under a hire-purchase agreement. If the hirer refuses to deliver up the goods pursuant to the statutory notices, the owner is left to the expensive and time-consuming procedure of taking action before a court under section 36. This places a considerable new burden on owners. Section 28 (i) provides a general residuary protection against any agreement to exclude, modify or restrict the operation of any provision of the Act.

Section 29 deals with commissions paid by hire-purchase companies to dealers. A commission not exceeding one-tenth of the total terms charges may be paid to a dealer who guarantees the performance of the agreement—this is a form of *del credere* agency—but all other commissions are outlawed. Section 30 prohibits a complicated form of transaction by which it was sought formerly to evade the legis-

[70] *Greenwood v. Leather Shod Wheel Co.* [1900] 1 Ch. 421, 436; *Manchester Trust v. Furness* [1895] 2 Q.B. 539, 545. But it could be argued from some of the reasoning of the High Court in *Fisher's* case (1928) 41 C.L.R. 167 that implied notice would be enough. [71] Hire-Purchase Act 1959, s. 27 (1). [72] *Ibid.* s. 27 (2).

lation. Section 31 prevents the existence of collateral securities in a hire-purchase transaction from laying a heavier burden on the hirer (or guarantor). A penalty of a fine not exceeding £200 or three months' imprisonment is imposed for any knowingly false statements by a dealer in any intended hire-purchase agreement or offer in writing.[73] The owner is afforded some protection against fraudulent hirers.[74]

Section 36 (1) lays down the proceedings to be taken by an owner who is entitled to repossess the goods when the hirer or any person in possession of the goods fails or refuses to deliver them up. Failure to comply with an order under this section involves liability to the general penalty for an offence against the Act under section 39. The court may extend, on application, any time prescribed by the Act for the service of any notice or other document.[75] The general effect of all these provisions is, from the viewpoint of owners, rather unsatisfactory, compared with the easier requirements of the old Act, and may induce finance companies to rely more on agreements with their dealers.

Section 39 raises the general penalty for any contravention of or failure to comply with a provision of the Act to a fine not exceeding £200 where no other penalty is expressly provided.

In general, this Act imposes considerably greater burdens on owners and confers correspondingly greater protection on hirers than the legislation introduced in 1936. By attempting to protect hirers from all possible impositions and oppressions, the Act seeks to balance the unequal situation caused by the owner's superior position.

Frustrated Contracts

The Frustrated Contracts Act 1959 (No. 6539), which is modelled on the English Law Reform (Frustrated Contracts) Act 1943,[76] seeks to avert the possibility of hardship being suffered by the parties to a contract as the result of the operation of the common law doctrine of frustration.

The Act makes two fundamental changes in the law. It amplifies the decision in the *Fibrosa* case[77] by permitting the recovery of moneys paid even though at the date of the frustrating event there has been no total failure of consideration.[78] A party who has done work in performance of the contract prior to the frustrating event may claim compensation for any benefit thereby conferred on the other party.[79] But perhaps the most notable feature of the Act is the

[73] *Ibid.* s. 32. [74] *Ibid.* ss. 33, 34. [75] *Ibid.* s. 35.

[76] 6 & 7 Geo. 6, c. 40. For a full account of this Act see Glanville Williams, *The Law Reform (Frustrated Contracts) Act 1943* (1944), and McNair, 'The Law Reform (Frustrated Contracts) Act 1943' (1944) 60 *Law Quarterly Review* 160.

[77] *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd* [1943] A.C. 32.

[78] Frustrated Contracts Act 1959, s. 3 (2). [79] *Ibid.* s. 3 (3).

discretion given to the courts to take into consideration the expenses and commitments of both parties prior to the frustration of the contract.[80] Parties may claim for moneys paid to third parties,[81] and overhead expenses and work or services performed,[82] but not insurance payments unless there is a statutory or contractual obligation to insure.[83]

These provisions are only to be applied in so far as they are consistent with any provision in the contract for discharge by frustration or impossibility.[84] If a severable part of the contract has been performed, the Act will apply only to the remainder.[85] The Act does not apply to charter-parties, except time charter-parties or charter-parties by way of demise, nor to any contract for the carriage of goods by sea.[86]

There are four points of difference between this Act and the English legislation. The English Act's restricted application to contracts 'governed by English law'[87] is omitted. Secondly, 'time of discharge' is defined as meaning 'the time at which the contract becomes impossible of performance or is otherwise frustrated or at which it is avoided by the operation of section 12 of the Goods Act 1958'.[88] A provision is included clarifying the nature of an action under the Act as being one 'founded on simple contract', and stating the appropriate time for accrual of a cause of action for the purposes of the Limitations of Actions Act 1958, as the time of discharge.[89] Finally, as can be seen from the definition of 'time of discharge', there is no exclusion from the provisions of the Act of cases governed by section 12 of the Goods Act 1958. The complexities which have arisen in England as a result of the exclusion of contracts governed by the corresponding provision in the English Sale of Goods Act 1893[90] are thus avoided.

Shares

At the request of the Trustee Companies Association, and as recommended by the Chief Justice's Law Reform Committee and the Statute Law Revision Committee, section 11 (3) of the Trustee Act 1958, which limits the power of trustees to deal in shares, is amended to enable trustees to engage in 'take-over transactions on behalf of their beneficiaries, and to accept offers of this nature, subject to acceptance by seventy-five *per cent* of the shareholders'.[91]

[80] *Ibid.* s. 3 (2). [81] *Ibid.* s. 3 (3) (a). [82] *Ibid.* s. 3 (4).
[83] *Ibid.* ss. 3 (5), 4 (5) (b).
[84] *Ibid.* s. 4 (3). [85] *Ibid.* s. 4 (4). [86] *Ibid.* s. 4 (5) (a).
[87] Law Reform (Frustrated Contracts) Act 1943, s. 1 (1) (Eng.).
[88] Frustrated Contracts Act 1959, s. 2.
[89] *Ibid.* s. 5.
[90] Law Reform (Frustrated Contracts) Act 1943, s. 2 (5) (c) (Eng.).
[91] Trustee (Amendment) Act 1959 (No. 6511) s. 2.

Public Health

Mental Health

The Mental Health Act 1959 (No. 6605), which repeals the Mental Deficiency Act 1958 and the Mental Hygiene Act 1958,[92] consolidates and amends the law concerning this subject, which in recent years has gained recognition as a matter of fundamental social importance.

Perhaps the most significant aspect of the Act is its thorough reform of relevant legislative terminology. Coloured words such as 'lunatic' and 'idiot' have been withdrawn,[93] in favour of 'mentally ill' and 'intellectually defective'. Most important, however, is the replacement of the stigmatizing certification system by a more neutral process of 'recommendation'.

Part I deals with the constitution, functions and powers of the Mental Health Authority (formerly the Mental Hygiene Authority). Part II is concerned with institutions for the care of the mentally afflicted—psychiatric hospitals, formerly known as 'receiving houses', mental hospitals for the treatment of the 'mentally ill', training centres for the 'intellectually defective' and repatriation mental hospitals for ex-servicemen.[94] The Mental Health Authority may subsidize private training centres for mentally defective patients, provided that such institutions satisfy the standards and conditions prescribed by the Authority.[95] Private mental homes must have a medical practitioner in attendance.[96] An innovation is a provision authorizing the establishment of Day Training Centres,[97] which will enable intellectually defective patients to retain the advantages of domestic affection whilst receiving trained assistance. In addition, section 40 provides for the registration of psychiatric treatment centres for in-patients of public hospitals.

Part III relates to the admission of patients to these institutions. The provisions for voluntary patients are in line with the procedure set out in the Mental Deficiency Act 1958. In place of the old system of certification of insanity, a patient may be admitted to a psychiatric hospital on the production of a request by any person accompanied by a statement of the prescribed particulars and recommendation of a medical practitioner based on recent examination.[98] Admission to a mental hospital or private mental home is permitted on the recommendations of two medical practitioners,[99] and admission to a training centre is given at the request of any person accompanied by a statement of particulars and approved by a medical practitioner.[1]

[92] Mental Health Act 1959, s. 2 (1).

[93] Unfortunately, 'lunatic' appears several times in the Second Schedule but it has been removed from the Act itself.

[94] Mental Health Act 1959, s. 24, consolidating the provisions of the Mental Hygiene Act 1958, ss. 38, 44, 209. [95] *Ibid.* s. 31. [96] *Ibid.* s. 34 (1).

[97] *Ibid.* s. 35. [98] *Ibid.* s. 42. [99] *Ibid*, s. 43 (1). [1] *Ibid.* s. 44.

The provisions with regard to judicial admissions are basically unchanged. Division 4 of Part III deals with 'security patients', formerly known as 'the criminally insane'. In addition to the provisions existing prior to the Act, the Chief Secretary is empowered to arrange for the admission of a person imprisoned or detained for some offence punishable by not more than twelve months' gaol, if he appears to be mentally ill or intellectually defective.[2] A court, instead of imposing a conviction upon a person, may order that he be admitted to an appropriate institution.[3]

Part IV, which provides for the administration of mental institutions, is basically similar to the repealed legislation, though it gives more effective protection to patients, especially with regard to their right to interview official visitors[4] and to their applications for reconsideration of their case.[5] Elaborate provisions protect patients from unlawful and unnecessary physical restraint or seclusion.[6]

Part V pertains to general matters and offences against the Act. Penalties are rationalized.[7] Section 102 sets out the conditions under which surgical operations and other treatment for the physical health of mental patients may be carried out. Section 103 exonerates any person acting 'in reliance on any recommendation order or other document apparently given or made in accordance with the requirements of this Act' from any civil or criminal liability.

The provisions of the Mental Hygiene Act 1958 relating to the management of estates of persons admitted to mental hospitals as patients, which appear in the Second Schedule to the Act, are transferred to the Public Trustee Act 1958 in a simplified form.

Section 2 of the Medical Act 1959 (No. 6528) inserts a new provision into the Medical Act 1958,[8] to the effect that, upon a medical practitioner becoming a patient within the meaning of the Mental Hygiene Act 1958,[9] or upon his committal to an institution outside Victoria under the laws of that place relating to mental illness, his registration shall be automatically suspended until such time as the suspension is revoked by the Medical Board of Victoria on the application of the practitioner concerned.

Corneal Grafting

Under section 40 of the Medical Act 1958, the eyes of a deceased person could be removed for the purpose of using them to give sight to a blind person only if the deceased during his lifetime had indicated his consent to such a use of his eyes. However, in the present state of medical knowledge, it is necessary to remove the eyes very

[2] *Ibid.* s. 53 (1). [3] *Ibid.* s. 51. [4] *Ibid.* ss. 74, 75, 83.
[5] *Ibid.* s. 77. [6] *Ibid.* s. 65. [7] *Ibid.* s. 112. [8] S. 12A.
[9] The Mental Hygiene Act 1958 was subsequently repealed by the Mental Health Act 1959, s. 2 (1).

soon after death—generally within twelve hours; consequently although a person may have directed by will that his eyes be used for grafting, in the normal course of events the will would not be made known until a time when the eyes could no longer be used. A new section, which is substituted for section 40[10] seeks to overcome this difficulty. The legal personal representative of the deceased may permit the removal of the eyes, unless the deceased had given directions to the contrary, or the surviving spouse or any surviving relative expresses an objection. Safeguards are included to ensure that no person except the coroner may authorize or consent to the removal of the eyes of a deceased person if there is any likelihood that there may be an inquest on the body.

Labels

Section 3 of the Health (Amendment) Act 1959 (No. 6569) gives power to the Governor-in-Council to make regulations in respect of the labelling of any substance, mixture or compound.[11] It is expected that such regulations will be prepared by the Commission of Public Health, and will prohibit the use of misleading words as 'harmless' and 'non-poisonous' on labels, and will require directions as to the appropriate antidote in case a dangerous substance is accidentally swallowed.

Pharmacy Board

The Pharmacy Board has been invested with power to impose various penalties, ranging from admonition through reprimand, imposition of a fine, temporary suspension, to cancellation of registration.[12] Previously, the Board could only punish by deregistration.[13] Such an inflexible disciplinary power would surely lead to hard cases, and the new scale of penalties should enable the Board to mete out more appropriate punishments for offences which are not sufficiently serious to warrant deregistration.

Drain Construction

Section 74 of the Health Act 1958 authorizes a municipal council to construct drains through or under any premises after giving due notice to the owner. The council must compensate the owner, and may recover from the person in whose interest the drain is made both the cost of the compensation and the cost of making the drain. There was no provision for payment of this money other than on a

[10] Medical Act 1959, s. 3.
[11] Amending the Health Act 1958, s. 390.
[12] Medical Act 1959, s. 4, inserting a new section in substitution for Medical Act 1958, ss. 96, 97.
[13] Medical Act 1958, ss. 96, 97.

cash basis, and this was found to cause embarrassment in some cases. Section 74 is now amended to allow payment by quarterly instalments over a period of five years, bearing interest at a rate not exceeding six *per centum*.[14]

Vermin and Noxious Weeds

A Vermin and Noxious Weeds Destruction Board, of three members, is established by the Vermin and Noxious Weeds Act 1959 (No. 6518);[15] its functions include inspection of lands, investigation into the incidence of vermin and weeds throughout the State, promotion of preventive and remedial measures, publication of results of its research activities, and instruction and supervision of landholders in vermin and weed eradication. The Board will report annually to the Minister of Lands, and will be expected to make recommendations for general policy in the destruction campaign.[16] A Central Advisory Council to the Board is comprised of the Minister of Lands, members of the Board and representatives of primary producers' organizations.[17] There is to be a series of district advisory committees, consisting of local land inspectors and selected persons who have special knowledge of problems in the locality; their main function will be to co-ordinate the activities of the Board with those of local landowners.[18]

Real Property

Land Settlement

The Land Settlement Act 1959 (No. 6534), which repeals the Land Settlement Act 1958,[19] substitutes for the system of land settlement by lease a system of freehold settlements.[20] Both temporary leases and purchase leases are envisaged. Temporary leases extend from one year to five years; their terms, and the fixing of rents, lie within the discretion of the Soldier Settlement Commission, which continues to control land settlement.[21] Leases may be terminated by the Commission in certain circumstances,[22] but if a lease is determined or surrendered payments for improvements may be made,[23] and settlers may appear before the Commission to show cause why their leases should not be surrendered.[24]

The Act aims to encourage settlers to enter into purchase leases as soon as farms are developed to the income-earning stage. When this is achieved and the settler can successfully carry on, the allotment is valued,[25] the capital liability of the settler is assessed[26] and the settler is then required to pay purchase rent at the rate of five

[14] Health (Amendment) Act 1959, s. 2.
[15] Vermin and Noxious Weeds Act 1959, s. 2. [16] *Ibid.* s. 4.
[17] *Ibid.* s. 5. [18] *Ibid.* [19] Land Settlement Act 1959, s. 2 (1).
[20] *Ibid.* s. 23 (1). [21] *Ibid.* s. 10 (1). [22] *Ibid.* s. 11 (1).
[23] *Ibid.* s. 13. [24] *Ibid.* s. 11 (2). [25] *Ibid.* s. 15 (1). [26] *Ibid.* s. 16.

per centum per annum on the total capital liability and four *per centum per annum* on the amount outstanding at any given time.[27] If it is found that the amount of rent paid under a temporary lease is more than what would have been paid under a purchase lease, capital liability may be reduced by the amount of the excess.[28] The property settled is not to be negotiable for a period of six years, except where allowance is made for time spent as a temporary lessee, or transfer is necessitated by death, bankruptcy, ill-health or other disability, or the Government or a public authority wishes to acquire the land. However, the Commission may consent to the land, or portion of it, being sub-let or share-farmed during this restricted period.[29] After six years, transfers or sub-leases may be effected with the consent of the Commission, if at least ten *per centum* of the outstanding capital liability has been paid.[30] Also, a purchase lease may be surrendered and a new one granted, taking effect from an earlier date (credit being given for earlier payments) or from the date of the grant.[31] Crown grants of the land comprised in the purchase lease may be made at any time after the expiration of six years, either without encumbrance or subject to a mortgage for the unpaid balance.[32] Any other registered encumbrances are also transferred from the lease to the Crown grant.[33] The Commission is given wide powers to defer or reduce payment of purchase rental instalments, but if instalments are overdue, additional interest must be charged.[34] Settlers may make advance payments under leases; moneys so paid are kept in a special fund, the Settlers' Credit Account.[35] The Commission has power to make advances to settlers, either for seasonal requirements, or permanent improvements, or for the establishment of co-operative works, such as canneries.[36] These advances are made on the security of a first mortgage, or of an assignment of produce by lien.[37] There are detailed provisions for the forfeiture by the Commission of leases for offences against the Act, or for breaches of covenant or condition.[38]

Two important differences from the repealed legislation are that war service as a factor to be considered in selecting settlers is not given as much prominence as formerly,[39] and that there is no longer any provision restricting the application of much of the legislation to areas outside the North-West Mallee Districts.[40]

[27] *Ibid.* s. 17 (2), (3). [28] *Ibid.* s. 19. [29] *Ibid.* s. 20 (1). [30] *Ibid.* s. 21.
[31] *Ibid.* s. 22. [32] *Ibid.* s. 23. [33] *Ibid.* s. 24. [34] *Ibid.* s. 25.
[35] *Ibid.* s. 26 (2). [36] *Ibid.* ss. 27, 34. [37] *Ibid.* ss. 29-32. [38] *Ibid.* s. 36.
[39] *Ibid.* s. 8 (d). *Cf.* Land Settlement Act 1958, s. 10 (1). The policy of preference for ex-servicemen is waning in other contexts. See Soldier Settlement (Amendment) Act 1959, s. 5, noted *infra*. In *Illawarra District County Council v. Wickham* [1959] Argus L.R. 711 the High Court held that legislation giving preference in employment to ex-servicemen was no longer within the Commonwealth defence power.
[40] *Cf.* Land Settlement Act 1958, s. 5.

The Soldier Settlement Act 1958 did not permit share-farming during the restricted period of the purchase lease. The Soldier Settlement (Amendment) Act 1959 (No. 6603) enables the Soldier Settlement Commission to consent to share-farming or sub-letting of portion of a settler's holding during the restricted period.[41]

Section 124 of the Soldier Settlement Act 1958 provided that any sale of farming land, the net annual value of which exceeds seventy-five pounds, to a person other than an ex-serviceman, must be lodged for the consent of the Minister and be subject to objections lodged by ex-servicemen. This provision has enabled many ex-servicemen to acquire farming land, but it has now been repealed, the Government taking the view that sufficient time has elapsed to give ex-servicemen the opportunity of rehabilitation.[42]

Conveyancing

The Transfer of Land (Amendment) Act 1959 (No. 6544) introduces several minor amendments to the Transfer of Land Act 1958. The Registrar of Titles is obliged to enter in the register book a memorandum of a writ of *fieri facias* when a judgment is obtained against the legal personal representative of the registered proprietor. Previously, a memorandum was entered only in respect of judgments against the registered proprietor.[43] On an application to bring land under the Act or to amend a title, easements may be omitted from a certificate of title if the registrar is satisfied that they have not been used for thirty years.[44] With the consent of all interested parties, the proprietor of a mortgage or charge may vary its terms[45] by an instrument of variation in the form or to the effect of Schedule 15A.[46] If a transfer or dealing is expressed to be subject to the rights of a caveator, the caveator is not obliged to take action to prevent the lapse of his caveat under section 90 of the Transfer of Land Act 1958.[47] Section 98 of the 1958 Act, which related to the implication of easements from transfers of allotments in a subdivision, did not operate to imply easements in cases where persons became registered as proprietor of land by means other than transfer. A new provision, substituted for section 98, dispenses with the requirement of a transfer, while ensuring that easements, when implied, are appurtenant to the dominant tenement in the same way as if they had been ex-

[41] Soldier Settlement (Amendment) Act 1959, s. 2, amending Soldier Settlement Act 1958, s. 66 (1). *Cf.* Land Settlement Act 1959, s. 20 (1), discussed *supra*.
[42] *Ibid.* s. 5. See comments *supra*, n. 39.
[43] Transfer of Land (Amendment) Act 1959, s. 4, amending Transfer of Land Act 1958, s. 52 (2).
[44] *Ibid.* s. 5, inserting s. 73A into the Transfer of Land Act 1958.
[45] *Ibid.* s. 6 (1), inserting s. 75A into the Transfer of Land Act 1958.
[46] *Ibid.* s. 6 (4).
[47] *Ibid.* s. 7, amending Transfer of Land Act 1958, s. 90.

pressly granted. The new section also inserts a reference to an easement of protection in the case of subdivision of a building.[48]

Section 172 (1) of the Property Law Act 1958 declares voidable every conveyance of property made with intent to defraud creditors. In *Thomson v. Nicholson*,[49] Lowe J., noting that the statutory definition of 'conveyance' extends only to transfers made by instrument, refused to hold that section 172 (1) forbade verbal transfers of property. To ensure that fraudulent debtors will not be able to take advantage of this loophole and defeat creditors, the Property Law (Amendment) Act 1959 (No. 6491) somewhat belatedly substitutes 'alienation' for 'conveyance' in section 172 (1).[50]

Town and Country Planning

The Town and Country Planning Act 1958 contained no provision for compensation of land owners who were adversely affected by a planning scheme, except in the case where the responsible authority refused to permit a proposed use of the land. The Town and Country Planning (Amendment) Act 1959 (No. 6526) provides that where buildings or other substantial improvements are erected on land which is proposed to be reserved for public purposes, and the owner sells the land at a lesser price than he might reasonably have expected to receive but for the proposal to reserve the land, compensation may be paid for the loss suffered; the compensation should not exceed the difference between the value of the land as proposed to be reserved and the value it would have if it were not reserved.[51]

A responsible authority may acquire or purchase land proposed to be reserved for public purposes under a planning scheme, prior to the approval of the planning scheme by the Governor-in-Council.[52]

Plantation Areas

If the Soil Utilization Advisory Council reports that certain land is not suitable for agriculture or pasture, the Governor-in-Council may proclaim the land a 'plantation area'.[53] Leases of such land, not exceeding sixty years, may be granted on application to the Board of Works, after investigation by a committee representing the Crown Solicitor and the Auditor-General. Where the Board certifies that proper use has been made of the land for fifteen years, the Governor-in-Council may make a grant of the land in fee simple to the lessee.[54]

Building, Housing and Development

Finance

Finance for house building is rendered more easily obtainable by the State Savings Bank (Amendment) Act 1959 (No. 6545). The maxi-

[48] *Ibid.* s. 10. [49] [1939] V.L.R. 157. [50] Property Law (Amendment) Act 1959, s. 2.
[51] Town and Country Planning (Amendment) Act 1959, s. 3. [52] *Ibid.* s. 2.
[53] Land (Plantation Areas) Act 1959 (No. 6521), s. 3. [54] *Ibid.*

mum authority to the Bank to issue Credit Foncier debentures is raised from £50,000,000 to £75,000,000.[55] The maximum amount which can be borrowed from the Bank's savings department by way of mortgage loan is increased from two-thirds to three-fourths of the valuation of the security.[56] The maximum Credit Foncier loan is increased from three-fourths to four-fifths of the valuation.[57] An amendment to section 72 of the State Savings Bank Act 1958 enables the Bank to advance an additional ten *per centum* to persons in lower income groups. Section 72 permitted such loans only if the total advance did not exceed £850. This limitation had remained unaltered since 1928, and had rendered the concession to low-income earners valueless. By its removal, the Bank is enabled to grant additional advances free from restriction.[58]

Some years ago, provision was made for the Bank to make available mortgage loans to minors aged eighteen years and over. However, there was omitted from that measure a provision for entering into covenants with minors. This defect is now remedied.[59]

The raising of loans for the purchase of 'own your own' flats should be facilitated by the Trustee (Mortgages) Act 1959 (No. 6580). Under section 4 (1) (c) of the Trustee Act 1958, trustees are authorized to lend trust moneys on the security of a first mortgage of freehold land registered under the Transfer of Land Act 1958. Various institutions and bodies also are authorized by various Acts to lend on this security. Doubts existed as to whether such loans could be made in respect of 'own your own' flats. The usual system of conveyancing in respect of such flats provides for a service company, the shares in which are held by the several flat owners in the subdivided building, and it is customary for each flat owner to execute a charge in favour of the service company to secure his annual payments to the service company for insurance, maintenance, repair and repainting of the building as a whole. This charge protects the building from dilapidation and therefore cannot be said to be hostile to a mortgagee's security, but technically it is necessary that it should be a first mortgage, and hence it may be argued that a mortgage which follows it is a second mortgage. Also, it is common practice for a flat owner to mortgage his shares in the service company collaterally with his mortgage of his flat, so that the loan to him is made on both securities. It would be debatable whether a power to lend money on a first mortgage would include a power to lend on such a mortgage coupled with some other security. These doubts are resolved by the Trustee (Mortgages) Act 1959, which by amendment to the Trustee Act 1958, makes it clear that money may be lent by trustees and others on the

[55] State Savings Bank (Amendment) Act 1959, s. 4 (b). [56] *Ibid.* s. 4 (a).
[57] *Ibid.* s. 4 (c). [58] *Ibid.* s. 4 (d). [59] *Ibid.* s. 5.

mortgage of a flat, notwithstanding that the mortgage is postponed to a service charge, and notwithstanding that it is coupled with a mortgage of shares in the service company.[60]

The Home Finance (Financial) Act 1959 (No. 6596) is a machinery measure which aims to facilitate the operations of the Home Finance Trust. Section 2 validates an existing practice by investing the Trust with power to raise money by overdraft on current account.[61] Section 3 creates a loans redemption account, into which all repayments of principal made by borrowers will be paid. Moneys in this account may be lent for periods of three years, the only restriction being that loans must be on first mortgage. The other restrictions on short-term loans imposed by section 7 of the Home Finance Act 1958 are insured.

Fiscal

Stamp Duty

Legislation in 1958 imposed an annual licence fee of five *per centum* of premium income on all types of insurance business other than life, motor car, employers' liability and crop damage insurance.[62] Employers' liability and motor car insurance, other than compulsory third-party insurance, have now been brought into the dutiable field.[63] It is estimated that the duty on these transactions will add £1,302,000 a year to revenue. Registered friendly societies, and organizations which conduct similar business, are exempted from the obligation to pay the licence fee.[64] A concession is made to insurance companies; the basis of assessing duty on marine and transport insurance is altered so that henceforth only business written in Victoria will be subject to duty.[65] The obligation to pay duty on business written outside Victoria had caused insurers inconvenience out of all proportion to the revenue gained.

Three amendments are made to section 131A of the Stamps Act 1958, which imposes a tax on 'goods' purchased by instalments. Books sold on credit are exempted from the tax;[66] books purchased in this way are mainly religious and educational works. Wholesale hire-purchase agreements were previously exempt if they covered a period not exceeding sixty days. This time limit was stipulated with a view to ensuring that only *bona fide* agreements were exempted, but it has worked hardship, as many genuine agreements, especially those relating to farm machinery, extend for much longer periods. Accordingly, the provision for a time limit is repealed.[67] In 1958, in order to catch a form of transaction which was being used to escape the

[60] Trustees (Mortgages) Act 1959, s. 2, inserting s. 5A into the Trustee Act 1958.
[61] Amending Home Finance Act 1958, s. 6.
[62] Stamps Act 1958, s. 95, as amended by Stamps (Amendment) Act 1958, s. 2 (2).
[63] Stamps Act 1959 (No. 6552), s. 2 (1).
[64] Stamps (Amendment) Act 1959 (No. 6494), s. 2 (2). [65] Stamps Act 1959, s. 2 (3).
[66] Stamps (Amendment) Act 1959, s. 3 (a). [67] *Ibid.* s. 3 (b).

duty on hire-purchase agreements, a duty was charged on 'credit purchase agreements' which were defined as agreements to purchase goods with the payment of the price spread over at least six instalments and over a period of at least six months, irrespective of when property passes.[68] However, a practice developed whereby a series of bills of exchange falling due over a period would be handed over by the purchaser immediately upon a sale. Acceptance of such bills amounts to immediate payment; thus this procedure provided an escape from the legislation, even though the seller would receive his money by a series of payments as the bills fell due. The definition of 'credit purchase agreement' is amended to bring such transactions within its scope.[69]

The duty on share transfers is increased from one-quarter to three-eighths *per centum* of the money considerations.[70] The duty on leases where the consideration is rent is doubled.[71]

As a result of the growing interest amongst professional groups and other self-employed persons in operating superannuation schemes, contributions to such schemes are exempted from duty, if the schemes receive ministerial approval.[72]

Motor Car Insurance Surcharge

A Budget proposal to add a surcharge of one pound to all motor car third-party insurance premiums is implemented by the Motor Car (Insurance Surcharge) Act 1959 (No. 6553). The announced reason for the levy is to defray the increasing cost to revenue of hospital services related to motor accident cases, and police supervision of motor traffic. The Act, which will only operate until December 1960,[73] does not apply the surcharge to insurance contracts of less than six months, nor to contracts in respect of vehicles used solely for interstate trade or commerce.[74]

Labour and Industry

Retail Trading Hours

The Labour and Industry (Retail Trading Hours) Act 1959 (No. 6514) introduces several important amendments to the Labour and Industry Act 1958.

The Minister for Labour and Industry is given power to exempt functions such as trade fairs, and displays organized by bodies such as chambers of commerce, from the provisions of the Labour and Industry Act 1958 which prohibit exposing goods for sale and taking orders outside prescribed trading hours. Formerly, only exhibitions

[68] Stamps (Amendment) Act 1958, s. 6 (2).
[69] Stamps Act 1959, s. 3. [70] *Ibid.* s. 4 (1) (a). [71] *Ibid.* s. 4 (1) (b).
[72] Stamps (Amendment) Act 1959, s. 5 (b).
[73] Motor Car (Insurance Surcharge) Act 1959, s. 2. [74] *Ibid.*

and fairs organized for charitable or benevolent purposes, with no element of private gain, could be exempted from these provisions.[75]

The scale of penalties for trading outside permitted hours is revised; the old penalties had not been altered for more than thirty years and had lost their deterrent value.[76] After the introduction of this legislation, it was found that even the revised scale of penalties, which imposed for the third offence a fine of not less than £50 nor more than £150, was not severe enough to deter certain motor car dealers from trading during prohibited hours. These persons found it profitable to flout the law and pay the fines imposed; in order to protect law-abiding traders from this unscrupulous competition, and to prevent any further defiance of the law, the Labour and Industry (Motor Car Shops) Act 1959 (No. 6595) was passed; for a fourth or subsequent offence of trading outside permitted hours, a dealer in motor cars may be fined not less than £500, nor more than £1,000.[77]

A person who, having been warned of his obligation to close his shop, continues to keep it open, is made guilty of an offence against the Act, and is liable to an additional penalty on the same scale as is provided for the offence of failing to close the shop in the first instance.[78]

The publication of advertisements which indicate that a shop will be open outside the prescribed trading hours, or that someone will be in attendance for the purpose of transacting business, is made an offence.[79] Responsibility is cast on the shopkeeper for the publication of any such advertisement, and publication itself constitutes *prima facie* proof of his authorization.[80] An exemption from these provisions is expressed in favour of a shopkeeper who offers to repair goods at any time and to supply materials necessary to effect repairs.[81] As a result of complaints by retailers in country towns, the practice of hiring halls for the purpose of displaying samples of goods at times when shops are required to be closed is prohibited.[82]

In an endeavour to overcome the difficulties of proving that a shop was not closed as required by the Act, additional presumptions are formulated; a shop will be deemed not to have been closed if it is proved that at any material time goods were available for inspection by persons within the shop, or goods which had previously been sold or ordered were available for delivery to the purchaser, or orders for goods were received by any person in attendance.[83]

Because of a fairly widespread use of the means of incorporation for the purpose of evading penalties, it has become necessary to make

[75] Labour and Industry (Retail Trading Hours) Act 1959, s. 2. [76] *Ibid.* s. 3 (a).
[77] Labour and Industry (Motor Car Shops) Act 1959, s. 2.
[78] Labour and Industry (Retail Trading Hours) Act 1959, s. 3 (b).
[79] *Ibid.* [80] *Ibid.* [81] *Ibid.* [82] *Ibid.* s. 3 (c).
[83] Labour and Industry (Retail Trading Hours) Act 1959, s. 4.

clear beyond doubt the liability of corporations for offences against the Act, and to render them liable for the acts of their directors or officers. Any knowledge, consent or intent of a director or officer may be imputed to the corporation. Any director or officer of a corporation which is guilty of an offence, will be liable for that offence, unless he can prove that the act or omission constituting the offence took place without his knowledge or consent and that he could not reasonably have known of it.[84]

Factories

The Labour and Industry (Amendment) Act 1959 (No. 6600) amends the Labour and Industry Act 1958 in relation to several procedural and administrative matters; it provides, *inter alia,* that a municipal council may found an objection to the establishment of a factory on any statute, by-law, order or regulation made under the town and country planning legislation.[85] Previously councils could only object if breach of municipal by-laws was involved. The period within which a municipal council might object to the registration of factory premises within its district is extended from one month to two months.[86]

Bread Industry

In post-war years, many attempts have been made in Victoria to introduce some measure controlling the bread industry. Public enquiries were instituted in 1947 and 1949, and Bills introduced in 1949, 1955 and 1957 all failed to receive Parliamentary approval. The Bread Industry Act 1959 (No. 6529) is designed to achieve two main purposes. It sets standards as to the quality of ingredients[87] and manufacturing processes.[88] Penalties are provided for breach of these standards.[89] The Bakers and Millers Act 1958 is repealed.[90] Secondly, the Act attacks practices of close integration in the industry which, it was felt, had produced harmony in the industry only at the cost of the interest of the consumer. The practice of refusing or stopping supplies to bread manufacturers who have not conducted their businesses in a manner which met the approval of other sections of the industry, is dealt with; it is made an offence for a bread industry supplier to refuse to supply a bread manufacturer[91] unless there is a *bona fide* reason for the refusal.[92] Agreements which hinder or preclude compliance with the Act are declared illegal, and parties to such agreements are liable to a penalty of not more than £200.[93]

[84] *Ibid.* s. 5. [85] Labour and Industry (Amendment) Act 1959, s. 3 (c).
[86] *Ibid.* [87] Bread Industry Act 1959, ss. 4, 5 (1), and Part A of the Schedule.
[88] *Ibid.* s. 5 (2) and Part B of the Schedule. [89] *Ibid.* s. 6.
[90] *Ibid.* s. 3. [91] *Ibid.* s. 8 (2). [92] *Ibid.* s. 8 (3). [93] *Ibid.* s. 9.

General

Motor Car

Amendments to the Motor Car Act 1958 alter the system of registration of motor vehicles, to ensure that it will not be impugned as contrary to section 92 of the Commonwealth Constitution. Government action on this matter was prompted by two decisions of the High Court; in *Armstrong and another v. The State of Victoria*[94] it was held that vehicles engaged solely in interstate trade could not be required to pay the motor registration fees provided for in the Second Schedule to the then operative Motor Car Act 1951, and a similar decision on corresponding New South Wales legislation was given in *Collier Garland Ltd v. Hotchkiss*.[95] To be immune from attack under section 92, the system of registration must be such that it does not impose any real burden or restraint on the freedom of movement of interstate trade. The system of registration previously in force involved substantial delays to vehicles arriving at the Victorian border in the course of interstate trade and seeking registration; registration could not be completed until the relevant documents were received by the Chief Commissioner of Police.[96] Now registration may be effected by registration officers at police stations and other appointed places.[97] A registration officer may dispense with evidence of weight of a vehicle registered without fee.[98] The immunity of vehicles which are used in Victoria solely for interstate trade from payment of registration fees, established in the *Armstrong* case,[99] is written specifically into the Act.[1] These amendments do not alter the obligation to have all motor vehicles covered by third-party insurance, which does not raise constitutional problems.

Under section 6 of the Motor Car Act 1958, a person who had the use of a motor car subject to a hire-purchase agreement or bill of sale would be shown on the register of motor vehicles as the 'owner' of the vehicle. As such a person often had the owner's certificate in his possession, he would to all external appearances seem to be the lawful, absolute owner. *Bona fide* purchasers from such persons had no means of discovering the true position, yet if the instalments on the vehicles were not paid, they could be repossessed. In an attempt to protect unsuspecting purchasers, the Motor Car Act 1959 (No. 6563) provides that an 'owner' on applying for registration or renewal of registration must declare the existence of any 'proprietor',[2] in whom the property in the car is vested. The names of both the owner and

[94] [1957] Argus L.R. 889. [95] [1957] Argus L.R. 675.
[96] Motor Car Act 1958, ss. 6, 10.
[97] Motor Car (Amendment) Act 1959 (No. 6532), s. 2 (3).
[98] *Ibid.* s. 2 (5), amending s. 9 of the Motor Car Act 1958. [99] *Supra* n. 94.
[1] Motor Car (Amendment) Act 1959, s. 3.
[2] Defined by Motor Car Act 1959, s. 2 (1).

the proprietor must be recorded in the register, and the owner's certificate must be held at the Motor Registration Branch until the proprietor's interest has been discharged. The name of a proprietor cannot be removed from the register without his consent.[3]

Section 3 of the Motor Car Act 1959 provides for the registration without fee of self-propelled agricultural implements owned by primary producers.[4] Under the Motor Car Act 1958, persons between the ages of sixteen and eighteen years could be granted a licence to drive motor tractors in connection with primary production; an amendment provides that anyone over sixteen years may obtain such a licence, but this does not entitle the holder to drive any ordinary vehicle on the roads.[5]

Concessional rates of registration are granted to drivers of veteran motor cars (manufactured before 1 January 1917) provided that such vehicles are properly insured and are used in official rallies between sunrise and sunset.[6] The practice of issuing to incapacitated persons conditional licences, applicable only to particular vehicles, is ratified,[7] as is the practice of registering vehicles for less than twelve months to enable owners of more than five cars to have a common expiry date.[8]

For many years drivers of commercial vehicles have been prohibited from working for a continuous period of more than three and one-half hours, or for more than eleven hours in one day, or from driving without an adequate period of rest. This provision has been enforced by regulations requiring drivers to maintain proper records of such matters. However, it was suggested to the Government that the regulations relating to drivers' 'log books'[9] were *ultra vires,* not because of constitutional difficulties, but because the legislation conferred no power to make them. Any arguments as to the validity of the control are averted by the Motor Car (Hours of Driving) Act 1959 (No. 6533), which sets out in full the provisions relating to the keeping of 'log books';[10] though different in form from the regulations, the Act makes no change in substance.

The Road Traffic (Infringements) Act 1959 (No. 6559) introduces a new method of collecting penalties for parking offences. It is estimated that the time required to process an offence under the new procedure will be about five man-minutes, as compared with 109 man-minutes under the 'owner-onus' system. The Act empowers authorized officers to detect parking offences and to serve notice on the offender on a prescribed form, either by post or by affixing the notice

[3] *Ibid.* s. 2 (2). [4] Amending Motor Car Act 1958, s. 7 (1).
[5] Motor Car Act 1959, s. 7. [6] *Ibid.* s. 5. [7] *Ibid.* s. 6.
[8] *Ibid.* s. 4. [9] Motor Car Regulations 1952, reg. 149A.
[10] Motor Car (Hours of Driving) Act 1959, s. 2.

to the vehicle.[11] The notice is to state the date and time of the alleged infringement, the nature of the infringement and the prescribed penalty, together with details as to the place and time of payment.[12] The owner may then at his option pay the relevant penalty in which case no further proceedings are taken and no conviction is regarded as having been recorded. Payment may be made by cash, cheque or money order either personally or by post.[13] If the penalty is not paid, and a statement to the effect that the defendant does not wish the matter to be dealt with by a court is not received before the expiration of fourteen days, proceedings are taken in the usual form, and the case is brought before a stipendiary magistrate or a court of petty sessions.[14]

An amendment to section 81 (1) of the Motor Car Act 1958 makes it an offence to drive a motor car on a highway carelessly without reasonable consideration for other persons using the highway.[15] Penalties for being under the influence of liquor or a drug whilst in charge of a car are increased.[16]

Under section 321 of the Crimes Act 1958, the maximum penalties for reckless driving or driving under the influence of intoxicating liquor or drugs were a fine of thirty pounds, or six months' imprisonment. It was found that there were many cases which did not warrant imposition of a term of imprisonment but nevertheless called for a monetary penalty greater than thirty pounds. Accordingly an amendment increases the maximum fine to one hundred pounds.[17]

The maximum penalty for the first conviction for illegally using motor cars is increased from twelve months to three years, in order to bring the punishment for this offence into proportion to that for larceny of motor cars, which is ten years, and for subsequent offences of illegally using, which is five years.[18]

Landlord and Tenant

The Landlord and Tenant (Fair Rents) Act 1959 (No. 6599) carries the process of de-control of transactions between landlord and tenant a stage further.[19] As from 1 April 1960, the basis upon which rents of controlled dwelling-houses are to be fixed is the capital value as at the date on which an application to have the fair rent fixed is made to a Fair Rents Board.[20] Alternatively the landlord and tenant may fix the fair rent by agreement in writing on the prescribed form.[21] The distinction between 'ordinary dwellings' and 'higher rent dwell-

[11] Road Traffic (Infringements) Act 1959, s. 5. [12] *Ibid.* [13] *Ibid.*
[14] *Ibid.* [15] Motor Car Act 1959, s. 8. [16] *Ibid.* s. 9.
[17] Crimes (Penalties) Act 1959 (No. 6561), s. 3. [18] *Ibid.* s. 2.
[19] The last important Act in this field was the Landlord and Tenant (Control) Act 1957, noted in 'Legislative Summary, Victoria 1957' (1958) 1 *M.U.L.R.* 504, 509.
[20] Landlord and Tenant (Fair Rents) Act 1959, ss. 1 (3), 4. [21] *Ibid.* s. 7.

ings'[22] is thus abolished. The machinery for the adjustment of 1940 values is repealed.[23]

This measure does not effect a complete abandonment of controls. Tenants of controlled premises continue to enjoy protection against eviction, and rents can only be increased in pursuance of a determination by a Fair Rents Board or an agreement between the parties. On the other hand, landlords who have been in the unenviable position of subsidizing their tenants should find their hardship considerably alleviated by the more liberal method of rent adjustment.

Section 44 of the Landlord and Tenant Act 1958 gives the Governor-in-Council power to declare, by Order published in the *Government Gazette,* that particular premises, otherwise not within the purview of the Act, shall be deemed 'prescribed premises', and accordingly be subject to control. However, section 49, which provided for the lifting of controls on 'business premises' on 1 August 1959, was so worded as to remove from the Governor-in-Council power to make an order under section 44 in respect of premises which were controlled 'business premises' before 1 August 1959. Some landlords took advantage of this loophole, and made extortionate demands on tenants. In order to curb rapacity of this sort, section 49 is amended to make it clear that, by Order in Council, any particular business premises may be brought under control.[24] On such an order being made, the tenant will continue to pay the rent he was paying immediately before control was imposed, but he may at once apply to a Board to have the fair rent fixed, or he may enter into an agreement with the landlord as to the rent payable.

Amongst the prescribed grounds on which a landlord may apply for repossession of a dwelling-house, provision is made for a person whose income is less than a prescribed maximum, to apply on that ground.[25] A lessor in this position is entitled to have questions of 'relative hardship' disregarded by the court.[26] The maximum income prescribed in the 1958 Act was £390 *per annum,* or, in the case of married couples, a joint income of not more than £780. At that time, £390 represented the full age pension, plus the full income from other sources allowed. Following a rise in the full age pension, the maximum incomes are raised to £429 and £858 respectively.[27]

Legal Profession

Pursuant to requests by the Law Institute of Victoria, the Legal Profession Practice (Amendment) Act 1959 (No. 6506) effects several amendments to the Legal Profession Practice Act 1958.

[22] Landlord and Tenant Act 1958, s. 43 (i).
[23] Landlord and Tenant (Fair Rents) Act 1959, ss. 5, 6.
[24] Landlord and Tenant (Amendment) Act 1959 (No. 6575), s. 2 (1).
[25] Landlord and Tenant Act 1958, s. 82 (6) (v). [26] *Ibid.* s. 93 (1) (a).
[27] Landlord and Tenant (Amendment) Act 1959, s. 3.

Claimants against the Solicitors' Guarantee Fund were often adversely affected by long delays in gaining the Law Institute's recognition of their claims. There was no provision for an allowance for loss of interest to be paid to claimants. Section 3 of the amending Act directs that interest is to be paid on the amount of compensation, at the rate of five *per centum per annum* calculated from twelve months after the date of lodging the claim, until the claim is satisfied.

By section 81 of the principal Act, a solicitor applying for renewal of his practising certificate must file, before a prescribed date, an auditor's report on his trust account, or a declaration that he held no trust moneys during the previous twelve months. This provision was held by O'Bryan J. in *Re Doyle*[28] to be mandatory; consequently, late filing automatically resulted in the withholding of a practising certificate for twelve months. Such an inflexible rule would inevitably lead to undue hardship in some cases. The Council of the Law Institute is now allowed a discretion to issue a certificate despite a failure to lodge the necessary documents before the due date, if it is satisfied that the delay is due to 'inadvertence or some other circumstance for which the solicitor ought fairly to be excused'.[29] The obligation under section 81 was imposed only on a solicitor applying for renewal of a practising certificate; there was no requirement that a solicitor retiring from practice should file an auditor's report in respect of the period since the last renewal of his certificate, despite the fact that the Solicitors' Guarantee Fund remains liable for misappropriations of trust money. The position is rectified by imposing an obligation on a retiring solicitor to have his accounts audited and reported on while he continues to hold trust money, or to file a declaration if no trust money is held.[30] A similar duty is attached to the legal representative of a deceased solicitor.[31] A retiring solicitor who fails to comply with this provision is made liable to a penalty of not more than twenty pounds.[32]

One of the grounds on which an application for a practising certificate could be refused, or an existing certificate cancelled, was that the person concerned had become bankrupt 'in circumstances which in the opinion of the council involve moral turpitude or fraud on his part'.[33] These words are repealed in order to give effect to the opinion of the Council of the Law Institute that, in the interests both of the public and of the Solicitors' Guarantee Fund, a solicitor who becomes bankrupt should not be permitted to practise, whether the circumstances involve moral turpitude or fraud or not.[34]

[28] (1956) Unreported.
[29] Legal Profession Practice (Amendment) Act 1959, s. 4 (a).
[30] *Ibid.* s. 5. [31] *Ibid.* [32] *Ibid.*
[33] Legal Profession Practice Act 1958, s. 84 (1) (a).
[34] Legal Profession Practice (Amendment) Act 1959, s. 6.

For many years it has been permissible to pay the Supreme Court Library Fee of forty pounds, which is levied on admission to practise, by an initial payment of ten guineas and annual instalments of two guineas. Increasing costs of maintenance of the Library have made it necessary to increase the annual instalments to five guineas.[35] The aggregate fee is unchanged.

Local Government

The two local government Acts passed during 1959[36] do not represent any major change in policy, but are rather collections of unrelated amendments to the Local Government Act 1958. The practice of examining Boards operating under Part V of the principal Act, of making regulations with respect to prerequisites for examinations of candidates for various municipal offices, is recognized.[37] Councils are given power to regulate parking by resolution, instead of by the more cumbersome by-laws.[38] Because of the difficulties of obtaining the services of councillors to sign cheques at short notices and the undesirable nature of the expedient adopted by some councillors of signing blank cheques, provision is made for special types of advance accounts, which may be operated by one councillor and one authorized council employee.[39] Except in special circumstances, councils could borrow only on the security of debentures. This restriction entailed undue expense and administrative work, causing inconvenience to lenders as well as to municipalities. Authority is now given for an alternative method of borrowing: the council will give a mortgage under seal, secured on the credit of the municipality.[40] This simpler procedure is expected eventually to replace the practice of issuing debentures. The power of councils to require street construction to be carried out prior to the sealing of plans of subdivision is amended, in order to remedy weaknesses disclosed by an examination of the law by the Crown Solicitor.[41] Where streets are to be constructed on the borders of municipal districts, the neighbouring councils should make an agreement whereby one council shall prepare the scheme and execute the work, the cost being apportioned between the municipalities. After construction is completed, each municipality will be responsible for the maintenance of its own half of the street.[42] Authority is given for councils to enter into agreements with the Minister for Education for the use of council-owned recreational reserves by students attending State schools.[43]

A council may be empowered by the Governor-in-Council to use

[35] *Ibid.* s. 2.
[36] Local Government (Amendment) Act 1959 (No. 6535); Local Government Act 1959 (No. 6601).
[37] Local Government (Amendment) Act 1959, s. 2.
[38] *Ibid.* s. 3.
[39] *Ibid.* s. 5.
[40] *Ibid.* s. 7.
[41] *Ibid.* s. 8.
[42] *Ibid.* s. 11
[43] *Ibid.* s. 12.

land, acquired for a particular purpose, for some other authorized purpose.[44] An extension to the borrowing powers of councils permits the acquisition of bank overdrafts on the credit of the municipality.[45] A further amendment to the principal Act imposes upon municipal auditors a duty to the municipality to audit the accounts with due skill and care. This provision was introduced as a result of the decision of Smith J., in chambers, in *The Shire of Frankston and Hastings v. Cohen,*[46] that municipal auditors owed no such duty to the municipality. After this measure had been passed, however, the High Court reversed the decision of Smith J.[47]

Status

The law concerning the matters dealt with by the Registration of Births Deaths and Marriages Act 1959 (No. 6564) has stood unaltered, on the whole, for more than a century. This Act consolidates the law on the subject and introduces some improvements. However, the system of registration of marriages and deaths remains basically the same.

Section 10 provides that registration of a birth may be effected by post. The forms of registration may be obtained from collecting agents, for whose appointment the Act provides.[48] This procedure should obviate the inconvenience of the previous system, improve the accuracy of the records, and reduce administrative costs.

A major improvement is that, on completion of registration of birth, an extract from the entry record will be forwarded to the informant without application or fee.[49] Previously, a copy of a birth registration form could only be obtained, after considerable delay, on payment of five shillings.

Since 1938, the maximum fee payable by the male party to a marriage celebrated by the Government Statist or the Registrar of Marriages has been one guinea. To bring the fee into line with the cost of the administrative work involved, the Marriage (Fees) Act 1959 (No. 6548) gives the Governor-in-Council power to prescribe fees not exceeding thirty shillings, for receiving an application for the celebration of a marriage (in effect a 'booking fee') and for the celebration of a marriage.[50]

Police Offences

The Police Offences (Penalties) Act (No. 6557) increases various penalties imposed, by the Police Offences Act 1958, for offences relating to good order, drunkenness, assaults, and illegal use of vehicles

[44] Local Government Act 1959, s. 2. [45] *Ibid.* s. 3. [46] (1959) Unreported.
[47] *The Shire of Frankston and Hastings v. Cohen* (1960) 33 A.L.J.R. 427.
[48] Registration of Births Deaths and Marriages Act 1959, s. 7.
[49] *Ibid.* s. 27. [50] Marriage (Fees) Act 1959, s. 2.

other than motor cars.[51] In the main, the Act aims merely to bring monetary penalties into conformity with current money values, but with two offences, the prescribed terms of imprisonment are also increased. The maximum penalty on a second or subsequent conviction for being drunk and disorderly in a public place[52] is increased from five pounds, or fourteen days' imprisonment, to twenty pounds, or one month's imprisonment.[53] This is the most common offence against the Act, and, perhaps, the most lightly regarded. The maximum penalty, of five pounds or one month's imprisonment, for being drunk in charge of carriages other than motor cars, or of loaded firearms,[54] is increased to twenty-five pounds or imprisonment for two months.[55]

Penalties for betting offences prescribed by Part IV of the Police Offences Act 1958—being the owner or occupier of a betting house,[56] receiving bets in a betting house,[57] advertising a betting house in any way,[58] inviting persons to bet,[59] street betting[60] and betting with infants[61]—are increased by the Police Offences (Betting) Act 1959 (No. 6586). Section 124 (1) of the Police Offences Act 1958, which made it an offence to communicate or convey information relating to betting during a race meeting to any person not on the racecourse, was found to be insufficient to prevent dissemination of betting odds to persons off the course; it was very difficult to prove that a person charged was conveying or communicating information. Section 124 (1) is replaced by a new sub-section[62] which defines the offence more precisely, and makes it an offence to *attempt* to convey or to *assist in* conveying betting information.

Miscellaneous

Power is conferred on members of the Police Force to arrest persons found offending against the fire protection provisions of the Country Fire Authority Act 1958.[63] It is now an offence for any person to use a motor tractor, traction engine, earth-moving equipment or road-making machinery during the summer period within thirty feet of any vegetation unless the vehicle is free from faults likely to cause fire, and is equipped with an efficient spark arrester and a water-spray pump.[64] It is interesting to note that this provision is levelled against the driver and not the owner of the vehicle, who would appear to be civilly liable for any damage it caused.

[51] The amendments relate to the offences prescribed by the Police Offences Act 1958, ss. 18, 23, 24, 25, 26, 27, 38, 39 (1) (a), 189 and 207 (1).
[52] Police Offences Act 1958, s. 24.
[53] Police Offences (Penalties) Act (1959), s. 4.
[54] Police Offences Act 1958, s. 25. [55] Police Offences (Penalties) Act 1959, s. 5.
[56] Police Offences Act 1958, s. 98 (1). [57] *Ibid.* s. 99 (1). [58] *Ibid.* s. 102.
[59] *Ibid.* s. 103. [60] *Ibid.* s. 104. [61] *Ibid.* s. 107.
[62] Police Offences (Betting) Act 1959, s. 8 (1).
[63] Country Fire Authority (Amendment) Act 1959 (No. 6583), s. 7.
[64] *Ibid.* s. 8.

Owners of vehicles, as well as their drivers, are made liable for penalties for carrying excess weights over culverts and bridges.[65]

The control and licensing of milk shops is transferred from the Dairying Division of the Department of Agriculture to the Milk Board as a result of the Milk Board (Milk Shops) Act 1959 (No. 6584).[66] A liberal policy with regard to the issue of milk shop licences is introduced; on application by the owner of any premises, a licence in respect of the premises will be issued if the premises comply with certain standard requirements.[67]

Trustees of cemeteries may invest cemetery funds, but are subject to the same rights and duties as if they were trustees within the meaning of the Trustee Act 1958.[68] Before officers of the trustees of a crematorium consent to a cremation, they must receive a form of application for cremation signed by the executor, next-of-kin or friend of the deceased, stating the circumstances of death and whether the deceased had given any direction as to the disposal of his remains.[69]

The law regulating the use of lifts and cranes and similar industrial lifting appliances is brought up to date by the Lifts and Cranes Act 1959 (No. 6577).

The maximum age limit prescribed for candidates for appointment to the Administrative Division of the State Public Service is raised from twenty-one years to twenty-four years, or such age under thirty years as the Public Service Board determines; it is hoped that this amendment will raise recruitment standards by giving university graduates and persons with experience in private enterprise the opportunity of seeking a career in public administration.[70] The Superannuation Act 1958 is amended to increase from twenty-six to thirty-six the maximum number of units of pension for which an officer may elect to contribute, provided that his salary permits him to do so.[71]

The accounting system of the Melbourne and Metropolitan Tramways Board is revised and brought into line with current practice.[72]

The number of members required to form a quorum at a meeting of the Melbourne and Metropolitan Board of Works is raised from nine to twenty-five.[73] Ministerial approval must be given to all contracts entered into by the Board in which the consideration exceeds £10,000.[74] The Board is empowered to make by-laws fixing charges

[65] Country Roads (Amendment) Act 1959 (No. 6500), s. 4. [66] S. 2.
[67] *Ibid.* [68] Cemeteries (Investment of Funds) Act 1959 (No. 6578), s. 4.
[69] Cemeteries Act 1959 (No. 6530), s. 2.
[70] Public Service (Amendment) Act 1959 (No. 6579), s. 3.
[71] Superannuation Act 1959 (No. 6560), s. 3.
[72] Melbourne and Metropolitan Tramways (Amendment) Act 1959 (No. 6555).
[73] Melbourne and Metropolitan Board of Works (Amendment) Act (No. 6536), s. 2.
[74] *Ibid.* s. 3.

for the supply of water by measure, and the terms and conditions of supply.[75] The maximum water rate is increased from eightpence to tenpence in the pound.[76] The Board's power to inspect plumbing works in private houses is clarified,[77] and the rate of interest accruing on unpaid debts is increased from five to six *per centum*.[78]

The Distribution of Population (Joint Committee) Act 1959 (No. 6576) establishes a Joint Committee comprising three representatives of the Legislative Council and six of the Legislative Assembly to investigate all aspects of decentralization and the distribution of population in Victoria, and to make recommendations to the Government.

The Chief Commissioner of Police is given power to delegate his functions to other members of the Force, such delegation being revocable at will.[79]

A more convenient means of serving notice on the absent owner of adjoining land, requiring him to contribute to the cost of a dividing fence, is created by the Fences (Amendment) Act 1959 (No. 6550). Instead of publishing a notice in a local newspaper, a notice may now be sent by registered post to the address of the absent owner as shown in the rate book of the municipality.[80]

The Housing Commission is empowered to construct houses for aboriginal families on land acquired for that purpose by the Aborigines Welfare Board.[81]

The Racing (Meetings) Act 1959 (No. 6574) increases from twenty-six to thirty the number of trotting race meetings which may be held each year.[82]

Under section 19 of the University Act 1958, honorary degrees could be conferred by the Council of the University of Melbourne only on persons who were graduates of any other university. This provision is amended in order that the Council may honour distinguished citizens who have not graduated at any university, or have graduated at the University of Melbourne only.[83]

After the consolidation of Victorian statute law in 1958, the Amendments Incorporation Act 1958 introduced the system, already in use in relation to Commonwealth legislation, of reprinting Acts from time to time, incorporating any amendments to them. Because of the growing problems of compilation and expense involved in the production of a general consolidation, it was felt that the adoption of the system of reprinting with amendments would provide a prefer-

[75] *Ibid.* s. 6. [76] *Ibid.* s. 8. [77] *Ibid.* s. 15. [78] *Ibid.* s. 16.
[79] Police Regulation (Delegation of Powers) Act 1959 (No. 6570), s. 2.
[80] Fences (Amendment) Act 1959, s. 2.
[81] Aborigines (Houses) Act 1959 (No. 6498), s. 2.
[82] Racing (Meetings) Act 1959, s. 4.
[83] University (Honorary Degrees) Act 1959 (No. 6502), s. 2.

able means of obtaining an orderly arrangement of Victorian statute law.[84] However, doubts arose as to whether the Amendments Incorporation Act 1958 was expressed in terms sufficiently wide to enable amendments made by proclamation, Order-in-Council, and similar instruments, to be included in reprints. The Amendments Incorporation (Extension) Act 1959 (No. 6541) resolves the ambiguity by expressly directing that such amendments are to be incorporated in reprints of the amended Act.[85]

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[84] See comments in 'Legislative Summary, Victoria 1958' (1959) 2 *M.U.L.R.* 222, 226.

[85] Amendments Incorporation (Extension) Act 1959, s. 2.